

INTERPRETIVE LETTER 98-4 (May 26, 1998)

For a banking facility to be considered a branch, it must engage in one of the core banking functions, must be established by the bank, and must be accessible to the public, giving the bank a competitive advantage in obtaining customers.

This letter responds to your recent inquiry regarding an out-of-state State bank ("Bank") wishing to establish a mortgage loan processing office ("LPO") in Illinois. You have asked the Office of Banks and Real Estate ("Agency") for an interpretation on the types of activities in which such an entity may be engaged. In addition, you also wanted guidance on any applicable licensing requirements.

According to your letter, the Bank has a wholesale mortgage lending division which makes nationwide mortgage loans based on applications that are generated by unaffiliated mortgage brokers. The Bank wishes to open an LPO in Illinois which would make loan decisions, prepare closing documents, process loan fundings, and perform other ministerial activities relating to the Bank's mortgage loans. The LPO would not take applications or close loans nor would it be accessible to mortgage loan applicants or other members of the public. Furthermore, no deposit activities or other commercial banking activities would be conducted at the LPO.

The first issue is whether the LPO's proposed activities are permissible under Illinois law. The Agency has taken the position that an out-of-state bank may establish an LPO in Illinois to explain credit product features and benefits, assist in credit application preparation, and accept credit applications for processing at the bank's main office. Interpretive Letter 88-7 (December 13, 1988). So long as the LPO conducts these representational functions, the LPO would not be considered a branch under Illinois law and would only be required to apply for a Foreign Bank Representative Office license in order to conduct such business in this state. Interpretive Letter 91-17 (July 25, 1991).

Under most circumstances, if an LPO participates in the credit decision process, accepts loan payments, or disburses loan proceeds, the LPO would be considered a "branch" and would have to comply with any relevant branching requirements. Interpretive Letter 88-7 (December 13, 1988). However, this assumes that the LPO meets all other relevant requirements for an entity to be considered a branch.

Some of these requirements have been discussed in federal law. A branch is defined in the National Bank Act as any office where, "deposits are received, or checks paid, or money lent." 12 U.S.C. 36(j). The OCC has taken the position that for a banking facility to be considered a branch, it must engage in one of the core banking functions, must be established by the bank, and must be accessible to the public, giving the bank a competitive advantage in obtaining customers. OCC-IL-634 (July 23, 1993). Since the definition of a branch in the National Bank Act is virtually identical to the definition in the Act, the Agency would, in this instance, also use the three prong test to help determine whether an entity is indeed a branch.

In the situation you described, although the LPO would engage in the core banking function of making loans and would be established by the Bank, it would not be accessible to the public nor would it give the Bank a competitive advantage over other Illinois banks. The Agency therefore concludes that the Bank may engage in the functions related to residential mortgage loans

discussed in this letter without being considered a branch so long as its LPO would not be accessible to the public. The LPO would be required to acquire a Foreign Bank Representative Office license through our Agency.

Expanded summary:

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For a banking facility to be considered a branch, it must engage in one of the core banking functions, must be established by the bank, and must be accessible to the public, giving the bank a competitive advantage in obtaining customers. For instance, an out-of-state State bank loan production office (LPO) which would make loan decisions, prepare closing documents, process loan fundings, and perform other ministerial activities relating to the Bank's mortgage loans may engage in those activities without being considered a branch so long as its LPO would not be accessible to the public.