

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
OFFICE OF FINANCIAL AND INSURANCE SERVICES**

Before the Commissioner of Financial and Insurance Services

**IN THE MATTER OF: Request by
Martin Werner, Werner & Blank, LLC, for
a declaratory ruling on an alternative asset test
under the Michigan Savings Bank Act**

Ruling No. 03-062-BT

**Issued and entered
this 10th day of September, 2003
by
Linda A. Watters
Commissioner**

**DECLARATORY RULING approving pursuant to MCL 487.3204(1)(b) the
asset test set forth in 12 USC 1467a(m) as an acceptable alternative to the
asset test set forth in MCL 487.3204(1)(a)**

**I
BACKGROUND**

Section 63¹ of the Administrative Procedures Act of 1969 allows an agency to issue a declaratory ruling, upon request by an interested person, as to how a statute administered by the agency would be applied to an actual state of facts. Section 2101² of the Banking Code of 1999³ (Code) created a financial institutions bureau to “have jurisdiction over and administer the laws relating to financial institutions transacting business in this state” and named the commissioner of the financial institutions bureau as its head. Section 201 of the Michigan Savings Bank Act⁴ (Act) gives the financial institutions bureau jurisdiction over and authority to execute laws “relating to savings banks transacting business in this state”. Section 208 of the Act authorizes the commissioner of the financial institutions bureau to issue orders and declaratory rulings considered “necessary to effectuate the purposes and to execute and enforce the provisions of

¹ MCL 24.263

² MCL 487.12101

³ MCL 487.11101 et seq.

⁴ MCL 487.3201(1)

this act”.⁵ Executive Order 2000-4, effective April 3, 2000, transferred the powers of the Financial Institutions Bureau to the Office of Financial and Insurance Services and the powers of the Commissioner of the Financial Institutions Bureau to the Commissioner of Financial and Insurance Services.

Thus, the Commissioner of the Office of Financial and Insurance Services has authority to issue a declaratory ruling regarding the applicability of the Act to an actual state of facts. The August 13, 2003 request letter sets forth a statement of facts sufficient to enable the Commissioner to issue a declaratory ruling regarding the applicability of the Act to the stated facts.

II FACTS

Citizens First Bancorp, Inc., Port Huron, Michigan (Citizens First), is a savings and loan holding company that has entered into an Agreement and Plan of Merger (Agreement) with Metro Bancorp, Inc., of Farmington Hills, Michigan, (Bancorp). Bancorp is a one-bank holding company that wholly owns Metrobank, a state-chartered commercial bank. Citizens First wishes to remain regulated as a savings and loan holding company following the planned merger, and in order to effect this, Citizens First proposes that Metrobank first should be converted into a Michigan-chartered savings bank.

Section 204(1) of the Act⁶ requires that a state savings bank satisfy either a defined asset test (Section 204 test) or one prescribed by order or declaratory ruling of the Commissioner. In addition, savings banks must satisfy the asset test established in Section 10(m) of the Home Owners Loan Act⁷ (HOLA test) to be considered a qualified thrift lender. The state and federal tests are similar but not identical.

III ISSUE

⁵ MCL 487.3208(2)

⁶ MCL 487.3204(1)

⁷ 12 USC 1467a(m)

The Commissioner has been asked to determine that the HOLA test is an acceptable alternative test to that established in Section 204(1)(a) of the Act.

IV ANALYSIS

As described in II, above, state-chartered savings banks must satisfy asset tests in order to be considered savings banks. Section 204(1)(b) of the Michigan Savings Bank Act authorizes the Commissioner to prescribe an asset test other than that detailed in Section 204(1)(a). In general, the Section 204 test may be described as requiring that 50% of a savings bank's total assets be comprised of any combination of certain delineated categories of loans or investments during any 9 of the immediately preceding 12 months. The federal HOLA test can be summarized as requiring that a savings bank's "qualified thrift investments" continue to equal or exceed 65% of its portfolio assets on a monthly basis in 9 of every 12 months.

Section 201(2) of the Michigan Savings Bank Act requires that the Commissioner

"maximize the capacity of savings banks in this state to offer convenient and efficient financial services, to promote home ownership and economic development, and to ensure that savings banks remain competitive with other types of financial institutions and providers of financial services."

The asset categories under both the state and federal asset tests emphasize residential lending and community development, though the HOLA test includes a broader range of qualifying assets, specifically with respect to inclusion of small business loans. Thus both tests promote home ownership and economic development.

Acceptance of the HOLA test would provide a savings bank, within the general boundaries of promoting home ownership and economic development, greater flexibility than the Section 204 test to meet the small business credit needs of its community while preserving its status as a savings bank, thus maximizing its ability to offer convenient and efficient financial services.

Federal savings banks, direct competitors of Michigan's state-chartered savings banks, must satisfy the HOLA test, but are not subject to the Section 204 test. The requirement that state savings banks meet both the state Section 204 and federal HOLA asset tests places a greater

burden for documentation of compliance with the tests on state-chartered savings banks than on their federal counterparts, creating competitive inequality.

The Commissioner is directed, with limited exceptions, to take a liberal construction of the Michigan Savings Bank Act.⁸ The issue at hand relates to none of the exceptions from the directive set forth in Section 201(3) of the Act. Thus the Commissioner may accept a commercially reasonable alternative asset test that, as set forth in 201(2), maximizes ability to offer convenient and efficient financial services, encourages home ownership and economic development, and ensures that savings banks remain competitive with other types of financial institutions.

There has been no evidence that the public has been harmed by federal savings banks' satisfaction of the HOLA test without regard to the provisions of the Section 204 test.

Implementation of the proposed course of action would not impair the safe and sound operation of Metrobank.

Michigan law does not elsewhere prohibit application of the HOLA test.

V RULING

IT IS MY RULING that a savings bank which satisfies the asset test established in Section 10(m) of the Home Owners Loan Act has satisfied the asset test requirement of Section 204(1)(b) of the Michigan Savings Bank Act.

/ss/

**Linda A. Watters
Commissioner**

⁸ “This act shall be liberally construed except for those provisions that relate to safety and soundness of operations, investments, and management.” MCL 487.3201(3)