

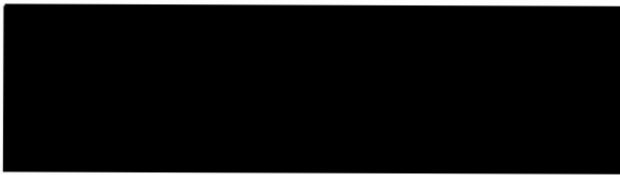


DIVISION OF FINANCE

301 West High Street, Room 630  
P.O. Box 716  
Jefferson City, MO 65102-0716  
(573) 751-3242  
(573) 751-9192 FAX  
[www.finance.mo.gov](http://www.finance.mo.gov)

Mick Campbell  
Acting Commissioner

April 13, 2022



Re: Interpretive Letter 2-2022  
Request under § 362.106(4)(e), RSMo

Dear [REDACTED]

In a letter dated March 15, 2022, you requested on behalf of your client, [REDACTED] this office's determination permitting your client to engage in the following activity:

*Conducting the actions of approving loans and making credit decisions on loan applications at any location, including a "Loan Production Office" ("LPO"), without making the location of such approval or decision a "branch" of the Bank.*

In your letter, you state that federal law permits national banks to engage in that proposed activity, and you cite 12 U.S.C. § 36(j), 12 C.F.R. § 7.1004, and Office of the Comptroller of Currency (OCC) Interpretive Letter No. 902 (January 2001) as authorizing the proposed activity for national banks provided that relevant conditions are met.

Under § 362.106(4)(e), RSMo, state-chartered banks may conduct any activity that national banks are expressly authorized to conduct so long as the Missouri bank provides notice to the Commissioner of Finance, the Commissioner determines that the proposed activity is not an unsafe or unsound banking practice, and the requesting bank meets the relevant conditions prescribed for national banks. The Commissioner may—within the 30-day notice period—either take no action with respect to the request, or may issue an

interpretive letter specifically describing the activity permitted and any limitations thereon.

### **National Bank Authority**

Under federal law, a “branch” of a national bank is any location of a bank—other than an automated teller machine or a remote service unit—“at which deposits are received, or checks paid, or money lent.” 12 U.S.C. § 36(j). Under federal banking regulations, national banks are expressly permitted to approve loans and make credit decisions at LPOs without transforming the LPO into a “branch”:

A national bank ... may engage in loan production activities at a site other than the main office or a branch of the bank. A national bank ... may ... originate and approve loans, make credit decisions regarding a loan application, and offer other lending-related services such as loan information and applications at a loan production office without violating 12 U.S.C. 36 and 12 U.S.C. 81, provided that “money” is not deemed to be “lent” at that site within the meaning of § 7.1003 and the site does not accept deposits or pay withdrawals.

12 C.F.R. § 7.1004(a).

The OCC has authorized national banks to originate and approve loans and make credit decisions at any location—not just at LPOs—without turning that location into a “branch”:

Credit underwriting is essentially a back office function, and has become even more so as modern technology has made it possible for loan “approval” functions to be performed virtually anywhere, based on pre-established criteria, with the results communicated instantly to anyplace else. Therefore, the physical location where loan “approval” takes place may have little significance in today’s world. Moreover, the core branching function that is required under the McFadden Act is “making” loans. It is apparent that neither loan origination nor the technical act of loan approval, taken separately, constitutes the making of a loan. Performing two nonbranching functions at the same location does not change the nonbranching character of either. It follows that loan approval may take place at any location, including an LPO, without making that location a branch under federal law.

OCC Interpretive Letter No. 902 (January 2001) (internal citations omitted).

### Missouri Bank Authority

Missouri law does not expressly define the term “branch” for banking purposes. But Missouri does restrict what activities may be performed at LPOs, and Missouri regulations expressly prohibit the rendering of credit decisions at LPOs:

Loans which are originated at a loan production office **must be approved or denied at the main office or branch office of the lending bank** and the proceeds of these loans must be disbursed from the main office or a branch office of the lending bank; disbursement may not be effected by or through the loan production office. No payments may be accepted at a loan production office.

20 C.S.R. 1140-6.075(2) (emphasis added).

### Findings

After reviewing the applicable Missouri and federal laws and regulations, and your client’s request, I have determined that the proposed activity is authorized by federal law, that the activity is not unsafe or unsound, and that the bank meets the conditions prescribed for national banks.

The proposed activity will facilitate parity between Missouri-chartered and nationally chartered banks by allowing Missouri-chartered banks the ability to utilize modern technology—as they already have in countless other respects—and allow their loan officers to perform loan-approval activities without being tied to a particular physical location. This outdated limitation is a holdover of a time when significant restrictions existed on interstate and de novo branching activities, and when asynchronous communication between a bank’s physical locations was the standard.

Now, national banks can enter into loans where the loan applicant submitted their application from their couch at home, and the loan officer approves that application from a location other than at a branch or LPO. And the COVID-19 pandemic has also served to further accelerate the adoption of many telecommunication technologies across myriad industries and in the performance of a wide swath of different functions. These technologies enable Missouri-chartered banks to engage in activities instantaneously and with access to more information than ever before. Now more than ever, the actual physical location of where a loan officer renders a credit decision is of ever-diminishing consequence.

Therefore, your client's request to approve loans and make credit decisions on loan applications at any location, including at LPOs, without turning that location into a "branch" is approved. That approval notwithstanding, the other restrictions in 20 C.S.R. 1140-6.075(2) still apply, and the bank may not disburse loan proceeds at any location other than the bank's main office or a branch, effect disbursement through an LPO, or accept payments at an LPO.

All Missouri-chartered banks may approve loans and make credit decisions on loan applications at any location, including at LPOs, without turning that location into a "branch," subject to the following restrictions:

- Loan proceeds must still be disbursed, payments must still be accepted, and deposits must still be received at a bank's main office or branch;
- The bank will maintain appropriate policies, procedures, safeguards, and controls—including those related to loan underwriting, sensitive information, data protection, remote access, and cybersecurity—to ensure safety and soundness at all locations where banking activities occur; and
- The bank will continue to assess any impact its LPO activities have with respect to the bank's obligations under the Community Reinvestment Act.

This letter will be filed today with the Office of the Missouri Secretary of State and posted on the public internet website of the Division of Finance. It will become effective ten days after filing with the Secretary of State. If you have any questions regarding this matter, please contact James Gallaher, Division of Finance General Counsel, or Gabriel Harris, Division of Finance Associate General Counsel.

Sincerely,



Mick Campbell  
Acting Commissioner

MC:cs

cc: Missouri Secretary of State's Office  
Federal Reserve Bank of St. Louis