

January 24, 1997

Cecil R. Monroe, Administrator
Division of Finance and Corporate Securities
Department of Consumer and Business Services
21 Labor & Industries Building
Salem, OR 97310

Re: Opinion Request OP-1997-1

Dear Mr. Monroe:

You ask whether a lender that is approved by the federal Housing and Urban Development (HUD) agency for participation in mortgage insurance programs under the National Housing Act (NHA) is exempt from the interest rate limitations imposed by ORS 82.010(3). The question arises because the HUD-approved lender, which functions under the federal laws, also makes real estate mortgage loans that are not, for example, eligible for mortgage insurance under the NHA. The lender seeks assurance from your office that it may make all of its real estate loans without being subject to the interest rate restrictions imposed by ORS 82.010(3). We believe that such a lender is exempt from the interest rate limitations with respect to all of its real estate loans.

ORS 82.010(3) subjects persons making small loans to interest rate limitations, unless the loans or lenders are specifically exempted by ORS 82.025.⁽¹⁾ The exemption at issue here is ORS 82.025(2), which provides that ORS 82.010(3) does not apply to:

Any lender approved by the Secretary of Housing and Urban Development of the United States for participation in any mortgage insurance program under the National Housing Act (12 U.S.C. 1701 et seq.)

In interpreting this section, we previously concluded that the interest rate limitation exemption applied to HUD-approved lenders dealing in otherwise regulated loans (e.g., mortgage loans approved for NHA participation) and did not extend to HUD-approved lenders making personal loans. Letter of Advice dated February 5, 1985, to Keith Boyer, Supervisor, Consumer Finance Section (OP-5734).⁽²⁾

We now take another look at ORS 82.025(2), this time in light of the proposal that a HUD-approved lender be permitted to set interest rates in excess of the state's limitation for all of its real estate mortgage loans. In a case decided after our 1985 opinion, the Supreme Court set out a template for interpreting statutory provisions. See *PGE v. Bureau of Labor & Industries (PGE)*, 317 Or 606, 610-12, 859 P2d 1143 (1993). The court's first level of analysis examines both the text and context of the statute. In doing so, the court considers statutory and case law rules of construction that bear directly on the interpretation of the text and context of the statute, such as "words of common usage typically should be given their plain, natural, and ordinary meaning." *Id.* at 611. If, but only if, the legislature's intent is not clear from the text and context inquiry, the court will then consider legislative history. If, after consideration of text, context and legislative history, the intent of the legislature remains unclear, then the court may resort to general maxims of statutory construction for aid in resolving the remaining uncertainty. *Id.* at 611-12

Our earlier review of ORS 82.025(2) was based almost entirely upon its legislative history.⁽³⁾ In considering this provision again, we first focus on its text and context.

The immediate context of ORS 82.025(2) is its relation to the other exemptions in that statute. These exemptions include a mix both of lenders, such as banks, national banks, mutual savings banks and savings and loan associations, ORS 82.025(1), and of loans, such as those secured by first liens on real property and loans secured or covered, in whole or in part, by the Federal Housing Administration, the United States Department of Veterans Affairs or the Farmers Home Administration, ORS 82.025(3), (5).

ORS 82.025(2) is a lender-specific provision, not a loan-specific provision. ORS 82.025(2) exempts "any lender approved by the Secretary of [HUD] for participation in any mortgage insurance program under the [NHA]." The text of this provision does not require that the loan itself be subject to mortgage insurance. In contrast, ORS 82.025(4) exempts "any loan which is secured by real property," but further defines the lender for such loans as "one who makes, invests in or arranges real property loans * * * aggregating more than \$1 million per year." Thus, it would appear from the text and context of ORS 82.025(2) that it is intended to exempt HUD-approved lenders, not loans or classes of loans.⁽⁴⁾

The exemption from interest rate limitations contained in ORS 82.025(2) is for "any lender" approved by the Secretary of HUD "for participation in any mortgage insurance program" under the NHA. Following the template for statutory interpretation set out in *PGE*, it is unnecessary to reach and rely upon the legislative history of ORS 82.025(2), as we did in our 1985 opinion. Looking at the "plain, natural, and ordinary meaning" of the statutory language, *PGE*, 317 Or at 611, we conclude that ORS 82.025(2) exempts "any lender" approved by the Secretary of HUD and does not restrict the exemption to lenders making only a certain type of loan, e.g., a federally insured loan.

A HUD-approved mortgage lender may make all of its real estate loans without being subject to the interest rate restrictions imposed by ORS 82.010(3). As a result of our review of ORS 82.025(2), based on the *PGE* analysis, we also conclude that our 1985 opinion was incorrect and hereby overrule that opinion. Under the plain language of ORS 82.025(2), a lender approved by HUD for participation in an NHA mortgage insurance program may make any of its loans without being subject to the interest rate restrictions imposed by ORS 82.010(3).

Sincerely,

Donald Arnold
Chief Counsel
General Counsel Division

1. ORS 82.010(3) provides, in part:

Except as provided in ORS 82.025, no person shall:

(a) Make a business or agricultural loan of \$50,000 or less at an annual rate of interest exceeding the greater of 12 percent, or five percent in excess of the discount rate * * * on 90-day commercial paper * * * ; or

(b) Make a loan of \$50,000 or less, except a loan made under paragraph (a) of this subsection, at an annual rate of interest exceeding the greater of 12 percent, or five percent in excess of the discount rate on 90-day commercial paper * *

Return to [previous location](#).

2. Our 1985 opinion interpreted ORS 725.031 and 725.041, which were repealed by Oregon Laws 1987, chapter 215, section 24, and reenacted by Oregon Laws 1987, chapter 215, sections 18 and 21. The reenacted laws became ORS 82.010 and 82.025, respectively.

Return to [previous location](#).

3. In our 1985 opinion we stated, without fully analyzing its text and context, that the language of ORS 82.025(2) was ambiguous and therefore concluded that the courts would consider the legislative history of the enactment. OP-5734, *supra*, at 2. In reviewing the legislative history of the enactment, we concluded that the Oregon legislature intended to provide a limited exemption for HUD-approved lenders dealing in otherwise regulated mortgage loans, an exemption not applicable to personal loans. *Id.* at 5.

Return to [previous location](#).

4. Language virtually identical to that in ORS 82.025(2) is also found in federal statutes, but each of these statutes contains additional, qualifying language. By the terms of the qualifying language, the federal statutes are limited to particular loans or particular lenders. See 12 USC § 3802(2) (defining a "housing creditor" and qualifying status as to alternative mortgage transactions); 12 USC § 1735f-7a(a)(1)(C)(vi) (defining "lender" for use in conjunction with "federally related mortgage loan," 12 USC § 1735f-5(b)(2)(A)).

Return to [previous location](#).

Go to:

[Top of page.](#)

[AG Opinions home page.](#)



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