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## ARKANSAS SECURITIES DEPARTMENT

January 16, 2004

Mr. Patrick A. Burrows  
Quattlebaum, Grooms, Tull & Burrow  
111 Center Street, Suite 1900  
Little Rock, AR 72201

RE: Wal-Mart Stores, Inc. Employee Benefit Program  
No Action No. 14639-CS

Dear Mr. Burrows:

We are in receipt of your letter dated December 29, 2003 in which you request that the staff of the Arkansas Securities Department recommend to the Commissioner that no enforcement action be taken against you client, Wal-Mart Stores, Inc., if it engages in the activities described in your letter without registration under the Arkansas Fair Mortgage Lending Act, Ark. Code Ann. § 23-39-501, *et seq.* (the "Act"). A copy of your letter reciting the pertinent facts is attached hereto for reference.

Based upon the representations set forth in your letter, primarily that Wal-Mart will receive no compensation or pecuniary gain from the loans written in connection with the employee benefit program, the staff will recommend to the Commissioner that no enforcement action be taken against Wal-Mart if it engages in the described activities without registration under the Act.

Please note that the position expressed herein pertains only to the facts and circumstances described in your letter. Different facts might well result in a different response. This letter is not to be construed or relied upon as legal advice, nor does it purport to address the possible application of any other laws that may relate to the actions described in your letter.

Should you have any questions, please contact me.

Yours truly,

John E. Moore, Jr.  
Chief Counsel

Quattlebaum, Grooms, Tull & Burrow

A PROFESSIONAL LIMITED LIABILITY COMPANY

111 Center Street  
Suite 1900  
Little Rock, Arkansas 72201

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December 29, 2003

Arkansas Securities Department  
Attention: John Moore  
Heritage West Building, Suite 300  
201 East Markham Street  
Little Rock, Arkansas 72201

Re: Interpretive Letter concerning the Fair Mortgage Lending Act

Dear Sirs:

On behalf of our client, Wal-Mart Stores, Inc. ("Wal-Mart"), we request an interpretive letter as to whether Wal-Mart would be a mortgage broker under the Fair Mortgage Lending Act in the circumstances described below.

Wal-Mart has entered into an arrangement with Nationwide Advantage Mortgage Company ("Nationwide") to provide an employee benefit program which makes available to eligible Wal-Mart employees ("Associates") certain benefits when obtaining a home mortgage ("Mortgage Program"). The benefits may include discounts on certain closing costs and participation for eligible Associates in certain Federal National Mortgage Association ("FNMA") programs to expand eligibility and reduce costs associated with originating home mortgage loans. One of the FNMA programs offered allows Associates with lower FICO scores (system for analyzing credit history in underwriting loans) to qualify for a higher mortgage loan amount than normally available under standard credit underwriting criteria.

Nationwide is currently a licensed loan broker under the Mortgage Loan Company and Loan Broker Act. Further, it is our understanding that Nationwide has completed all licensing requirements as a mortgage broker under the Fair Mortgage Lending Act (the "Act").

Wal-Mart periodically communicates to its Associates the existence and availability of its employee benefit plans and, upon request by its Associates, provides information of such programs. Communications to Associates concerning the Mortgage Program are handled in substantially the same manner as communications about all other benefit programs. Wal-Mart provides its Associates access to Nationwide for participation in the Mortgage Program through direct access telephone lines

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in its retail stores. Other than the communications described above, Wal-Mart does not solicit its Associates to participate in the Mortgage Program.

Mortgages originated under the Mortgage Program are "co-branded", bearing Wal-Mart's name and logo on the instrument, but Nationwide undertakes all of the funding of the loans and owns all such loans. Wal-Mart has no ownership interest in Nationwide or any companies affiliated with Nationwide. Wal-Mart did not receive any fees, compensation or other remuneration for instituting the Mortgage Program and does not receive any fees, compensation or other remuneration from the operation of the Mortgage Program. The sole benefit to Wal-Mart is the intangible benefit in assisting Wal-Mart in recruiting and maintaining a competent, motivated and efficient workforce.

Under the Mortgage Loan Company and Loan Broker Act, in effect prior to January 1, 2004, a loan broker is defined as "any person who engages in the business of purchasing wages or salaries or who acts as a go-between, finder, or agent of a lender or borrower of money for the purpose of procuring a loan of money or who engages in the business of guaranteeing or endorsing notes and other evidences of indebtedness." To qualify as a loan broker under the present law, a person either has to be actively engaged in a business involving mortgage loans or actively engaged in arranging a mortgage loan. Wal-Mart previously determined that simply making available the Mortgage Program did not involve the level of active participation required to be a loan broker under the present law.

Under the Act, which is effective January 1, 2004, the definition of the activities and conduct which will subject a person to regulation has been amended and, perhaps, expanded. The Act, at A.C.A. §23-39-502(12), defines mortgage broker as follows:

- (12) "Mortgage broker" means a person who for compensation or other gain or in the expectation of compensation or other gain and, regardless of whether the acts are done directly or indirectly, through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers:
- (A) Accepts or offers to accept an application for a mortgage loan;
  - (B) Solicits or offers to solicit a mortgage loan;
  - (C) Negotiates the terms or conditions of a mortgage loan; or
  - (D) Issues mortgage loan commitments or interest rate guarantee agreements to borrowers . . . .

In our analysis of the applicability of the Act to the Mortgage Program, at least three areas of significant ambiguity arose. The Act removes the concept of "engaging in business" as being a requisite for certain activities to be regulated. This change arguably expands the scope of the Act to cover incidental activities that are not undertaken in a business directly related to mortgage lending, thereby raising the possibility that the Mortgage Program might cause Wal-Mart to be a mortgage broker even though it is not engaged in any business activities related to mortgage lending. Second,

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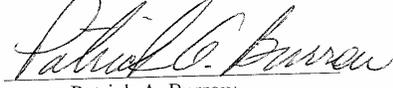
the Act regulates the solicitation or offer to solicit a mortgage loan. There is no definition of solicit or solicitation under the Act. Hence, the Act does not provide any specific guidance on the type or level of conduct required to constitute a solicitation or an offer to solicit a mortgage loan. While Wal-Mart does not actively solicit mortgage loans from its Associates, the existence of the Mortgage Program and communications to its Associates about the Mortgage Program might be viewed as sufficient activity to constitute a solicitation. Finally, while the new Act does require a mortgage broker to have compensatory motive, the types of "other gain" which are intended to be included are not specified. At most, Wal-Mart receives an intangible benefit related to recruiting and maintaining its workforce from offering the Mortgage Program. Without additional guidance, it is not possible to conclude with certainty that such an intangible benefit could not constitute "other gain".

It is our belief that the activities of Wal-Mart under the Mortgage Program are not within the intended scope of the definition of mortgage broker under the Act. A reasonable interpretation of the concept "solicit a mortgage loan" would require a higher level of active conduct than merely making available and communicating the existence of an employee benefit program through a licensed mortgage broker to help Associates reduce mortgage loan closing costs and expand eligibility of Associates to qualify for mortgage loans. Further, a reasonable interpretation of "other gain" would require receipt of some type of tangible compensation or profit, whether directly or indirectly. In any case, the receipt of only an intangible benefit from recruiting and maintaining its workforce is not sufficient to satisfy a reasonable interpretation of "other gain".

We respectfully request that the Commissioner issue an interpretive letter addressing whether, based upon the facts and circumstances set forth above, Wal-Mart would be a mortgage broker under the Act.

Sincerely,

QUATTLEBAUM, GROOMS, TULL  
& BURROW PLLC



Patrick A. Burrow