J. Mark Gidley, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N. Street, N.W.
Washington, D.C. 20037-1128
September 22, 1994

Dear Mr. Gidley:

This letter responds to your request on behalf of the Mortgage Asset Research Institute, Inc. ("MARI") for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. . 50.6. You have requested a statement of the Department's current enforcement intentions regarding a proposal by MARI to establish an information clearinghouse that "will contain information about non-public incidents involving fraud, material misrepresentation and other serious misconduct by real estate and mortgage industry parties" that participate in originating, insuring, selling or servicing mortgage loans. The clearinghouse would be known as the Mortgage Industry Data Exchange ("MIDEX"). Based on the information and materials that you have provided, the Department has no current intention to challenge the proposed information exchange program.

You have informed us that in 1993 the residential mortgage industry originated over $1 trillion in traditional mortgage loans. In addition to the origination of mortgage loans, substantial business have developed to insure, service and resell mortgage loans. The efficient operation of all of these mortgage-related markets depends on the existence of accurate information about the persons that apply for a mortgage and the property that secures the mortgage. You assert that on occasions individuals and firms in the mortgage industry have misrepresented facts critical to the soundness of mortgages and that these misrepresentations have imposed very substantial losses on the industry and its customers.

MARI already operates a database that contains public information about incidents resulting in disciplinary and other actions against financial, real estate and mortgage industry parties by federal, state and trade oversight bodies. However, it asserts that there is a sizeable amount of information about unscrupulous operators in the mortgage-related businesses that is known to individual firms but not to others who might be victimized. As a result, you assert that "in the absence of a mechanism to exchange non-public information on a timely basis . . . an unscrupulous operator can victimize many firms before any effective action" can be implemented. MIDEX is MARI'S proposed means of filling that vacuum.

MIDEX will be open to subscribership by any mortgage originator, insurer, servicer, purchaser or other mortgage industry participant. Subscribers will be required to report to MIDEX, on a non-exclusive basis, information indicating that fraud, material misrepresentation, or other serious misconduct has occurred with respect to a mortgage. Subscribers may also query MIDEX about particular mortgage industry firms or individuals with whom they are, or contemplate, doing business. Subscribers will not, however, deal directly with each other. Information will be sent to and received from MIDEX. Recipients of information generally will not know who provided the information and what action, if any, the reporting subscriber took with respect to the reported firms or individuals. Conversely, reporting subscribers will not know who received

the information sent to MIDEX or what actions the receiving subscriber took with respect to dealing with the reported entities. MIDEX will make no recommendation as to what action, if any, receiving subscribers should take. You assert that all actions by subscribers will be on a unilateral, voluntary basis. Whether recipients choose not to deal with reported persons, take extra precautions, or proceed as usual will reflect the independent decisions of individual subscribers. Any meetings of MIDEX subscribers will be limited to the administration and operation of the clearinghouse in accord with a written agenda. There will be no discussion about any specific MIDEX report or the parties mentioned therein. Antitrust counsel retained by MARI will attend all meetings.

Based on the information that you have provided, the Department has no current intention to challenge the exchange of information in the manner contemplated by MARI in the proposed MIDEX clearinghouse. To the extent that MARI, MIDEX and its subscribers operate in accord with the statements and commitments in the materials that you have submitted to the Department, the proposed information exchange program should not have any anticompetitive effects. That program has been designed with sufficient safeguards that it is not likely to facilitate collusion. The limited amounts of information exchanged are not likely to result in concerted decisions relating to price, quality, output or whether, or the terms on which, any subscriber will do business with reported persons. The information will be exchanged on a "blind" basis, i.e. through a third-party vendor, MIDEX, and both reporting and receiving subscribers will make independent decisions about how they should deal with reported parties, without knowledge of the decisions of other subscribers. Moreover, the fact that MIDEX will be open to all parties in mortgage-related businesses reduces any concern that the clearinghouse is designed to competitively disadvantage or advantage any individual, or group of, competitors.

To the extent that the information exchanged through MIDEX reduces industry and consumer losses attributable to fraud, material misrepresentation or other improper conduct by mortgage-related entities, it will have a procompetitive effect; it will enhance efficiency and lower operating costs, thereby increasing output.

This letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring an enforcement action in the future if the actual operation of any aspect of the proposed information exchange proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. . 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph l0(c) of the Business Review Procedure.

Sincerely, /S/

Anne K. Bingaman
Assistant Attorney General