

**DEPARTMENT OF BUSINESS OVERSIGHT***Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

**Jan Lynn Owen**  
**Commissioner of Business Oversight**

May 11, 2016

Re: Request for legal opinion

Dear \_\_\_\_\_:

Thank you for your letter to the General Counsel of the Department of Business Oversight ("Department"), Scott Wyckoff, dated February 29, 2016, on behalf of \_\_\_\_\_. As Counsel in the Legal Division, Mr. Wyckoff requested that I respond to this matter. Your letter requests a formal opinion from the Department about whether \_\_\_\_\_ will be: 1) deemed to be conducting business in California under Financial Code section 16020, subdivision (c); 2) subject to regulation by the Department if it originates residential mortgage loans secured by California real property; or 3) required to comply with the laws of California applicable to state-chartered credit unions. This letter responds to your letter and our subsequent telephone conversations on March 9 and March 14, 2016.

### **Background**

\_\_\_\_\_ is a Nevada state-chartered credit union. Your letter states that \_\_\_\_\_ intends to originate residential mortgage loans in California by doing one of the following: 1) the residential mortgage loan originations will be made through \_\_\_\_\_'s existing limited liability company, or 2) the residential mortgage loan originations will be made through a new limited liability company formed in California. Under the second option, either \_\_\_\_\_ or \_\_\_\_\_ will be the sole member of \_\_\_\_\_. Both \_\_\_\_\_ and \_\_\_\_\_ will be wholly-owned subsidiaries of \_\_\_\_\_.

Under both options, \_\_\_\_\_ and \_\_\_\_\_ will become licensed by the Department as a residential mortgage lender. \_\_\_\_\_ and \_\_\_\_\_ will transact no business in California other than residential mortgage lending. All mortgage loan applications will be processed in Nevada. You stated that \_\_\_\_\_ will not open any credit union branch offices or facilities or process any loan applications in California.

### **Credit Union Law**

The California Credit Union Law<sup>1</sup> applies to any corporation other than a federal credit union engaging in the business of a credit union in California. The Credit Union Law defines

<sup>1</sup> Fin. Code § 14000 et seq.

“branch business” of a credit union to include, among other things, issuing share accounts, receiving deposits, and making loans and other obligations.<sup>2</sup> A foreign (other state) credit union cannot transact business in California except at a branch office or facility the foreign (other state) credit union is licensed to maintain.<sup>3</sup> Financial Code section 16020, subdivision (c) provides an exception to the branch office and facility licensing requirement. A foreign (other state) credit union will not be deemed to be transacting business in California merely because a majority-owned subsidiary transacts business in this state.<sup>4</sup>

### **Conclusion**

You stated that \_\_\_\_\_ will only be making mortgage loans through a wholly-owned subsidiary. The wholly-owned subsidiary will be licensed by the Department as a residential mortgage lender. The proposed activity falls under the licensing exception in Financial Code section 16020, subdivision (c). As such, the proposed lending activities of \_\_\_\_\_ do not constitute engaging in credit union business in California. \_\_\_\_\_ would not be subject to the California Credit Union Law or other laws applicable to California, state-chartered credit unions.

This opinion is limited to the facts and circumstances described above regarding the regulation of \_\_\_\_\_ only. Should any of the facts or circumstances change, the Department’s opinion may also change.

Should you have any questions, please contact the undersigned at \_\_\_\_\_.

Sincerely,

Jan Lynn Owen  
Commissioner of Business Oversight

By

\_\_\_\_\_  
Shavaugn I. Lewis  
Counsel

SIL:acp  
cc: Scott Cameron, Senior Deputy Commissioner, Department of Business Oversight

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<sup>2</sup> Fin. Code § 16001.

<sup>3</sup> Fin. Code § 16020, subd. (a).

<sup>4</sup> Fin. Code § 16020, subd. (c).