

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 Law¹ 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

¹ 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.² 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.³ 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.⁴

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

² Fin. Code § 16001.

³ Fin. Code § 16020, subd. (a).

⁴ Fin. Code § 16020, subd. (c).