



State of Michigan
John Engler, Governor

Department of Consumer & Industry Services
Kathleen M. Wilbur, Director

Financial Institutions Bureau
Gary K. Mielock, Acting Commissioner

P.O. Box 30224
Lansing, MI 48909

333 S. Capitol, Suite A
Lansing, MI 48933

Tel. (517) 373-7107
Fax (517) 373-9475

January 5, 2000

YYYY
XXXX
XXXXXXXXXX
XXXXXXXXXX

Dear YYYY:

This letter is in reply to your facsimile dated November 24, 1999, regarding the applicability of the licensing and registration provisions of the Mortgage Brokers, Lenders, and Servicers Licensing Act (“MBLSLA”)¹ and The Secondary Mortgage Loan Act (“SMLA”)² to XXXX. This letter will also address your facsimile dated December 22, 1999, regarding “salespersons.”

Mortgage Brokers, Lenders, and Servicers Licensing Act

Your facsimile of November 24, 1999, requested that the Bureau provide written confirmation that XXXX is exempt from the licensing requirements of the MBLSLA.

Your letter indicates that XXXX is a California industrial loan company licensed by the California Department of Financial Institutions (“DFI”). In addition, you point out that XXXX is principally engaged in the origination of commercial and consumer real estate loans in California. XXXX now desires to extend its real estate loan activity into Michigan. Your letter also indicates that XXXX is a depository institution insured by the Federal Deposit Insurance Corporation (“FDIC”) and is subject to regulation and examination by both the DFI and the FDIC. Based upon its status as an insured depository financial institution, you claim that XXXX is exempt from the licensing requirement of the MBLSLA.

The MBLSLA regulates loans secured by a first lien mortgage on Michigan residential real property.

Section 2³ of the MBLSLA states, in pertinent part;

¹ MCL 445.1651, *et seq*; MSA 23.1125(51), *et seq*.
² MCL 493.51, *et seq*; MSA 23.568(1), *et seq*.
³ MCL 445.1652; MSA 23.1125(52).

“(1) A person shall not act as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under this act, unless 1 or more of the following apply:

* * *

“(b) The person is exempt from the act under section 25.”

Section 25(a)⁴ of the MBLSLA states that:

“This act does not apply to the following:

“(a) A depository financial institution whether or not the depository financial institution is acting in a capacity of a trustee or fiduciary.”

Section 1a(d)⁵ of the MBLSLA defines “depository financial institution” as:

“[A] state or nationally chartered bank, or a state or federally chartered savings and loan association or savings bank, or a state or federally chartered credit union, or an entity of the federally chartered farm credit system.”

Section 1a(d) of the MBLSLA specifically defines those depository financial institutions that are exempted from regulation by the MBLSLA as being state or nationally chartered banks, state or federally chartered savings and loan associations or savings banks, state or federally chartered credit unions, and entities of the federally chartered farm credit system. However, section 1a(d) makes no mention of industrial loan companies or any other entity whether insured by the FDIC or some other deposit insurance scheme. Under Michigan law, the distinction between banks and industrial loan companies has been abolished. Consequently, Michigan law does not charter or permit the operation of new industrial loan companies.⁶

Unlike Michigan, California law specifically allows for the chartering of “industrial loan companies.” However, California “industrial loan companies” are distinguished from other California financial institutions (banks, commercial banks, trust businesses, trust companies, credit unions, national banks, and savings associations). California banks are distinctly established and regulated under Division 1 of the California Financial Code.⁷ California credit unions⁸ and savings associations⁹ are also distinctly established and regulated under California law. California industrial loan companies are formed and operated under Division 7¹⁰ of the California Financial Code. In effect, although industrial loan companies may be able to accept deposits and may be federally insured, California law does not treat industrial loan companies as banks. In fact, industrial loan companies in California are so unique, they

⁴ MCL 445.1675(a); MSA 23.1125(75)(a).

⁵ MCL 445.1651a(d); MSA 23.1125(51a)(d).

⁶ MCL 487.308; MSA 23.710(5).

⁷ Cal Fin Code, § 100, *et seq.*

⁸ Cal Fin Code, § 14000, *et seq.*

⁹ Cal Fin Code, § 5000, *et seq.*

¹⁰ Cal Fin Code, § 18000, *et seq.*

are both organized and regulated separately and distinctly from banks and other types of depository financial institutions.

Although XXXX may be deemed to be a “state bank” under Section 3(a)(2)¹¹ of the Federal Deposit Insurance Act (“FDIA”) by virtue of its FDIC membership and depository insurance, the MBLSLA specifically enumerates those institutions included within the definition of “depository financial institution.” Industrial loan companies are not included within the definition.

Because California law does not treat industrial loan companies in the same fashion as they treat those institutions listed under Section 1a(d) of the MBLSLA, XXXX does not qualify for exemption from the MBLSLA.

Secondary Mortgage Loan Act

The exemption rules of the MBLSLA differ significantly from the exemption rules of the SMLA. Section 29 of the SMLA states, in pertinent part, that:

“This act does not apply to a *depository financial institution* that is subject to other laws of this state, another state, or of the United States *regulating the power of the depository financial institution to engage in secondary mortgage loan transactions* or upon the conditions and limitations imposed by law upon the exercise of this power.”¹²

Section 1(2)(c)¹³ of the SMLA defines the phrase “depository financial institution” to include state and nationally chartered banks, state and federally chartered savings and loan associations, state and federally chartered savings banks, state and federally chartered credit unions, and “any other institution whose deposits are insured by an agency of the federal government.”

Therefore, if XXXX can meet the definition of a “depository financial institution” under the SMLA, it may be able to take advantage of the Section 29 exemption.

According to your letter, XXXX is a California-chartered, FDIC-insured, industrial loan company. Because XXXX has obtained FDIC deposit insurance, XXXX is considered a “depository financial institution” for purposes of the SMLA. However, simply meeting the SMLA’s definition of a depository financial institution by obtaining deposit insurance does not automatically trigger the Section 29 exemption. Insured depository institutions must also be authorized under their regulating authority to engage in secondary mortgage loan transactions.

¹¹ 12 USC 1813(a)(2).

¹² MCL 493.79; MSA 26.568(29). Emphasis added.

¹³ MCL 493.51(2)(c); MSA 26.568(1)(2)(c).

YYYY

January 5, 2000

Page 4

In some circumstances an insured depository financial institution will be subject to the SMLA, including its licensure provisions, if the state or federal law regulating its lending activity does not authorize a specific type of secondary mortgage loan transaction. For instance, the California Financial Code authorizes industrial loan companies to make a loan “secured primarily by real property,” but defines the phrase “secured primarily by real property” to mean the “fair market value of the real property less prior encumbrances, at the time the loan is made or other obligation is acquired, is more than 50 percent of the principal amount owing on the loan or obligation.”¹⁴ Therefore, it appears that an industrial loan company is prohibited from making some types of secondary mortgage loans (*e.g.*, fair market value is 50% or less of loan) under California law, even though no such lending prohibition would exist in the SMLA. In such a case, the institution would not be able to take advantage of the Section 29 exemption regarding transactions permissible under Michigan law but not regulated under California law without first obtaining a license or registering under the SMLA.

Therefore, to the extent XXXX’s Michigan secondary loan transactions would be prohibited under California law, it must be licensed or registered under the SMLA.

Licensure of Salespersons

According to your facsimile dated December 22, 1999, XXXX plans to implement its “retail lending” business within the state of Michigan through “salespersons working from their homes.” Your facsimile indicates that the salespersons will “solicit loan applications from [Michigan] residents by mail and telephone.” Finally, your facsimile indicates that the “salespersons” will not open their homes to the public and, therefore, “need not be licensed by the Michigan Financial Institutions Bureau.”

The statements made in your letter do not present the Bureau with sufficient facts for it to make a determination regarding licensure of these individuals. For instance, if the “salespersons” are not your exclusive employees and are brokers that may broker loans to other lenders, each “salesperson” must be individually licensed. Please provide us with a complete description of how the “salespersons” will engage in business within the state of Michigan. Please include a statement regarding their relationship with XXXX, their compensation, and loan approval authority.

Please note that this letter is predicated on the facts outlined in your letter. If there is any change in the facts or applicable law, the Bureau may unilaterally withdraw this letter and require that XXXX subject itself to any applicable licensure provision for which an exemption was previously claimed.

¹⁴ Cal. Fin. Code, § 18006.

YYYY

January 5, 2000

Page 5

Application forms for both the MBLSLA and SMLA are enclosed for your convenience.

If you any questions in this regard, please contact me at (517) 373-3470.

Sincerely,

/s/

Barbara J. Strefling, Director
Licensing and Enforcement Division

DJ C:\Data\MS-WORD\Correspondence\Licensure\Mortgage Lender\XXXX