

(717) 787-1471

October 16, 1998

Re: Licensing Requirements Under The Secondary Mortgage Loan Act

Dear

This is in response to your letter to the Pennsylvania Department of Banking (the "Department") in which you request the Department to confirm that an entity which makes or produces secondary mortgage loans under Pennsylvania's Simplification and Availability of Bank Credit Act (the "Simplification Act"), 7 P.S. § 322, is not subject to the licensing or substantive requirements of Pennsylvania's Secondary Mortgage Loan Act (the "SMLA"), 7 P.S. § 6601 *et seq.*, under the facts as described below.

You state that your firm represents a second mortgage loan production office (the "Producer"), which is a first-tier subsidiary of a national bank (the "Bank"). You also state that the Producer brokers loans exclusively to the Bank and all loans close in the name of the Bank. You state that when a loan closes, the Bank exports the rates and fees of its home state for application to the loan. Finally, you state that for fees not subject to exportation, the Bank utilizes the Simplification Act in accordance with the National Bank Act's most favorable lender provisions.

Please be advised that the Department agrees with your analysis that a secondary mortgage loan made by the Bank under the terms of the Simplification Act, pursuant to the most favorable lender provision of the National Bank Act at 12 U.S.C. § 85, is not subject to any of the substantive provisions of the SMLA. Secondary mortgage loans originated under the Simplification Act are not subject to the provisions of the SMLA because the SMLA excludes from the definition of a "secondary mortgage loan" a loan which is made under any other law of the Commonwealth of Pennsylvania. 7 P.S. § 6602. In addition, a national bank is expressly exempt from the provisions of the SMLA, pursuant to 7 P.S. § 6603.

Accordingly, a loan originated by the Bank either under the laws of its home state consistent with the National Bank Act or under the provisions of the Simplification Act, pursuant to the most favorable lender provision of the National Bank Act at 12 U.S.C. § 85, does not fall within the definition of a secondary mortgage loan under the SMLA. *See* 7 P.S. § 6602. For purposes of the SMLA, a "secondary mortgage loan broker" is defined as "[a] person who in the ordinary course of business, for a fee, directly or indirectly negotiates or arranges for others a *secondary mortgage loan.*" 7 P.S. § 6602 (Emphasis added). Therefore, the Producer is not required to obtain an SMLA

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broker license to broker such loans to the Bank.

Furthermore, the Producer is not required to register with the Department as a "loan broker" under section 2188 of the Credit Services Act, 73 P.S. § 2188, and the regulations promulgated thereunder, 10 Pa. Code Chapter 42. Section 2188 of the Credit Services Act provides that a "loan broker" shall be registered with the Department pursuant to regulations promulgated by the Department. 73 P.S. § 2188. The Department promulgated regulations under section 2188 of the Credit Service Act at 10 Pa. Code Chapter 42. For purposes of the Credit Services Act, national banks are excluded from the definition of a "loan broker," whether the national bank is located within or outside of Pennsylvania. *See*, 73 P.S. § 2182(2)(i). Subsidiaries and affiliates of national banks located in Pennsylvania are excluded from the definition of a "loan broker." *See* 73 P.S. § 2183(2)(ii). Subsidiaries and affiliates of national banks located outside of Pennsylvania are excluded from the definition of a "loan broker," because subsidiaries and affiliates are not required to obtain a license as a mortgage banker under section 3(b) of the Mortgage Bankers and Brokers Act, 63 P.S. §456.03(b)(10). *See*, 73 P.S. § 2182(2)(iv).

If the Bank, pursuant to the most favorable lender provision of the National Bank Act at 12 U.S.C. § 85, uses the SMLA to originate secondary mortgage loans in Pennsylvania, it is the position of the Department that the Producer must be licensed as a mortgage broker under the SMLA. A secondary mortgage loan broker is defined as a person who, in the ordinary course of business, negotiates or arranges for others a secondary mortgage loan. 7 P.S. § 6602. A secondary mortgage loan is defined, in part, as a loan in the original principal amount in excess of \$5,000 up to \$50,000 which is secured in whole or in part by a lien upon any interest in real property created by a security agreement. 7 P.S. § 6602. The SMLA does not contain a licensing exemption for separate subsidiaries of national banks. *See* 7 P.S. § 6603. Therefore, the Producer must obtain a secondary mortgage loan broker license pursuant to the SMLA if the Bank originates secondary mortgage loans brokered for a fee by the Producer using the provisions of the SMLA, pursuant to 12 U.S.C. § 85.

Finally, please be advised that it is the position of the Department that if a national bank chooses to use the provisions of the Simplification Act to make loans in Pennsylvania, the national bank is required to comply with all of the terms and conditions of that statute. *See* Interpretive Letter No. 325 [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,495 (Jan. 22, 1985). If a national bank lends funds out-of-state at the interest rate permitted by the borrower's state, then the bank becomes subject to those provisions of the usury laws of the borrower's state that are "material to the determination of the interest rate." *Id.* at 3.

The Department's analysis is based upon the facts and conditions as stated in this letter. Any change in the facts could result in a reversal of the Department's position. This letter states the Department's position regarding the issues discussed herein and may not be relied upon or construed as constituting legal advice.

I trust this letter is responsive to your request. Please feel free to contact me if you have any

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questions.

Sincerely,