



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

JANE SWIFT
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

July 6, 2001

Kristine A. Godbey
Severson & Werson
The Atrium
19100 Von Karman, Suite 700
Irvine, California 92612

Dear Ms. Godbey:

This letter is in response to your correspondence dated June 21, 2001 to the Division of Banks (the "Division") in which you request an opinion relative to the maximum interest rate which may be charged to consumer borrowers on certain consumer loans in the Commonwealth.

In your letter, you state that a California Corporation primarily engaged in direct automobile lending intends to engage in this type of lending in Massachusetts. These loans would be offered through an Internet web site accessible by consumers nationwide. The corporation does not maintain an office in the Commonwealth or have any personnel operating in this state. All contact with the consumer would be by mail and payments are processed and loans serviced in California or Florida. All loans secured by an automobile would be for amounts ranging from \$7,500.00 to \$50,000.00. You ask the Division to confirm the maximum interest rate on these loans allowable under Massachusetts law.

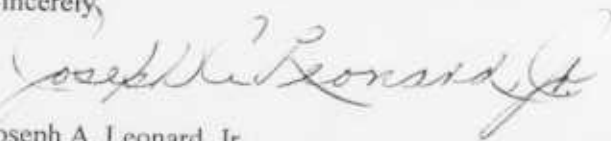
Your letter concerning the maximum interest rates for direct automobile lending raises two separate issues. The first issue relevant to the loans to be made by the Corporation is whether these loans would be considered "small loans" for the purpose of Massachusetts General Laws chapter 140, section 96, the Small Loans Act, so-called. Said section 96 is applicable to all loans of \$6,000.00 or less for personal, family or household purposes and it makes these loans subject to the Small Loan Rate Order cited as regulation 209 CMR 26.00. The rate order establishes a maximum interest rate for small loans of twenty-three percent in addition to a \$20.00 administrative fee. As stated in your letter, the Corporation intends for all loan amounts to exceed \$7,500.00 which would mean that the interest rate cap for small loans would not be applicable. However, in the event that any of the automobile loans made by the Corporation were for amounts of \$6,000.00 or less, these loans would be subject to the Small Loan Rate Order. Please be advised that legislation is pending in the Massachusetts Legislature which would increase the small loans coverage to \$9,000.00 and subsequently adjusted annually by the Consumer Price Index.

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The second issue concerning maximum interest rates in the Commonwealth is the criminal usury statute. Massachusetts General Laws chapter 271, section 49 establishes that it is usury in Massachusetts to hold a loan contract which calls for an interest rate exceeding a twenty percent annual percentage rate ("APR"). However, said section 49 further states that loans in excess of twenty percent are permissible provided that the lender registers with the Office of the Attorney General. In addition, the statute specifically excludes government-regulated entities from this registration requirement. Any questions on that statute should be directed to the Attorney General's Office.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,



Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

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