

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



Reply to the Attention of:  
John Hunter  
(202)523-8671

OPINION NO. 82-64A  
Sec. 408(b)(4)

DEC 14 1982

Ms. Penny Howe Gallo  
Ware, Fletcher & Freidenrich  
525 University Avenue  
Palo Alto, California 94301

Re: Fireside Thrift Co.  
Identification Number: F-2211A

Dear Ms. Gallo:

This letter responds to your letters of December 7, 1981 and May 4, 1982 concerning whether Fireside Thrift Co. ("Fireside") is a "bank or similar financial institution" within the meaning of section 408(b)(4) of the Employee Retirement Income Security Act of 1974 ("ERISA").

You represent that Fireside is an industrial loan company ("loan company") with 72 locations throughout the State of California. As a loan company, Fireside is regulated under the California Industrial Loan Law, Cal. Fin. Code section 1800 et seq. (the "Act"). Regulation of loan companies under the Act is performed by the Commissioner of the California Department of Corporations ("Commissioner"). You assert that this regulation is extensive and describe it as follows.

In order to engage in an industrial loan business in California, authority must be granted by the Commissioner after considering the background and experience of the organizers or incorporators and of the proposed officers, managers, stockholders and directors; the need for a loan company in the community; the ability of the community to support a loan company; and such other facts and circumstances as the Commissioner may deem relevant. In addition, a loan company must meet certain minimum capitalization requirements.

A loan company may issue various savings instruments to its customers (including passbook accounts, treasury certificates, all-savers certificates, and time certificates) similar to instruments issued by banks and savings and loan associations. The terms and conditions under which these various certificates may be issued are regulated by the Commissioner. In addition, a loan

company issuing such certificates must be a member of the Thrift Guaranty Corporation of California ("Corporation") as a condition of conducting business. The Corporation guarantees each individual account established with a loan company in an amount up to \$20,000. The Corporation is subject to regulation by the Commissioner and has independent authority to regulate, submit reports and make recommendations regarding its members. The Corporation is also required by the Act to maintain a minimum guarantee fund which is funded by member's contributions and assessments.

The investment of funds deposited with a loan company is also regulated. Essentially, the funds may be used for real estate or consumer loans. The terms of the loans, as well as the fees and charges which may be imposed, are regulated by the Act and regulations promulgated thereunder. The Act also imposes various reserve requirements with respect to loans and requirements as to the security on real estate loans.

Loan companies are required to file audited financial statements and other information with the Commissioner annually and are subject to periodic examination by the Commissioner.

Your submission includes copies of the Act and regulations issued thereunder, the audited financial statement for Fireside for the year ending December 31, 1981, and Fireside's Articles of Incorporation and amendments thereto.

You indicate that the Commissioner has granted approval for loan companies to offer Individual Retirement Accounts and Keogh plans (collectively, "Plans") and that Fireside wishes to offer these Plans to its customers. Fireside would serve as the custodian of all of the funds contributed to the Plans. Under the terms of the Plan agreements contributions would be invested in Fireside savings instruments bearing a reasonable rate of interest as designated by the individual establishing the plan.

Section 408(b)(4) of ERISA and regulation section 29 CFR 2550.408b-4 provide that the prohibitions of ERISA section 406 shall not apply to the investment of all or a part of a plan's assets in deposits bearing a reasonable rate of interest in a bank or similar financial institution supervised by the United States or a State, even though the bank or similar financial institution is a fiduciary or other party in interest of the plan, if certain conditions are met. Section 408b-4(c)(1) of the regulation defines the term "bank or similar financial institution" to include certain banks, domestic building and loan associations, and credit unions.

Based upon the facts and representations contained in your submission, it is the conclusion of the Department of Labor that Fireside is a "bank or similar financial institution" within the meaning of section 408(b)(4) of ERISA. Thus, investment of the assets of the Plans in Fireside savings instruments would be permitted under the section 408(b)(4) exemption if the remaining conditions of that section are satisfied with respect to the transaction. See regulation section 2550.408b-4.

The question you presented also relates to section 4975(d)(4) of the Internal Revenue Code of 1954 ("Code"), which section corresponds to section 408(b)(4) of ERISA. Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred, with certain exceptions not here relevant, the authority of the Secretary of the Treasury to issue rulings under section 4975 of the Code to the Secretary of Labor. Therefore, the views provided above also apply to section 4975(b)(4) of the Code.

This letter is an advisory opinion under ERISA Procedure 76-1. Section 10 of the Procedure describes the effect of advisory opinions.

Sincerely,

Alan D. Lebowitz  
Assistant Administrator for Fiduciary Standards  
Pension and Welfare Benefit Programs