



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

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July 2, 2003

Ms. Kathleen A. Enderlin
Vice President, Audit Services
New England Credit Union Services, LLC
304 Turnpike Road
Southborough, MA 01772-1709

Dear Ms. Enderlin:

This letter is written in response to your correspondence of May 15, 2003 on behalf of New England Credit Union Services, LLC ("NECUS") to the Division of Banks (the "Division") requesting clarification on the circumstances which trigger the requirement for a state-chartered credit union to have an audit conducted by a certified public accountant or public accountant. NECUS is a limited liability company owned by the Massachusetts Credit Union League, New Hampshire Credit Union League and Rhode Island Credit Union League whose audit services department has been performing audit services for credit unions since 1989. According to your letter, each auditor in NESCUS' audit services department has over 20 years of Credit Union/banking and auditing experience. Your letter further describes the experience of each auditor. Your letter does not identify any such auditor as a certified public accountant or licensed public accountant.

As you are aware, G.L. c. 171, §16 sets forth the statutory audit requirements for state-chartered credit unions. This section, in addition to imposing annual audit responsibilities on the auditing committee, requires the auditing committee to cause an examination and audit to be made of the books, securities, cash, assets, liabilities, income and expenditures of a credit union including trial balance of deposit and share accounts within a period of time not exceeding three years and pursuant to regulations prescribed by the Division. Moreover, credit unions having assets over \$5 million are required to have the three year periodic audits conducted by a certified public accountant or public accountant not connected with the credit union and the selected accountant is subject to approval of the Division. The implementing regulation to this provision, 209 CMR 43.00 *et seq.*, provides in section 43.04 titled "Requirements for an Outside Audit", that a credit union shall obtain an independent audit by a certified public accountant or licensed public accountant for any fiscal year during which any one of the following conditions is present:

- (a) the auditing committee has not conducted an annual audit under 209 CMR 43.03(2);
- (b) the annual audit did not meet the requirements of 209 CMR 43.03;
- (c) the auditing committee failed to comply with the annual audit requirements of G.L. c. 171, §16;
- (d) the credit union has experienced serious and persistent recordkeeping deficiencies as defined in 209 CMR 43.04(3);
- (e) the credit union has assets over \$5,000,000 and it has not had an outside audit within three years;
or
- (f) the credit union has assets in excess of \$30,000,000.



Your letter requests clarification of the audit requirements applicable to a credit union with assets over \$5 million which has had an audit in each of the past three years conducted by the NECUS Audit Services Department. It is your position that the provision in 209 CMR 43.04(1) requiring an "independent audit by a certified public accountant or licensed public accountant" is not applicable because none of the conditions specified in 43.04(1)(a) through (f) exist. Further, it is your position that an audit conducted by NECUS is equivalent to an "outside audit" as that term is used in 43.04(1)(e). 209 CMR 43.04(1) provides that an independent audit by a certified public accountant or licensed public accountant must be conducted for any fiscal year during which any one of the conditions in (a) through (f) exists. It is the Division's position that the reference to an "outside audit" in (e) refers to an independent audit conducted by a certified public accountant or licensed public accountant. This is consistent with the statutory requirement that a credit union with assets over \$5 million have an audit conducted by an independent certified public accountant or public accountant within a period of time not exceeding three years. Accordingly, the NECUS annual audit as described would not suffice for purposes of demonstrating compliance with the outside or independent audit requirements of G.L. c. 171, §16 and 209 CMR 43.04.

In addition, your letter contains cites to certain audit provisions contained in the NCUA Rules and Regulations applicable to state-chartered NCUSIF-insured credit unions.¹ The NCUA audit provisions differ from Massachusetts law. For example, the NCUA regulations require an audit conducted by a certified public accountant when a credit union's assets are \$500 million or greater.² For federally-insured, state-chartered credit unions with assets of less than \$500 million, the NCUA regulations provide that a credit union must obtain either an annual supervisory committee audit as prescribed under either §715.6(a) or §715.7, or an audit prescribed by the State or jurisdiction in which the credit union is principally located, whichever audit is more stringent.³ (emphasis supplied). The Division recognizes there are differing alternatives available under NCUA regulations for audits of credit unions with assets less than \$500 million. However, the Division would apply the more stringent state law audit requirements for state-chartered credit unions and notes the recognition of this precept in the NCUA regulations.

Accordingly, it is the Division's position that in accordance with G.L. c. 171, §16 and 209 CMR 43.04, a credit union with assets over \$5 million is required to have an audit conducted by an independent certified public accountant or licensed public accountant within a period of time not exceeding three years.

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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¹ 12 CFR 741.202(a) and 12 CFR 715.4, 715.6, 715.7

² See 12 CFR 715.6(a)

³ See 12 CFR 715.6(b)