



The Commonwealth of Massachusetts
Office of the Commissioner of Banks
One South Station
Boston, Massachusetts 02110

JANE SWIFT
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

April 12, 2001

Mr. Peter S. Milewski
Director, Mortgage Insurance Fund
Massachusetts Housing Finance Agency
One Beacon Street
Boston, MA 02108-3110

Dear Mr. Milewski:

This letter is in response to your correspondence dated March 27, 2001 to the Division of Banks (the "Division") on behalf of the Massachusetts Housing Finance Agency relative to whether loans under the proposed "Community Second" program described herein could be classified as qualified loan investments pursuant to Massachusetts General Laws chapter 167E, section 2, subsection C.

According to your letter, the Mortgage Insurance Fund of the Massachusetts Housing Finance Agency has recently completed negotiations with the Federal National Mortgage Association ("Fannie Mae") to allow banks to provide low- and moderate-income homebuyers with 100% conventional home financing, thus addressing the issue of homebuyer down payment in affordable housing. The program will be called the "Community Second Program" (the "Program"). The Program is comprised of a 90% loan-to-value ratio first mortgage sold to Fannie Mae and a 10% loan-to-value ratio second mortgage retained by the originating lender as a mortgage loan. Your letter describes the second mortgage as a community reinvestment loan. The two mortgages would combine for a 100% loan-to-value ratio. The borrower need only contribute the lesser of 1% of the sales price or \$500.00 to closing costs and other mortgage financing expenses including but not limited to appraisal, application and credit report fees.

Your letter further indicates that the first mortgage will be insured by the Mortgage Insurance Fund of the Massachusetts Housing Finance Agency. The second mortgage will be uninsured. The loans will be originated at a market rate to allow the banks to earn a reasonable rate on their invested funds. The rate on the second mortgage will be equal to or lower than the rate on the first mortgage. The Program is similar to the "Soft Second" program currently authorized under existing statutes.

Your letter asserts that the purpose, structure, and Massachusetts Housing Finance Agency sponsorship of the Program allows the second mortgage to be classified as a qualified loan investment under subsection C of section 2 of chapter 167E of the Massachusetts General Laws and that such loans made to low- and moderate-income homebuyers expand affordable

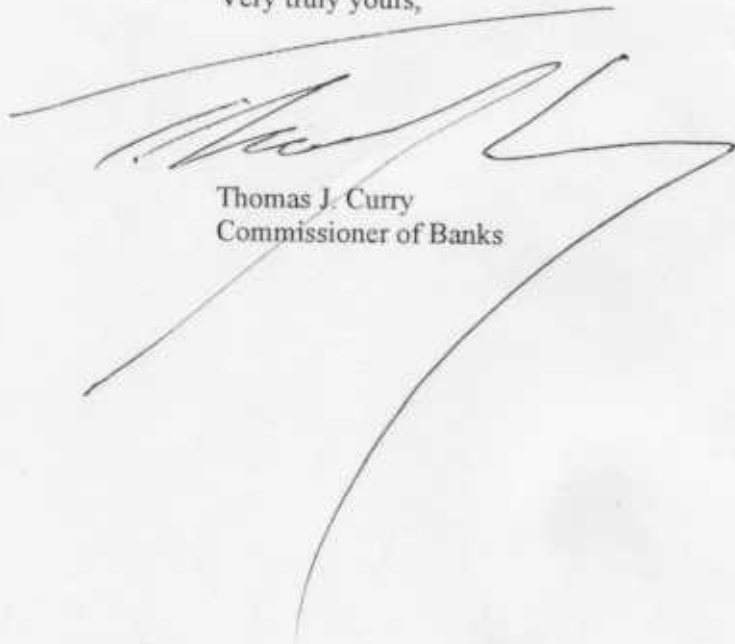
homeownership opportunity by addressing the issue of down payments. Your letter requests an opinion from the Division as to whether the Program's second mortgage loans could be classified as qualified loan investments pursuant to said subsection C.

Massachusetts General Laws chapter 167E, section 2, subsection C states "Any such bank may make or acquire any mortgage residential real estate loan, other than a reverse mortgage loan, on a dwelling house with accommodations for four or less separate households and occupied, or to be occupied, in whole or in part by the mortgagor, provided, however, that such mortgage loan is saleable in the secondary market *or is underwritten in accordance with mortgage loan programs of public instrumentalities created by the commonwealth for the purpose of financing and expanding the supply of residential mortgages or affordable housing.*" (Emphasis supplied.)

Based upon the facts in your letter, it is the position of the Division that a loan made under the Program would meet the requirement set forth in said subsection C as a loan made in accordance with a mortgage loan program of a public instrumentality created by the Commonwealth for the purpose of financing and expanding the supply of residential mortgages or affordable housing. Accordingly, such loans made under the Program, as described above, would be authorized pursuant to said subsection C.

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

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'T. Curry', is written over the typed name and title.

Thomas J. Curry
Commissioner of Banks