



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

JANE SWIFT
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

October 15, 2001

Margaret B. Crockett, Esq.
Goodwin, Procter & Hoar
Exchange Place
Boston, Massachusetts 02109

Dear Ms. Crockett:

This letter is in response to your correspondence of August 9, 2001 to the Division of Banks (the "Division") in which you request a clarification of Opinion O01090 relative to whether a Small Loan Company license is required in order for your client First Marblehead Education Resources, Inc. ("FMER") to perform certain lending related activities. As stated in Opinion O01090, FMER had filed an application for a Small Loan Company license from the Division.

As provided in Opinion O01090, FMER, a Delaware Corporation, is a subsidiary of FMC, also a Delaware Corporation, headquartered in Marblehead, Massachusetts. FMC designs education loan programs funded by lenders and arranges periodic securitization transactions which fund education financing. FMC does not finance, hold, broker or sell loans. The Education Resources Institute, Inc. ("TERI") is a Massachusetts not-for-profit corporation headquartered in Boston, Massachusetts. TERI is a licensed Small Loan Company. TERI provides student loan lenders nationwide including Massachusetts with loan application processing, loan origination and loan underwriting services. TERI planned to outsource to FMER all of TERI's loan application processing, loan origination and loan underwriting functions. FMER would not close, finance, buy, hold, broker or sell small loans. Moreover, FMER would not solicit or advertise loans or initiate telephone marketing relative to such loans. FMER's processing centers generally would not be open to the public. According to your June 13, 2001 letter which requested Opinion O01090, FMER did not intend to create the impression that it made or solicited loans. No correspondence with borrowers would refer to FMER.

The Division opined in Opinion O01090 that FMER, performing the functions as described in that request, would not be engaged in the business of making small loans under the Small Loan Act. Therefore, FMER was not required to have a Small Loan Act license.

The question you now raise is whether FMER would require a license based on the above same facts except that correspondence with loan applicants would be on FMER's letterhead. According to your August 9, 2001 letter, all such correspondence would clearly reference that FMER is acting as agent for TERI and the respective lender to avoid any implication that FMER makes or solicits loans.



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Massachusetts General Laws Chapter 140, sections 96 to 114A inclusive (the "Small Loan Act") requires any person that is engaged in the business of making small loans to obtain a Small Loan Company license. Under this statute, the business of making small loans includes the making of loans of \$6,000 or less with interest rates and expenses in excess of 12% per annum. This same statute also states that the business of making small loans includes the activity of ".... directly or indirectly engaging, for a fee, commission, bonus or other consideration, in the business of negotiating, arranging, aiding or assisting the borrower or lender in procuring or making" such loans of that amount and at that rate.

Prior opinions of the Division interpretive of the above statutory language relative to brokering small loans and similar language in Massachusetts General Laws chapter 255E, section 2 relative to mortgage brokers have focused on, among other factors, an entity's or individual's activities and involvement with the consumer/borrower. See for example, Opinions O99067 and O00146.

Based on your August 9, 2001 letter, FMER will not close, finance, buy, hold, broker or sell small loans. You state that FMER will not solicit or advertise loans or initiate telephone marketing relative to such loans. FMER's processing centers generally will not be open to the public. While correspondence with borrowers may refer to FMER, such correspondence would clearly reference that FMER is acting as agent for TERI and the respective lender to avoid any implication that FMER makes or solicits loans.

It is the position of the Division that FMER, performing the functions as described in your August 9, 2001 request, would not be engaged in the business of making small loans under the Small Loan Act. Therefore, FMER is not required to have a Small Loan Act license.

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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