



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

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DIRECTOR
OFFICE OF CONSUMER AFFAIRS
AND BUSINESS REGULATION

April 14, 2003

Bud Hedrick
Assistant Licensing Director
All Fund Mortgage
8833 Pacific Avenue, Suite G
Tacoma, Washington 98444

Dear Mr. Hedrick:

This letter is in response to your correspondence dated February 4, 2003 to the Division of Banks (the "Division") in which you request an opinion relative to whether a company which provides certain loan processing functions is required to be licensed as a mortgage broker in the Commonwealth.

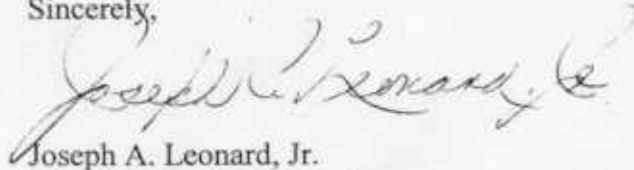
In your letter you state that Amerifund Financial Inc. d/b/a All Fund Mortgage ("All Fund") has been approached by mortgage loan processors asking to become a processing center for All Fund. You describe a list of loan processing activities to be performed at the proposed processing center. All Fund is licensed as both a mortgage lender and a mortgage broker in the Commonwealth.

Massachusetts General Laws Chapter 255E defines a mortgage broker as "...any person who for compensation or gain or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement, finds or offers to negotiate, place, assist in placement or find mortgage loans on residential property for others". Since the processing property center will be receiving compensation from All Fund, the central question becomes whether any of the loan processing functions conducted by the processing center meet the definition of mortgage broker under chapter 255E.

Bud Hedrick
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The Division has issued opinion letters in the past relative to the questions raised in your letter. Please find enclosed copies of two such opinion letters, O99116 and O98266. The Division recommends that All Fund and its counsel review these letters for guidance in connection with licensing requirements for loan processing functions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph A. Leonard, Jr.", written in dark ink.

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

O03013



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

ARGEO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

THOMAS J. CURRY
COMMISSIONER

November 8, 1999

Ms. Mary Ann B. Clancy
Senior Vice President and General Counsel
Massachusetts Credit Union League, Inc.
304 Turnpike Road
Southborough, MA 01772-1709

Dear Ms. Clancy:

This letter is in response to your correspondence dated August 16, 1999, and, upon request, the supplemental submission of October 26, 1999, to the Division of Banks (the "Division") on behalf the New England Credit Union Services, LLC ("NECUS") in which you request an advisory opinion relative to whether a proposed loan support program (the "Program") requires licensing under Massachusetts General Laws chapter 255E, section 2.

According to your correspondence, NECUS proposes to operate a centralized loan processing center (the "Center") as part of its products and services. The purpose of the Center would be to provide clerical and administrative functions to credit unions and duly licensed mortgage brokers and lenders. The client base of the Center would be state- and federally-chartered credit unions. Under one feature of the Program, credit unions would contract with NECUS to deliver similar expedited loan processing services to their credit union client base. In consideration of the services provided by the Center, compensation based upon production volume as agreed between the parties would be paid to NECUS by credit unions and licensed mortgage brokers and lenders in accordance with their respective contractual arrangements. Any remuneration between the parties would be made in accordance with the provisions of Regulation X, the Real Estate Settlement Procedures Act, and other applicable rules and regulations.

As indicated in Appendix A of your letter of August 16, 1999, the functions to be performed at the Center include the following services: computer entry of application information; review of application information; completion of FNMA 1003 or other abbreviated mortgage application form as directed by the credit union, mortgage broker, or mortgage lender; ordering of consumer (non-mortgage) credit reports; and transmitting of credit card reports together with applications to credit unions, mortgage broker, or mortgage lenders. The Center will not provide any of the following services: pre-approvals; loan originations; underwriting; debt collection; appraisals; title searches; mortgage credit reports; income verification; and financial planning.

Your correspondence notes that the Center would not have access to the database of any mortgage loan products of any licensed mortgage broker or lender. NECUS would be an independent contractor to credit unions and licensed mortgage brokers and lenders. Its employees would be the sole employees of NECUS in the business of performing data entry tasks, not in the business of loan originations. Staff training and mortgage application software and equipment, which does not contain underwriting capabilities, would be independently obtained by NECUS from third party providers and would remain the exclusive property of NECUS.

The nature of the contact between the Center and potential borrowers would be that which is necessary to complete the assembly of mortgage underwriting documentation as directed by its clients. It is anticipated that the average contact with potential members would be 15-25 minutes in length. No subsequent direct or indirect contact initiated by the Center would occur. Furthermore, the Center would not engage in telemarketing activities, including but not limited to initiating contact with potential borrowers.

NECUS is a limited liability corporation ("LLC") formed under the laws of the Commonwealth of Massachusetts. None of the general or limited partners in the LLC are financial institutions or other regulated entities. NECUS is affiliated with and maintains a management agreement with the Massachusetts Credit Union League, Inc. (the "League").

Massachusetts General Laws chapter 255E governs the licensing requirements in the Commonwealth for mortgage lenders and brokers. Section 1 of said chapter 255E defines a "mortgage broker" as "any person who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement, finds or offers to negotiate, place, assist in placement or find mortgage loans on residential property for others." A "mortgage lender" is defined in said section 1 as "any person engaged in the business of making mortgage loans, or issuing commitments for mortgage loans." Section 2 of said chapter 255E provides an exemption from licensing for mortgage lenders and mortgage brokers for certain entities, including "a bank as defined in section one of chapter one hundred and sixty-seven ... a federally chartered credit union ... or any subsidiary or affiliate of the above..." Said section 2 also provides, in part, that "No person shall act as a mortgage broker or mortgage lender with respect to residential property unless first obtaining a license from the commissioner; provided, however, that any person who is employed by or associated with a licensed mortgage broker or mortgage lender in the capacity of a mortgage broker or mortgage lender under the direction of said licensed mortgage broker or mortgage lender shall not be required to obtain such license."

Your letter asserts that NECUS would not be required to be licensed under said section 2 for the following reasons: the Program's activities would be ministerial in nature; the activities would not rise to the statutory definition of mortgage broker or mortgage lender; and, even if the Division determined that the Program's activities are subject to licensure under said section 2, express statutory provisions exempt both state and federally-chartered credit unions from mortgage broker and mortgage lender licenses.

Based on the description in your correspondence of the Center's activities, it would not be engaged in the business of making mortgage loans or issuing commitments for mortgage loans. Additionally, the services to be provided by Center would consist of clerical and administrative functions which do not fall within the definition of the activities of a "mortgage broker." Therefore, based on the information provided, the Center would not be required to obtain a license under said chapter 255E. But

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for the clarifications set out in your supplemental filing of October 26, 1999, the Division may have found that a license was required.

With regard to your third assertion, that the Program qualifies for exemption as an affiliate, your correspondence notes that NECUS is an LLC whose general and limited partners are credit union trade associations and officials and that it maintains a direct relationship through its management agreement with the League. All other services offered by NECUS, such as business planning and audits, relate to transaction of credit union business and are offered exclusively to credit unions. In addition, an indirect relationship also exists in those instances where NECUS partners with third party providers of services, such as human resource consulting, to deliver products assisting credit unions as employers and in the furtherance of the delivery of financial services to consumers. NECUS asserts that such direct and indirect relationships within a cooperative credit union movement merit a sufficient nexus to meet an "affiliate" status.

Please be advised that it is the position of the Division that said section 2 does not provide an exemption for LLCs, regardless of the identities of the general and limited partners, because they are not subject to licensure by the federal government, other state governments, or the Division. (While other types of entities are also exempt in said section, they are for specific public purposes, such as education.) NECUS's status as an LLC, although its partners are affiliated with credit unions, would not allow it to be exempt from said section 2 for that reason. Similarly, the League is a trade association, and is therefore not included in the exemptions in said section 2.

The Division notes that your correspondence of October 26, 1999 includes clauses that NECUS intends to add to its respective agreements with mortgage brokers and credit unions. The agreements with mortgage brokers would include the following: "The broker understands and agrees that credit union member inquiries relative to mortgage products and options shall be referred by NECUS to the credit union or broker for response during normal business hours." The agreement with credit unions would include the following: "The credit union agrees to respond to member inquiries relative to the variety and features of the mortgage products and services offered. The credit union understands that NECUS staff shall refer any and all member inquiries for response during the credit union's normal business hours. A report summarizing such inquiries and referrals shall be provided to the credit union in a format and at intervals agreed upon by the parties." It is the Division's position that said clauses should be included in the respective agreements.

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

Sincerely,



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



The Commonwealth of Massachusetts

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Leverett Saltonstall Building, Room 2004
100 Cambridge Street
Boston, Massachusetts 02202*

ARGEO PAUL CELLUCCI
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

February 25, 1999

Mr. Jason Gryder
AnyTime Access, Inc.
1750 Creekside Oaks Drive
Sacramento, California 95833

Dear Mr. Gryder:

This letter is in response to your correspondence to the Division of Banks (the "Division"), dated December 15, 1998. As stated in your letter, AnyTime Access, Inc. is an outsource provider of application and loan recommendation services to financial institutions. You seek a determination as to any licensing requirements in the Commonwealth for the services you propose to provide. The general information provided raised certain questions. The Division contacted you and left two messages to call the Division about your December 15th letter. Since to date you have not responded, the Division will provide a general response to your letter.

According to your letter, AnyTime Access, Inc. provides a call center for financial institutions which contract with it. The contract would require you to answer a unique 800-line call initiated by the institution's customer. The customer is calling to seek information on a first mortgage. The call would be answered in the name of the customer's financial institution. The call may result in AnyTime Access, Inc. taking an application from the customer (emphasis added). Any such application would be delivered to the institution electronically and the institution would do the processing, approval, documentation and closing. AnyTime Access, Inc. would bill the financial institution per minute or a per application basis regardless of the application results.

You state that, based upon the above information, no licensing is required in the Commonwealth of Massachusetts.

The Division cannot concur with your position. Massachusetts General Laws



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chapter 255E defines a mortgage broker as "... any person who for compensation or gain or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement finds or offers to negotiate, place, assist in placement or find mortgage loans on residential property for others." AnyTime Access, Inc. will be receiving compensation or gain on a per minute or per application basis for its actions in placing or assisting in placing mortgage loans on residential property.

The Division's review of the limited information provided considered the services of AnyTime Access, Inc. under three separate and distinct scenarios. The most basic service that could be provided by AnyTime Access, Inc. under the information provided would be to provide specific rate information on loans to be made by the lender whose unique 800 line was called by a consumer. AnyTime Access, Inc.'s providing such specific and limited information would not trigger any licensing requirements under said chapter 255E.

Similarly, providing information about a specifically requested product or mortgage program would not trigger the law. However, a different result could occur the more counseling or explaining various options of a mortgagor that AnyTime Access, Inc. provided directly over the telephone.

Finally, providing certain mortgage information on a separate and distinct, dedicated telephone line for each separate lender would not require a license. However, if AnyTime Access, Inc. could inform a customer calling the dedicated line of one lender that another lender had the product or mortgage program they were seeking, then a license would be required under chapter 255E.

Absent more detailed information on the specific activities of AnyTime Access, Inc., the Division can not make a determination on the status of AnyTime Access, Inc. under chapter 255E of the General Laws.

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.

Sincerely,



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

JAL/mhc
Enclosures
98-266