



September 3rd, 2025

By electronic submission to Lindsay.R.Castanien@banking.nh.gov

Lindsay Castanien
Attorney, State of New Hampshire Banking Department
53 Regional Drive, Suite 200
Concord, NH 03301

Dear Ms. Castanien,

It has come to our attention that the New Hampshire Banking Department may have questions related to the activities of lead generators that operate in the small dollar lending space. Specifically, the questions seem to be focused on whether these entities fall under the definition of a “Lender” as set forth in NH Rev Stat § 399-A. The Online Lenders Alliance (OLA) represents a number of lead generators and would like to supply the New Hampshire Banking Department with information about lead generators relevant to this question.

Based in Arlington, Virginia, OLA represents the growing industry of innovative companies focused on credit inclusion and financial solutions for all Americans through a common goal: to serve hardworking Americans who deserve access to trustworthy credit. Consumer protection is OLA’s top priority and members abide by a rigorous set of Best Practices to ensure consumers are fully informed and fairly treated.¹

Background

Lead generators provide options of lenders for the consumer, from a network of approved lenders. Lead generators use a ping tree process whereby they distribute leads to lenders based on their placement in the ping tree. Individual lenders bid on placement in the ping tree, and their ultimate position in the ping tree is determined by their bid as well as other factors, such as consumer satisfaction scores and lender responsiveness.² After the lender purchases the lead, the consumer is redirected to the lender's site; the lead generator has no additional contact with the consumer.

Lead generators are not agents, representatives, or brokers of lenders within their networks. Lead generators do not lend to consumers and do not make credit decisions. Lead generators have no information regarding lenders’ loan criteria or the offers made by the lenders and have

¹ OLA Best Practices <https://onlendersalliance.org/best-practices/>

² Federal Trade Commission, “Follow the Leader” Workshop (Sep. 2016) 4, https://www.ftc.gov/system/files/documents/reports/staff-perspective-follow-lead/staff_perspective_follow_the_lead_workshop.pdf.

no influence over lending decisions. When a lender purchases a lead, the lender is obligated to pay for the lead even if the lender does not consummate the loan.

The Definition of “Lender” Under NH Rev Stat § 399-A

According to the New Hampshire small loans statute, the term “Lender” means an individual, corporation, association, firm, partnership, limited liability company, joint stock company, or other form of organization that lends money or gives credit temporarily on condition that the amount borrowed be returned, usually with an interest fee. The term “Lender” does not include financial institutions, but does include a person who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:

- (a) Acts as an intermediary, finder, or agent of a lender or borrower for the purpose of negotiating, arranging, finding, or procuring loans, or commitments for loans.
- (b) Offers to serve as an agent for any person in an attempt to obtain a loan.
- (c) Offers to serve as an agent for any person who has money to lend for a loan.
- (d) Performs services or any of the business functions auxiliary or supplemental to the production, distribution or maintenance of loans for a lender.
- (e) Acts as a credit services organization as defined in RSA 359-D:2, II(a)(2).
- (f) Advertises for, solicits, or holds himself out as willing to make or procure small loans, payday loans, or title loans.
- (g) Holds the servicing rights to a small loan or records small loan payments on its books and records and performs such other administrative functions as may be necessary to properly carry out the debt holders' obligations under a loan agreement.

Lead Generators Do Not Perform the Functions of “Lenders” as Defined by NH Law

1. Lead generators do not engage in lending activity.

Lead generators do not offer loans; do not make loans; do not service loans or hold servicing rights; do not buy interests in loans; do not make, arrange, or secure loans for lenders or borrowers; and do not hold themselves out as being able to make, arrange, or secure loans. They connect individual consumers who have expressed an interest in obtaining credit with a network of potential lenders through the use of the ping tree, a standard industry method. Network lenders bid to be connected with prospective borrowers. After purchasing the ability to connect with an interested person, the network lender then deals exclusively with that interested person and there is no further contact with the lead generator. Lead generators have no ownership or other interest in any loan that may arise from their marketing efforts.

2. Lead generators are not agents or intermediaries of lenders or borrowers.

Further, lead generators are not agents, representatives, intermediaries or brokers for the lenders within their networks. Nor do lead generators hold themselves out as agents, representatives or brokers for the network lenders. Lead generators operate their own proprietary websites, using their own brands, and prospective borrowers only become aware of the ultimate lender once the lead has been purchased and the prospective borrower has been transferred to the lender's own website.

The lack of an agency relationship between lead generators and their network of lenders is illustrated by the fact that lead generators have no duty of loyalty to specific lenders and offer leads to multiple entities that may be directly competing with each other.

Lead generators also do not act as agent for borrowers – they do not seek out loans for borrowers, and do not vouch for borrowers to lenders. OLA members who are lead generators include clear disclosures on their consumer-facing websites that they are not lenders; that they do not arrange, facilitate, or broker loans to lenders; that they do not endorse any lender; and that they simply provide a means for consumers to submit information to a network of lenders to determine if they may be able to get credit. OLA members who are lead generators do not promise to “match” consumers with lenders, recommend lenders based on consumers' unique needs, or provide the “best” loans for consumers.

3. Lead generators are not “finders.”

The statutory definition also uses the word “finder.” Although the term “finder” does not appear to be defined anywhere in New Hampshire financial services laws or regulations, there is a substantial body of interpretive guidance under federal banking law, which indicates that a finder acts as intermediary, communicates terms, refers borrowers to lenders, and takes a finder's fee. See, e.g., 12 CFR § 7.1002, 12 CFR § 7.5002, 12 C.F.R. § 225.86(d)(1). Under this guidance, a “finder” identifies willing buyers and willing sellers of a product, service or asset; makes inquiries as to interest of the parties; refers parties to each other and arranges contacts or meetings; conveys expressions of interest, bids, offers, orders and confirmations; and transmits information concerning products or services to potential parties.

OLA members who act as lead generators do none of those things. Unlike “finders,” lead generators are not evaluating a borrower's unique needs or recommending loans that meet those needs. Lead generators are not assisting with loan applications, are not conveying bids or offers, do not publicize or explain price or terms of any particular product, and are not acting as a go-between potential sellers and buyers.

Lead Generation Should Not Be Considered To Be Lending Under NH Law

Not only are OLA members who generate leads not “Lenders” under the terms of the New Hampshire statute, there is no consumer protection purpose to be served by their licensing. For example, OLA members who generate leads do not advertise or communicate any loan terms to consumers. They do not participate in credit decisions in any way or have any influence over credit decisions.

OLA members who generate leads essentially provide a loan shopping tool to consumers. Although there are a small number of states that specifically require licensing of “lead generators,” most states do not. Imposing a licensing requirement, particularly by regulatory fiat, will cause some number of lead generators to leave the New Hampshire market, thereby diminishing competition among lenders, limiting consumers’ access to services, and increasing loan shopping costs for New Hampshire consumers.

If Generating Leads Is Lending, Then All Paid Search Is Lending

Moreover, if this type of ping tree model is “lending” and requires a lender license, New Hampshire will be requiring licensure of many more business models than lead generators. For example, a paid search provider such as Google performs essentially the same function as a lead generator utilizing a ping tree: gathering expressions of interest from consumers who are shopping for products and services, including loans, and allowing the highest bidder to market to those interested consumers.

Under the Google paid search model, lenders and other advertisers choose “keywords” that represent expressions of interest by consumers and then bid on those keywords. Every time that a user searches on a particular keyword, Google runs an auction among eligible advertisers to bid on whether their advertisement will be displayed to the interested consumer, and how prominently the ad will be displayed (*i.e.*, in which position or rank). In this same manner, the ping tree system allocates lenders the opportunity to market to a consumer interested in credit.

Please let us know if you have questions or need additional information. We would be happy to discuss further the benefits that lead generators provide to New Hampshire consumers, and the reasons why they should not be subject to licensing as “lenders.”

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Duke".

Andrew Duke
CEO
Online Lenders Alliance