



August 12, 2015

Mr. David J. Cotney, Commissioner of Banks
The Commonwealth of Massachusetts
1000 Washington Street, 10th Floor
Boston, MA 02118-6400

**RE: Review of Regulations in connection with Executive Order 562, March 31, 2015
Division of Bank's Request for Comments**

Dear Commissioner Cotney,

I am writing in response to the Division's request for comments relating to Governor Baker's Executive Order 562, to reduce unnecessary regulatory burden. I would like to thank you for the opportunity to provide the following comments and recommendations, and I appreciate your time and consideration in the matter.

For the past 13 years, I have been the Chief Compliance Officer for a large regional independent mortgage banker and now with a small community bank in Woburn, MA. In my work with the independent mortgage lender I directed compliance for three business channels including wholesale, correspondent and retail lending. I am writing this letter primarily from a community bank perspective and mainly as CCO for Patriot Community Bank, but also based on my collective experiences I have had and what I believe will help alleviate the regulatory burden for all industry participants. Patriot Community Bank has assets of \$150 million dollars with only one main office and employs less than 30 full time permanent employees.

I first would like to address the current regulatory burden and what it takes to comply with the specific Massachusetts rules, then will indicate which specific regulations listed in the Divisions request I believe should be considered for streamlining. I will follow with additional recommendations for the Division to consider as a part of the Executive Order review process.

In today's lending and regulatory environment, in order for a compliance officer to ensure their company is complying properly, there are several steps that have to be taken. Laws and Regulations from the Federal, State of Massachusetts, and other state governments, as well as agency requirements from the prudential regulators (like the Federal Reserve) and government agencies like FNMA, FHLMC, HUD, RHD, and the VA must be followed, kept up-to-date and tested. When considering testing, first you must be on top of your software providers to ensure they have properly interpreted the regulations and rules and that when updates to the software are made the rules did not impact the state or other compliance programming. You must also ensure that your software providers are providing accurate information on their documents, forms and disclosures, and that they are mapped properly. When new rules are implemented extensive testing and follow up must be performed to ensure new and ongoing compliance. Checklists, training, workflow and job aids must be developed, tracked, and monitored to ensure compliance. Risk management and the tasks involving reviews and analysis are equally important. Automation is critical, but for a small bank like Patriot Community Bank, it is not easy to

automate all compliance and risk monitoring, thus manual auditing and reliance on outside consultants becomes especially important. Special rules on a state level require additional checklists and monitoring, follow up and when necessary, corrective action, and more monitoring and follow-up. Constant education and feedback are important for continued success, especially if the bank has to deal with employee turnover. As a part of the Compliance Management System and managing regulatory risk, the Compliance Officer must include all state unique rules in the regular monitoring and testing program.

To this end, not only time and human resources are imperative, but the cost associated is a big factor. For a small bank like Patriot Community Bank who relies heavily on revenues from the residential mortgage lending area, but closes less than 1,000 loans per year, having more than one compliance officer and additional compliance and training staff is not realistic. Moreover, the Compliance Officer must tend to depository, commercial lending, and servicing compliance and is not working exclusively on mortgage lending compliance. With the TRID project, and next year the new HMDA requirements, the bank has had to outsource the routine QC and Compliance audits for the mortgage lending area. Here is a quick chart of the items to consider (just for MA residential mortgage lending at the bank) that contribute to the regulatory burden and costs:

Specific Unique Monitoring for State of MA:

Regulation or Bulletin	Who Monitors/tests Or performs operational task	Who monitors, keeps current, conducts training, corrective action, reporting to EVP
State VS Federal Differences in TILA	Loan Processor	Consultant, CCO
Refinances – Borrower’s Interest	Underwriter	Consultant, CCO
Adverse Action -Notice of Right to Appeal	Underwriter SVP	CCO
Subprime Loans – First Time Homebuyers	CCO	CCO
Late Charge Fees on Note (Standard language of the principal and interest VS of the payment	Processor SVP	Consultant, CCO
ARM Notice Post Closing (Federal timing VS state timing for ARM Changes)	AVP	Consultant, CCO
Flood Insurance (Federal VS State)	Underwriter Loan Closer SVP	Consultant, CCO
RESPA/Unearned Fees	Loan Closer	Consultant, CCO
Good Funds Law	EVP	CCO

Please refer to Exhibit A for an estimated breakdown of the cost associated with MA specific compliance. In the end, for our small community bank, the cost is equivalent to one part time Senior Underwriter, at a monthly cost of \$1,977.50 and annual at \$23,730.00. If my recommendations are enacted, it would save 75% of this cost at a savings of \$17,797.50 per year.

209 CMR 32.00: Truth in Lending

The Division did a great job of streamlining 209 CMR 32.00 this past year. The format was excellent as it did not repeat the verbiage that stayed the same as the federal, so it was easy to read through and determine what in fact differed from the federal law. Good Job. Of the remaining items that do differ I would like to request the following items be reconsidered:

- **§32.15 and 32.23 Right of Rescission:** The MA four year rescission period exceeds the federal requirement of three years. Since the state law MGL 140D indicates a 4 year rescission, I recommend that this section be repealed and instead, comply with the federal Truth in Lending Act.
- **§32.20 Disclosure requirements regarding Post-Consummation Events:** This section pertains specifically to the requirement for providing a notice to a consumer to let them know about the upcoming change in interest rate and payment on an ARM mortgage. The way the State law is written is very different than how the Federal law is written, but they both end up not far apart in the net result. It is very confusing and took me several days (including emails and live discussions with a compliance consultant) to sort it out. Technically the federal law provides the delivery of the notice of interest rate change far enough in advance to caution the consumer, however, I think the intention of the MA law was that too far in advance may not necessarily be a benefit to the consumer. In any event, I believe the federal law would trump the state law, nevertheless, in this case the state regulation is specific to **depositories** having to comply with MGL C 167E, and since we are not regulated by the CFPB, we chose to comply with the MA Law. I am not an attorney and I admit I am confused by this section. Is there a reason why this section could not follow the Federal law? Here is an excerpt from the bank’s MA Compliance section of our compliance policy, as it pertains only to this section, and it will exemplify the differences I am attempting to point out.

Closed-End Credit

There are a few differences that must be adhered to:

- I. 32.20(3) Disclosure Requirements Regarding Post-Consummation Events – Variable Rate Adjustments
 This requirement is for the notice to the consumer prior to the rate change that informs the consumer of the new interest rate and payment.
Initial rate and payment change:
 - PCB must provide a notice at least 210 but not more than 240 days before the first payment at adjusted level is due (7-8months).***Ongoing rate and payment changes:**
 - Federal TILA looks at the actual first payment date: The disclosure shall be provided to consumers at least 60 but no more than 120 days before the first payment at adjustment level is due.
 - MA DOB looks at the rate change date: no sooner than 60 but no later than 30 days before the rate change.

*If the interest rate and payment is not known this far in advance, an estimate is provided, then another notice is provided 2-4 months in advance of the interest rate and payment change.

	Rate Change Date	Payment Change Date
	4/1	5/1
Federal notice no later than 60 days before payment change, No earlier than 120 before payment change		No later than 3/1 No earlier than 1/1
State notice no later than 30 days before rate change	No later than 3/1 No earlier than 2/1	

Federal law trumps state law when it is in the best interest of the consumer. It is arguable if receiving a notice so far in advance benefits the consumer; under Federal TILA lawmakers determined it was in the consumer’s best interest to be informed so far in advance. However, the notice period is a range without definitive set dates in which to comply, therefore PCB will follow the MA State Law ranges for notifications.

- **§32.32 Requirements for High Cost Mortgages:** The Federal High Cost Thresholds changed effective January 2014. It appears that the MA requirements do not reflect the changes.
 - **Federal:** APR for first lien 6.5% above the APOR
 - **State:** APR 8% above the TCM

While the state is more liberal with the threshold, most mortgage lenders sell their loans to the secondary market and agency requirements follow federal, so the more conservative will apply. In any case the 5% points and fees threshold is in line with the federal and the agencies. It is still a difference we have to track and monitor. I recommend lining it up with the Federal law.

209 CMR 40.00: Unfair and Deceptive Practices in Consumer Transactions

- **§ 40.02 Definitions High Cost Home Loan:** Refer to notes above referencing 209 CMR 32.32.
- **940 CMR 8 Attorney General (93A Prohibited Acts) 8.06 (15) “No-Doc Loans”** This section no longer applies, and document vendors like Doc Magic still include the “No Doc” Disclosure in MA Loan Files. We have to monitor this and request the disclosure be omitted, and it appears out of the blue on occasion. We watch this closely. The industry has not originated no-doc loans in several years. TILA now includes Ability to Repay and the QM Loans safe harbors discourage this type of lending. I recommend repealing only section 8.06 (15) of the Act.

209 CMR 53.00: Determination of Documentation of Borrower’s Interest

When this law was made in 2005 there was a very important need for the requirement. Many banks, lenders and brokers were “churning” pipelines and refinancing borrowers, financing in closing costs and increasing principal balances as well as not providing a substantial benefit to the refinance. Since then many consumer protection laws have been put in place to restrict abusive lending. These laws include UDAAP, TILA ability to repay and qualified mortgage rules, and high cost prohibited acts and the high priced mortgage loan rules. The secondary market self-polices this practice by placing restrictions on lenders that refinance the same borrower in a given time frame (typically 120-180 days) and imposes severe financial penalties for those who violate the rule.

This is another MA rule where the document providers don't seem to get it right and we have to constantly police to ensure forms relating to the rule are correct and do not get put in application packages. Additionally, it takes our underwriters at least 5 minutes per loan file to review the underwriter certification and complete it while they determine if the rule needs to be complied with or the transaction is exempt. We require this so we have a paper trail to prove compliance. Then we include this in our compliance reviews and training.

With the revision last summer exempting QM loans from the requirements, it substantially reduced the number of loans that fall into this category, however, we still have to go through the review process and document the exemption. Is it possible to take it a step further and repeal the law entirely? It does not appear to serve a beneficial purpose any more, however it was an important rule at its time. I recommend repealing this law.

Mass. Regulatory Bulletin 1.30-0104 (II): Subprime Loans to First Time Homebuyers (MGL 184, §17B1/2, Section 7 of Chapter 206 of the Acts of 2007)

Piggy backing on the Refinance rule, when this rule came out in 2007 it was needed and did a good job protecting first time homebuyers during periods in the market when ARM and nontraditional mortgages were popular.

We monitor compliance with this and in 2014 out of 65 ARM loans originated by the bank, not one fell into this category. But still, we have to monitor, audit and report which requires time and human resources. Today, for the reasons mentioned above, this guidance is outdated and no longer needed. I recommend repealing this in its entirety.

Mortgage Review Board Notice

While I am not sure how far this law dates back, I am sure that it served a critical importance to the prevention of redlining. Conversely, in today's environment and for the recent past, one must question the effectiveness of this law and if the benefit outweighs the cost, for the industry as well as the Division.

For the past 13 years I oversaw compliance for the origination of thousands of loans in MA and only had three times in which the notice process was used by a consumer and in all three cases the decision was in favor of the lender.

The amount of work that goes into this process is excessive for the lender and the Division. Today, the consumer is very aware of their rights and how to file a complaint. MA consumers can make a complaint directly to the Division, MA Attorney General, or the CFPB. The new Loan Estimate has the CFPB website and tools referenced on the form. The CFPB Loan Toolkit which is provided to all borrowers at the time of application details how to submit a complaint. With CRA quotas and an emphasis on fair lending reviews by regulators, and as required part of a lender's compliance management system; the potential for redlining is closely monitored. The amount of time that is taken within the loan process, the follow-up monitoring, auditing and training that must be completed takes up time and human resources without a net benefit to all involved, including the consumer. The cost to the Division is also a factor and should be considered. I recommend this law be repealed in its entirety.

In summary, I recommend the following be modified and simplified:

209 CMR 32.00: Truth in Lending:

§32.15 and 32.23 Right of Rescission

§32.20 Disclosure requirements regarding Post-Consummation Events

§32.32 Requirements for High Cost Mortgages

209 CMR 40.00: Unfair and Deceptive Practices in Consumer Transactions:

§ 40.02 Definitions High Cost Home Loan

I recommend the following section only be repealed:

- **940 CMR 8 Attorney General (93A Prohibited Acts) 8.06 (15) "No-Doc Loans"**

I recommend the following being fully repealed:

- **209 CMR 53.00: Determination of Documentation of Borrower's Interest**
- **Mass. Regulatory Bulletin 1.30-0104 (II): Subprime Loans to First Time Homebuyers (MGL 184, §17B1/2, Section 7 of Chapter 206 of the Acts of 2007)**
- **Mortgage Review Board Notice**

In closing, I would once again like to thank the Division for this opportunity to voice my recommendations on behalf of the bank and myself. While this comes as a result of the Governor's Executive Order, the Division has been proactive in the past with reviewing and updating regulations in the mortgage lending arena as well as recently, the Bank Modernization Act. The Division has always been transparent and willing to work with industry to reform and move ahead. Please feel free to contact me anytime at (781) 935-3318, ext. 255, or sgausch@patriotcb.com.

Sincerely Yours



Sandra D. Gausch, VP
Chief Compliance Officer

Cc: Annette J. Hunt, Executive Vice President, Patriot Community Bank

Exhibit A

In order to calculate the real time cost to comply with the MA laws, which include the rules that require the most attention, here is a basic estimate of the total cost. Of that total cost, if the recommended changes were to be implemented, I estimate 75% of this cost would be saved by the bank.

Estimated Monthly Costs just for MA State specific reviews/tasks:

Job Title	Hourly Pay	Task	Total Monthly Hours	Total Monthly Cost
Consultant	\$110.00*	Compliance Audit	4	\$440.00
CCO	\$48.00	Adverse Action Reviews	10	\$480.00
CCO	\$48.00	Compliance reviews, research, training, monitoring	10	\$480.00
Underwriter/SVP	\$25.00*	Completing Adverse Action (Notice of right to appeal) and Refinance Worksheets	2	\$50.00
	\$50.00*		2	\$100.00
Processor	\$15.00*	Completing checklists, monitoring Calyx for MA specific requirements	12.5 Hours**	\$187.50
CCO	\$48.00	Monitoring MA laws, changes, policies, procedures, checklists, etc.	5	\$240.00
Totals			45.50	\$1,977.50

*Average charge/expense

**50 loans a month at 15 minutes total in the process per file

The overall estimated total monthly cost is equivalent to the cost of one part time senior underwriter position. At a monthly cost of \$1,977.50 and annual at \$23,730.00, if my recommendations are enacted, it would save 75% of this cost at a savings of \$17,797.50 per year for the bank.