Compendium of Actions Taken Relative to Foreclosures and the Mortgage Industry

June 30, 2009

Commonwealth of Massachusetts
Division of Banks

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF BANKS

COMPENDIUM OF ACTIONS TAKEN RELATIVE TO FORECLOSURES AND THE MORTGAGE INDUSTRY

JUNE 30, 2009

I. EXECUTIVE SUMMARY

The Division of Banks has been actively managing the increase in foreclosures in the Commonwealth since 2006. The response has been comprehensive and multi-faceted. Some of the highlights of the Division's measures are provided below:

- Convened the nation's first regulator-organized mortgage summit in November 2006 which ultimately lead to sweeping legislation filed by Governor Patrick and enacted in November 2007.

- Issued 377 formal and informal enforcement actions against licensed mortgage lenders and brokers.

- Acted as the lead negotiator for the recently announced 14 state Settlement Agreement with Taylor, Bean, and Whitaker Mortgage Corporation. This agreement will result in the company's participation in the United States Department of the Treasury's "Making Home Affordable" loan modification program.

- Processed over 7,500 applications for mortgage loan originator licenses. As a result of the Division's strong licensing review standards and changes in the marketplace, less than 6,000 applications have been approved.

- Substantially increased the net worth and bonding requirements for non-bank mortgage lenders and brokers.

- Granted $3 million to support regional foreclosure prevention efforts. Organizations receiving grants have counseled over 7,000 Massachusetts residents.

- Applied first in the nation CRA-type standards to non-bank mortgage lenders to ensure mortgage loans provided are suitable and sustainable.

- Led efforts to develop and implement the Nationwide Mortgage Licensing System (NMLS) which will house licensing and enforcement information relative to all mortgage providers operating throughout the United States.

II. INTRODUCTION

It has been three years since foreclosures began to rise in Massachusetts. While over half of the nation's foreclosure activity is concentrated in the states of Arizona, California, Florida, and Nevada, the Commonwealth has also been impacted by increasing foreclosures since 2006. At that time, the Division of Banks (Division) through examinations and meetings with community groups and the industry identified lending patterns and other trends that warranted comprehensive action. This report serves to summarize the Division's implementation of broad policy directives designed to directly impact the Massachusetts mortgage market, strengthen the regulatory structure for the mortgage industry, and provide assistance for homeowners facing difficulty managing their financial obligations.[1]

In an effort to energize a broad base of stakeholders in order to affect substantial change, the Division organized the nation's first regulator-sponsored Mortgage Summit in November 2006. The summit brought together city, state, and federal government officials, industry representatives, and nonprofit organizations in an effort to address the increasing number of mortgage foreclosures across Massachusetts. The Summit also sought to develop a statewide foreclosure prevention strategy that would put into place meaningful measures to help consumers confronted with the loss of their homes.

The Mortgage Summit resulted in the formation of the Commonwealth's Mortgage Summit Working Groups. Their work was completed in April 2007 and their findings laid the groundwork for legislation immediately filed by Governor Deval Patrick. This far-reaching legislation was enacted in November 2007 and became Chapter 206 of the Acts of 2007. As a result, Massachusetts became one of the first states in the nation to react to increasing foreclosures by passing comprehensive legislation, implementing increased protections for borrowers, and creating one of the strongest regulatory structures for mortgage lenders and brokers in the country.

The report describes varied administrative and legislative actions taken from 2006 to present and is organized into four sections: *Higher Industry Standards; Enhanced Supervision and Enforcement; Assistance for Homeowners; and Improved State and Local Partnerships*.

III. HIGHER INDUSTRY STANDARDS

A core principle of the Division's efforts to combat increasing foreclosures has been to significantly improve standards within the mortgage industry.[2] This has been

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[1] Additional complementary efforts by other Massachusetts agencies have focused more specifically on housing, neighborhood stabilization, and connecting homeowners directly with mortgage servicers in an effort to increase the number and pace of mortgage loan modifications.

[2] The Division oversees state-chartered banks and credit unions and non-bank mortgage lenders and brokers. National banks and federal thrifts are not subject to the Division's jurisdiction and have benefited significantly by policies of federal bank regulatory agencies that have aggressively preempted state consumer protection laws. It is noted that the Obama Administration's proposal for regulatory reform

accomplished through both administrative action and as a result of the passage of Chapter 206. Examples of efforts to increase standards in the mortgage industry are summarized below.

A. Issued Industry Guidance on Reduced Documentation Loans

In September 2006, the Division issued industry guidance to all licensed mortgage lenders and brokers and financial institutions relative to the origination of reduced documentation loans noting that immediate and severe action would be taken should any evidence of inflating borrower income be found.

B. Promulgated Emergency Regulations to Expand Prohibited Acts and Practices

In September 2006, the Division promulgated emergency amendments to its regulations which govern the supervision of mortgage lenders and brokers. The changes significantly expanded the number of existing prohibited acts and practices that constitute grounds for the issuance of cease-and-desist orders and license suspension or revocation.

C. Adoption of Non-Traditional Mortgage Guidance

In January 2007, the Division adopted federal guidance on non-traditional mortgage loans in the form of a new regulatory bulletin and made it applicable to all state-licensed lenders and brokers. Specifically, the guidance cautioned lenders not to simply qualify borrowers based upon their ability to repay loans while introductory or interest only payments are required. Instead, the guidance noted that lenders should evaluate a borrower's ability to repay the loan at the fully indexed rate on a fully amortizing scheduled as part of their overall underwriting decision

D. Increased Experience and Education Requirements

In July 2007, the Division acted to increase the experience and education requirements for applicants for licensure as mortgage lenders and mortgage brokers.

E. Adoption of Subprime Lending Guidance

In September 2007, the Division adopted federal guidance on subprime loans in the form of a new regulatory bulletin and made it applicable to all state-licensed lenders and brokers.

F. Increased Net Worth and Bonding Requirements

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would eliminate preemption and all mortgage providers, whether state or federally chartered, would be subject to state law and federal law and state and federal enforcement.

In September 2007, the Division finalized rules to substantially increase the net worth and bonding requirements for licensed mortgage lenders and brokers. The new rules require bonding of $100,000 to $500,000 for mortgage lenders depending upon the volume of mortgage loans originated and $75,000 for mortgage brokers. In addition, new minimum net worth standards were established at $200,000 for mortgage lenders and $25,000 for mortgage brokers.[3] These rules became effective upon release for new licensees. Existing companies had until December 31, 2008 to comply with the new standards. In June 2009, the Division issued 87 cease-and-desist orders to mortgage lenders and brokers that had not provided the Division with evidence of the required bond.

G. Mortgage Loan Originator Licensing

Effective July 1, 2008, Chapter 206 mandated that licensing be extended to the mortgage loan originators employed by licensed mortgage lenders and mortgage brokers. The law established high standards for licensure. To date, the Division has received 7,747 applications for mortgage loan originators. The Division has approved 5,979. A total of 183 applications have been denied for felony convictions or a failure to meet financial responsibility requirements. An additional 1,323 applicants terminated or withdrew their applications after correspondence from the Division demonstrated material weaknesses in their submission.

H. Extension of CRA Requirements to Mortgage Lenders

Chapter 206 also extended Community Reinvestment Act-like (CRA) requirements to licensed mortgage lenders originating 50 or more mortgage loans a year in the Commonwealth. Thus, Massachusetts became the first state in the nation to extend CRA to non-banks. The CRA mandate requires the Division to conduct public examinations of mortgage lenders to determine their record of meeting the mortgage credit needs of the communities within which they do business. In an effort to increase the pace of lenders responding to homeowners hardest hit by the foreclosure crisis, the loan modifications completed for delinquent borrowers will also be assessed during the Division's examination process. The first mortgage lender CRA examinations are being conducted at this time.

IV. ENHANCED SUPERVISION AND ENFORCEMENT

A. Implementation of the Nationwide Mortgage Licensing System (NMLS)

Creating a 21st century model for state supervision of the non-bank mortgage lending industry has long been a top priority of state regulators throughout the

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[3] For the purpose of determining net worth, the new rules excluded the equity in the home of the principal owner(s) of a licensed mortgage lender or broker.

country. The foundation for this 21st century system of coordinated state supervision is the Nationwide Mortgage Licensing System (NMLS). The Division has been at the forefront in the development of this system – a process that began over six years ago. Commissioner of Banks Steven L. Antonakes has served as a founding member of the NMLS oversight board for nearly three years. In this capacity, he participates in weekly conference calls to supervise the implementation of the NMLS.

In January 2008, Massachusetts and six other state mortgage regulators became the first states in the country to manage their mortgage brokers, mortgage lenders, and loan originators exclusively through this comprehensive system. By January 2010, 43 states, the District of Columbia, and Puerto Rico will be using the NMLS.

The NMLS is a universal licensing portal designed to promote regulator information sharing, improve transparency in the mortgage industry, promote uniformity, and reduce regulatory burden. The database provides a single platform for licensing mortgage entities and individuals as well as a central repository of information about licensing and enforcement actions. The NMLS provides the foundation for coordinated supervision of the mortgage industry.

B. Passage of SAFE Act Mandating Loan Originator Licensing and NMLS

The hard work of state regulators was recognized by Congress when Chairman Barney Frank ushered through the Housing and Economic Recovery Act of 2008 (HERA). The Secure and Fair Enforcement for Mortgage Licensing Act or SAFE Act was included in this legislation. The purposes of the SAFE Act are to increase loan originator professionalism and accountability, enhance consumer protection, and reduce fraud by requiring all mortgage loan originators to be licensed or registered through the NMLS. In essence, the SAFE Act follows Massachusetts' lead relative to the licensing of mortgage loan originators and codified the NMLS. In addition, the law requires all bank- and credit union-employed mortgage loan originators to register through the NMLS.

The law requires all states to pass legislation to meet the minimum requirements established by the SAFE Act by July 31 of this year. Commissioner Antonakes also chaired a multi-state committee to draft a Model State Law to ensure compliance with the SAFE Act. To date, nearly 40 states have passed legislation to bring them into compliance with the SAFE Act.

C. Proposed Federal Housing Finance Authority Rules

In June 2009, the Federal Housing Finance Agency (FHFA) announced its intention to require that GSEs accept mortgage product only from mortgage companies who register under the NMLS.

Accordingly, the ability to associate the loan documents and business practices with the individual and company that negotiated the transaction has been created by registering every loan originator with a unique identifier and requiring that identifier to be incorporated with loan origination documents, Further, the NMLS will be a central repository for enforcement actions against companies and individuals. This is a powerful tool to ensure that bad actors cannot hide from their past bad actions. When combined with the required registration of loan originators operating within insured financial institutions, we have created an almost seamless connection that begins with practices and products and culminates with any record of consumer harm.

D. Formal Enforcement Actions

In August 2006, the Division became the first regulator in the country to issue cease-and-desist orders to licensed mortgage lenders and brokers found to be falsifying borrower information. Since that time the Division has aggressively acted to close many licensed companies found to engage in falsifying loan documents and operating in an unsound manner. Since 2006, the Division has issued 230 informal and 147 formal enforcement actions against licensed mortgage lenders and brokers. The Division has also referred numerous cases to law enforcement agencies to determine whether criminal penalties are warranted. The Division's orders became the model for similar action in other jurisdictions.

Division staff acted as the lead negotiators for the recently announced 14 state Settlement Agreement with Taylor, Bean, and Whitaker Mortgage Corporation. This comprehensive agreement will result in the company's participation in the United States Department of the Treasury's "Making Home Affordable" loan modification program.

E. Revised Examination Procedures

In September 2006, the Division revised its mortgage lender and mortgage broker examination procedures to eliminate scheduled examinations in favor of surprise examinations. In addition, the Division's compliance-based examination was replaced with a fraud-based model. New techniques include a review of the performance of loan transactions and attending loan closings on an unannounced basis.

F. Weekly Nationwide Conference Calls

In January 2007, the Division began hosting weekly nationwide conference calls with all state mortgage regulators to promote enhanced information sharing and coordinate enforcement activities. The Division continues to lead these weekly calls.

G. Creation of Enforcement and Investigation Unit

In April 2008, the Division created an Enforcement and Investigation Unit to supervise fraud investigations of the Division's regulated entities. This Unit interacts regularly with several state and federal law enforcement agencies, including the Office of the Massachusetts Attorney General, the United States Attorneys' Office, the Federal Bureau of Investigation, the United States Marshal's Office, and the Internal Revenue Service.

H. Reverse Mortgage Examination Procedures

In September 2008, the Division announced several formal enforcement actions relative to unfair and deceptive practices relating to reverse mortgage loans.

Division staff chaired a multi-state group on reverse mortgage loan risks and oversaw the development and creation of Reverse Mortgage Examination Guidelines that the Division formally adopted in December 2008. In addition, Division staff serves as the only state representative on a comparable committee comprised of federal bank regulators.

V. ASSISTANCE FOR HOMEOWNERS

A. Consumer Guidance on Interest-Only Mortgages

In February 2006, the Division issued a consumer brochure entitled, "Interest-Only and Option ARMs: Are They Right for You?" The brochure detailed the risks and benefits of Interest-only mortgages and payment option adjustable rate mortgages ("Option ARMs"). This brochure became the model for similar guidance by the Federal Reserve published a year later.

B. Consumer Alert on Deceptive Mortgage Practices

In October 2006, the Division issued an alert to provide guidance to consumers in mortgage transactions. During a series of unannounced examinations in the summer of 2006, the Division found a number of instances of deceptive mortgage practices, particularly related to stated-income and other reduced documentation mortgage products. As a result, the Division issued a series of "Do's and Don'ts" for consumers to avoid being taken advantage of.

C. Voluntary Stays for Homeowners in the Foreclosure Process

In April 2007, at the direction of Governor Patrick, the Division began seeking voluntary stays for homeowners in the foreclosure process that contact the Division. The goal is to provide a short amount of time to allow the Division to refer homeowners to reputable homeownership counseling firms and encourage mortgage servicers to utilize this time to work with homeowners to see if an alternative short of foreclosure is possible. Since April 2007, the Division has secured nearly 1,200 voluntary 30 to 60 day stays.

D. Opt Out and Counseling Requirement for Subprime ARMs

On January 31, 2008, a provision of Chapter 206 went into effect that prohibits a lender from making a subprime, adjustable-rate mortgage to a first-time homebuyer unless the applicant affirmatively opts out of a fixed rate product and receives counseling from a counselor certified by the Division. The purpose of the law was to create a "vanilla" fixed-rate product that was more appropriate for a subprime borrower. This provision of Chapter 206 is implemented by a regulatory bulletin issued by the Division in January 2008. This concept has subsequently been adopted by the Obama Administration in their regulatory reform recommendations.

E. Ninety Day Right to Cure

On May 1, 2008, a 90-Day Right to Cure (Right to Cure) went into effect in Massachusetts. This new requirement of Chapter 206 prohibited a lender from foreclosing unless they first provided homeowner with a notice of their default and an itemization of the amounts needed to cure the default. The Right to Cure provision also prohibits a lender from charging any additional legal or other fees (other than principal and interest) during the 90-day period. The intent of the law was to avoid foreclosures by giving the homeowner an opportunity to cure the default or the lender to engage in meaningful loan modifications.

F. Reverse Mortgage Guidance and Web Site

In September 2008, the Division, together with the Office of Consumer Affairs, created a new consumer resource on reverse mortgages at www.mass.gov/reversemortgage. A reverse mortgage is a special type of mortgage loan for seniors (generally age 62 and older) that pays a homeowner loan proceeds drawn from accumulated home equity. The product is particularly complex and the Division has had increasing concerns that the product is being marketed inappropriately to seniors who may not fully understand the risks of the product. The web site details the risks of the products and the important reverse mortgage protections for seniors in Massachusetts.

G. Prohibition against Mortgage Brokers Accepting Modification Fees

In April 2009, the Division issued industry guidance prohibiting mortgage brokers from charging borrowers a fee or receiving any compensation from any source for assisting in the process of obtaining a loan modification.

VI. IMPROVED STATE AND LOCAL PARTNERSHIPS

A. Awarded Grants to Support Counseling and Foreclosure Mitigation Efforts

Chapter 206 mandates that the Division award a portion of the fees raised from licensing mortgage loan originators. In April 2008, the Division awarded $2 million to support 11 regional foreclosure education centers, statewide foreclosure prevention efforts and first-time homebuyer programs. In additional $1 million was awarded in 2009. In the 14 months since the grants were awarded, organizations receiving funding have counseled over 7,000 individuals.

B. Creation of a Foreclosure Database

As mandated by Chapter 206, in May 2008, the Division launched a web-based database of foreclosure notices that will allow the Division to study trends and better focus examination efforts. The database also has built in functionality to track the entities responsible for maintaining vacant foreclosed properties. This aspect of the database follows up on an industry letter issued jointly by the Division and the State Fire Marshal to ensure vacant foreclosed properties do not present local public safety hazards.

C. Multi-State Mortgage Examination Protocol and Committee

Commissioner Antonakes chaired a committee to draft and implement information sharing agreement and examination protocol to supervise non-bank mortgage lenders and brokers operating in multiple state jurisdictions. Division staff chairs the Agreement's Committee on Multi-State Mortgage Supervision, responsible for coordinating all aspects of the supervision of multi-state mortgage lenders and brokers.

VII. OTHER

A. Federal Testimony

Commissioner Antonakes has testified before Congress on numerous occasions on matters relative to subprime lending, the Massachusetts experience, and in support of the passage of a federal predatory lending law. His varied sets of testimony appear below.

March 2007 Testimony
October 2007 Testimony
March 2009 Testimony
April 2009 Testimony

The Division also actively supported the efforts of the Federal Reserve System to promulgate stronger protections for consumers seeking mortgage loans. Commissioner Antonakes' June 2007 testimony can be reviewed here.

B. Recognition of Massachusetts Efforts

The Division's Mortgage Summit was the featured story in the Federal Reserve Bank of Boston's 2007 *New England Community Developments* publication.

In March 2007, Commissioner Antonakes received NeighborWorks' National Government Service Award for the Division's work in combating foreclosures. No other bank or mortgage regulator has ever received this award.

In August 2008, the Division was presented the American Association of Residential Mortgage Lenders (AARMR) Distinguished Service Award for leadership in mortgage supervision. Only the Division and the North Carolina Banking Department have been recognized with this honor.

In December 2008, the Division became the first state mortgage regulator in the country to receive formal accreditation from the Conference of State Bank Supervisors.