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To Whom It May Concern:

This letter is written in response to the Consumer Financial Protection Bureau's (Bureau) request for comments on the proposal for streamlining the regulations that it has inherited from other federal agencies. The Massachusetts Division of Banks (Division) supports the Bureau's stated goal of streamlining existing regulations by modifying or eliminating provisions that can be unduly burdensome or unnecessary and by updating or eliminating outdated provisions. The Division believes this project presents a valuable opportunity to revisit some regulatory requirements that while initially relevant and consumer protective, may have inadvertently created unnecessary burden on financial institutions with minimal tangible benefit to consumers.

The Division regulates 218 state-chartered depository institutions with assets of $385 billion and approximately 1,400 licensed non-bank financial service entities, including over 600 mortgage lenders and mortgage brokers, for compliance with applicable State and federal consumer protection statutes and regulations. The Division performs routine examinations of these institutions for compliance with all applicable State and federal consumer protection provisions, including but not limited to the Real Estate Settlement Procedures Act (RESPA), the Equal Credit Opportunity Act (ECOA), the Home Mortgage Disclosure Act (HMDA), the Fair Credit Reporting Act (FCRA), as well as the Truth in Savings Act (TISA) and the Electronic Fund Transfer Act (EFTA). In addition, for over 40 years the Division has received an exemption from the Truth in Lending Act (TILA) from the Board of Governors of the Federal Reserve System. In fact, the federal TILA is based on the Massachusetts truth in lending law passed in 1966. The Division also evaluates banks and credit unions for compliance with the Massachusetts Community Reinvestment Act (CRA) and certain non-depository mortgage lenders for Mortgage Lender Community Investment (MLCI), in order to assess a mortgage lender's performance in meeting the mortgage credit needs of communities in the Commonwealth. Through these efforts, Massachusetts has one of the most consumer protective supervisory programs in the country for all banks, credit unions, and licensees.

The Division has reviewed the request for comments and offers the following recommendations to potentially streamline the consumer financial regulations. The Division's primary focus is to suggest effective ways to ease regulatory burden on financial institutions, particularly smaller community banks and credit unions, without negatively impacting consumers, and to raise concerns to be considered before revising any specific regulatory requirements. First, the Division proposes as its top priority the creation of a tiered regulatory structure which would provide regulatory relief to smaller, community based institutions. Second, the Division proposes the realignment and consolidation of existing lending regulations to make them more accessible and functional, as well as additional areas whereby regulations may be clarified or alternately consolidated. Finally, the Division is offering feedback on specific illustrations put forward by the Bureau in its request for comments.

Creation of a Tiered Regulatory Structure

The Division proposes as its top priority the creation of a tiered regulatory structure which would provide regulatory relief to smaller, community based institutions. The Division believes that the current regulatory structure, which imposes the same requirements on a small community bank with less than $250 million in assets as it does to a multi-billion dollar national bank, is fundamentally inequitable. Consumer protection regulations should consider the risk posed to consumers by certain types of institutions, and be tailored to address these risks in a more reasonable and risk-based manner. Institutions that pose the greatest risk to consumers, either through the size of their operations, the volume of business conducted, or the risk of products offered, should bear a greater portion of the regulatory burden than smaller community based institutions that pose less risk to consumers.

The Division believes that the Bureau should revise the regulations that fall under its rulemaking authority to reflect the amount of risk posed to consumers by an institution. For instance, financial institutions that engage in lending activity could be considered under a tiered regulatory system based on loan volume and/or asset size.

- The smallest institutions should be exempt from certain complicated and onerous compliance requirements. Those lenders who originate very few loans and have less than $250 million in assets could be considered in this category.
- Mid-sized institutions may be subjected to a level of regulatory requirements that provide a base level of consumer protection without subjecting these lenders to undue regulatory burden. Those lenders who originate very few loans and have more than $250 million but less than $10 billion in assets could be considered in this category.
- The largest institutions, those that pose the greatest risk to consumers, should be subject to the full scope of consumer protection requirements, and in some cases should adhere to a higher level of regulatory requirements. Those lenders who have a high volume of lending activity or have more than $10 billion in assets could be considered in this category.

The Division believes that the reporting requirements for HMDA data under Regulation C present an excellent example of regulatory requirements that would benefit from a tiered structure. The regulation currently has exemptions for depository institutions with less than a certain asset threshold, $40 million for 2011. However, an institution that meets this threshold and originates only one loan must report all HMDA data for that loan and all other reportable applications, regardless of disposition. Meanwhile, a non-depository mortgage lender with $9 million in assets that originates 99 HMDA reportable loans would not have to report those data. These thresholds should be redesigned to better capture the activity of companies that are more active in the home lending marketplace. Thus an institution with less than $250 million in assets that originates fewer than 100 loans in a given year should be exempt from HMDA reporting requirements. On the other hand, those institutions with assets over $10 billion, or who originate over 1,000 loans, and thereby pose greater risk to consumers, should be required to track and report additional data for HMDA reporting purposes. These institutions should be required to report the specific criteria that are evaluated in the underwriting process, including: loan-to-value ratios; debt-to-

income ratios; credit scores; and other critical underwriting criteria. The inclusion of these additional data in HMDA reportable fields would allow regulators to better evaluate the data and risk scope for the examination process. The largest institutions already collect and track much of this information electronically for internal analysis purposes and as such reporting this additional information for HMDA would impose little additional burden on these institutions. The proposed tiered regulatory structure would ease the regulatory burden for the smallest depository institutions while requiring more meaningful data from the largest institutions.

Other Proposals for Potential Streamlining Opportunities

In addition to the recommendation detailed above, the Division does have additional suggestions for ways that the Bureau can streamline existing regulations in a way that maintains important consumer protections while improving the accessibility of the current regulations.

Consolidate Lending Regulations

The Division understands that the Bureau's highest current priority is the alignment and consolidation of TILA and RESPA for mortgage transactions. However, the Division believes this is an excellent opportunity to expand this process to include all consumer protection regulations under the Bureau's rulemaking authority for lending practices. Therefore the Division recommends the consolidation of existing consumer protection requirements based on the type of product offered rather than the current approach of one regulation per law. The Division believes that a rational reorganization of lending requirements in this manner would allow for greater consistency and ease of use while maintaining important consumer protections.

For instance, using this approach the Bureau could consolidate all regulatory requirements for mortgage transactions under a single regulation. Thus the lending requirements under TILA, RESPA, ECOA; HMDA; FCRA; EFTA; the SAFE Act; and the Alternative Mortgage Transaction Parity Act, as well as Regulation N governing the advertisement of mortgage acts and practices could be incorporated into a single source. Real-estate secured transactions are more complicated and these transactions pose a significantly higher risk to borrowers and lenders, and warrant far more stringent rules and restrictions and greater disclosure requirements than non-real estate secured transactions. This approach can retain the consumer protection aspects of existing mortgage lending regulations while easing the regulatory burden by creating a "one-stop shopping" approach to compliance whereby a financial institution need reference only a single source for all mortgage lending requirements throughout the lifecycle of a mortgage.

A similar approach could be taken for other types of loan products. Thus a separate regulation could be established which consolidates all the consumer protection requirements for credit cards and another for consumer finance and leasing transactions. Reorganizing the consumer protection requirements in this manner would allow the regulations to be targeted to address the particular risks to borrowers posed by each different type of transaction. This would also be more conducive in facilitating compliance by offering a single source for the compliance requirements of each different product.

The Division believes that a consolidated regulatory structure for all lending and leasing requirements, similar to those proposed in Appendix A of this letter, would serve as a significant improvement over the current system. The proposed organizational structure would allow for greater consistency and ease of use by financial institutions without sacrificing important consumer protections.

Consolidate Deposit Regulations

The Division believes realignment similar to that proposed above for the lending regulations would be beneficial for the consumer protection regulations for deposit accounts. There are currently a number of different regulations governing disclosure requirements, advertising requirements, and operational requirements and restrictions for these accounts. The Bureau's Regulation DD governs truth-

in-savings. Regulation E covers electronic funds transfers, including certain disclosure and operational requirements, and the Bureau's Regulation I addresses disclosure requirements for depository institutions without deposit insurance. The Division believes that a consolidated regulatory structure for deposit regulations, similar to the proposal in Appendix B to this letter, would be a significant improvement over the current system. The Division understands that some of the requirements under the rules governing electronic funds transfers are not limited to deposit accounts but the bulk of this regulation is directed at activities associated with deposit accounts. Therefore the consolidation within an overall deposit regulation framework is appropriate. Also, as the Bureau is required to jointly issue Regulation CC, which governs expedited funds availability, with the Federal Reserve System, the Division believes that this is a good opportunity to divide the requirements under Regulation CC into two separate regulations. The Bureau should incorporate the consumer protection aspects of the regulation into a consolidated rule governing all deposit products while the Federal Reserve System should keep all technical requirements within its regulation. Every effort should be made in concert with the other federal rulemaking authorities to make this and any other deposit disclosure requirements consistent with the rules under the Bureau's rulemaking authority. The Division believes the proposed realignment would allow for greater consistency and ease of use while maintaining important consumer protections.

Consolidate and Clarify Guidance on Regulations

Some regulations, such as the regulations implementing RESPA and HMDA, do not have a centralized resource for guidance on how to comply with their requirements. RESPA has FAQs, a RESPA Roundup newsletter, and other industry letters and public guidance documents which provide guidance on how to comply. HMDA has a staff commentary, a number of FAQs, Financial Institution Letters, and the annual *A Guide To HMDA Reporting: Getting It Right!* publication. These are essential resources and provide invaluable guidance for an institution attempting to comply with regulatory requirements. However, over the years these resources have multiplied and become far too disjointed to be entirely effective. The Division believes consolidating existing guidance into a single definitive resource, such as the Official Staff Commentary to Regulation Z, would ease the regulatory burden, particularly for smaller institutions with limited resources and expertise to master all available guidance resources. Consolidation of HMDA guidance documents would also be an excellent opportunity to clarify the guidance on certain common practices that often result in examination violations (e.g., clarifying that when a customer completes the government monitoring information personally, the lender must rely on that information even if the lender believes it to be incorrect). It may still be appropriate to issue annual guidance similar to *A Guide To HMDA Reporting: Getting It Right!* for HMDA compliance purposes for each reporting year, but this guidance should be limited to the specific changes for that year. The current practice of issuing a new 120+ page document for each year makes it burdensome for reporting institutions to identify specific changes year by year, and any guidance that applies to more than one year or on a prospective basis should occasionally be consolidated into a central resource for ease of use. If the Bureau continues to use additional guidance documents such as *A Guide To HMDA Reporting: Getting It Right!*, the regulations should refer to these documents and other generally accepted guidance as a way to raise awareness of these resources.

Comments on the Bureau's Specific Illustrations of Potential Streamlining Opportunities

The Division welcomes the opportunity to comment on some of the specific illustrations of potential streamlining opportunities. Please see the comments below for the Division's specific suggestions and, in some cases, concerns relative the Bureau's suggestions.

Consistent and Sufficient Definitions

The Division supports any effort to create more consistent definitions for existing regulations. The Division does recognize, however, that in some cases there are valid reasons for differences among the definitions. For instance the definition of an application for the purposes of RESPA and TILA is quite specific because it triggers timing requirements for important disclosures. HMDA on the other hand has a broader, more flexible definition of application to provide lenders with flexibility in establishing

procedures to accurately and consistently report the application date. Following are suggestions on possible ways to address the different needs of various regulatory requirements while at the same time establishing a consistent definition of application that can meet all these needs:

- In many cases it may be appropriate to start with a consistent definition of application, but then apply qualifiers to this universal definition for each regulation depending on the goal. In other words, the application date for HMDA reporting could remain flexible but the application date for disclosure purposes remains clearly defined and consistent for all lenders. For example, the disclosure requirements under RESPA and TILA could be based upon the receipt of a preliminary or unverified application, while the timing requirements for ECOA may be subject to the receipt of a complete and verified application.
- Apply the definition of application under RESPA and TILA to those HMDA reportable loans subject to those regulations. This would take away a lender's flexibility in setting an application date but it could eliminate opportunities for confusion and improve consistency.
- Apply the definition of application under RESPA and TILA to ECOA. Timelines under ECOA could then be adjusted to reflect the more stringent definition of application. For instance, the 30 day requirement for notice of action taken could be extended to 45 days to accommodate lenders.
- While the regulations should establish a universal definition of application, specific regulatory requirements could be triggered by different actions associated with that specifically defined item. For instance, taking any component of an application could trigger registration requirements under the SAFE Act, while the receipt of a completed preliminary application would trigger TILA and RESPA disclosures.

Additional terms that warrant a review as part of any attempt to revise and improve regulatory definitions include:

- Withdrawn, Denied, Approved, and Approved Not Accepted: Clear definitions should be established for what constitutes a *withdrawn*, *denied*, *approved*, and *approved not accepted* application for HMDA and ECOA purposes. The regulations should also provide better illustrations regarding approved not accepted, withdrawn or declined.
- Temporary Financing/Short-term Financing/Construction Loan: Clear definitions should be established for *temporary financing*, *short-term financing* and *construction loan* for the purposes of establishing exemptions from HMDA reporting. Specific illustrations of these terms should also be included in any enhanced definitions. The Division has noted many instances where lenders have incorrectly included or omitted loans from their HMDA LAR due to the misinterpretation of these terms.
- Multiple Advance Construction Loan: A clear definition of a *multiple advance construction loan* should be established for Truth in Lending purposes. The Division has noted some confusion over what constitutes a construction loan triggering the special disclosure requirements in Appendix D to the regulation.

Annual Privacy Notices

The Division suggests a review of the efficacy of the numerous annual privacy notices sent to borrowers from financial institutions. Current requirements call for an inordinate number of notices that are often not read and do not provide tangible benefit to consumers. The Division's Consumer Assistance Unit receives many complaints related to privacy concerns each year regarding data breaches and companies sharing or selling private information to unrelated companies without the consumer's consent. The Division suggests establishing tighter restrictions on sharing information without consumer consent and tougher penalties for sharing information outside of the allowable circumstances and for data breaches resulting from negligence. These measures together with the elimination of repetitive disclosure requirements would be more meaningful and would better serve consumers. This may be achieved in

many ways. Following are some suggestion on how to ease the burden on financial institutions without sacrificing consumer protections.

- Provide consumers with the choice of opting in to the receipt of electronic disclosures in lieu of annual paper notices.
- Allow a financial institution that does not share personal non-public information to make a privacy notice available on-line instead of mailing annual notices.
- Allow one notice per institution per customer instead of one notice per account so long as the privacy policy is consistent.
- Eliminate the annual notice requirement for institutions that do not share information but require a notice prior to any change in the institution's privacy policy.

ATM Fee Disclosure

The Division recognizes the importance of clear disclosures to consumers before they incur any fees as a result of an ATM transaction. An ATM operator should be required to clearly disclose any fee that will be charged to a consumer prior to the consumer incurring the fee. The ATM operator should also be required to obtain a customer's consent before assessing any fee in relation to a transaction conducted at an ATM. However, it is the Division's position that the current on-screen and on-machine paper disclosures are duplicative and present an unnecessary burden on ATM operators while providing little or no tangible benefit to consumers. The Division is also aware of instances of defacement of on-machine paper disclosures and frivolous class action lawsuits which are an unintended but significant consequence of the current requirements of the regulation. This poses an extra burden on and additional risk to ATM operators, which lends support to the argument to remove the duplicate disclosure requirement. An on-screen disclosure and the requirement to obtain a consumer's consent prior to assessing a fee should be sufficient to ensure that no customer incurs a fee without adequate information. On a related topic, the Division is aware of some instances where consumers who withdraw cash as part of a point of sale transaction have been charged fees. The Division believes this regulation should be updated to adequately cover disclosures for this type of fee and transaction.

Coverage/Scope of Regulation B (Equal Credit Opportunity)

This regulation implements important requirements of the Equal Credit Opportunity Act. The regulation contains important protections for consumers against discrimination in credit transactions. However, the Division would support attempts to ease the disclosure and timing requirements under 12 CFR 1002.9, as well as the data reporting requirements of this regulation, based on the volume of applications processed by the lending institution to ease the regulatory burden on smaller institutions and institutions that only occasionally extend consumer credit as an accommodation for customers. The exemptions for low transaction volume set forth in Regulation Z offer a reasonable balance for applicability based on the volume of real estate and non-real estate secured credit.

Electronic Disclosures

The Division supports the use of new technology to provide important consumer protection information to consumers. Consumers are conducting financial transactions on-line in ever-increasing numbers and regulatory requirements should be updated to reflect this reality. Most currently required disclosures should be able to be provided electronically on the condition that these disclosures meet certain requirements for prominence and consumer retention. The Division supports efforts to allow financial institutions to provide certain consumer protection disclosures electronically when the consumer has consented to the receipt of these disclosures. In some cases implied consent through the use of electronic platforms may be appropriate, while in others explicit consent from each consumer involved in a transaction should be required. In some cases it may be appropriate to post certain disclosures, such as annual privacy notices, on a financial institution's website instead of providing them directly to the consumer. This should only be allowed on a website that is readily accessible where information can be

downloaded and printed easily, and in conjunction with clear notification of where to obtain this information.

Following are examples of different categories of lending disclosures that may be treated differently for electronic disclosure requirements:

- The requirements for certain generic disclosures, such as the special information booklet required for home loans under 12 CFR 1024.6, the brochure for home equity lines under 12 CFR 1026.5b(e), and the Consumer Handbook on Adjustable rate mortgages for adjustable rate transactions required under 12 CFR 1026.19(b)(1) can be more flexible. For instance, it may be appropriate to post these disclosures on a financial institution's website instead of providing them directly to the consumer.
- The requirements for product specific disclosures such as the Important Terms Disclosures required for home equity lines under 12 CFR 1026.5b(d), and the program disclosures for adjustable rate transactions required under 12 CFR 1026.19(b)(2) should be somewhat more stringent than the generic disclosures described above. For instance, it may be appropriate to allow these disclosures to be provided through e-mail with a consumer's consent.
- Certain critical transaction specific disclosures such as the initial disclosures required under 12 CFR 1026.06 and 12 CFR 1026.18, or the good faith estimate of settlement costs required under 12 CFR 1024.7 and the settlement statement required under 12 CFR 1024.8 should continue to be provided in writing.

However, the Division recognizes that some consumers do not have the resources or expertise necessary to conduct financial transactions online, and these customers should not be disadvantaged by the availability of on-line disclosures. Therefore, any of these disclosures should continue to be available in writing upon verbal or written request. There are also instances where technology fails and written disclosures should be available in these circumstances as well.

The Bureau specifically requested input on mobile banking applications and on whether to allow certain disclosures to be provided by text messaging. The Division believes that text messages may be appropriate but that any disclosures provided in this manner should only be allowed under requirements similar to those set forth under the ESIGN Act, which requires customer consent and reasonable future access to the electronic disclosures. Any electronic disclosures provided through this medium should still be required to comply with all applicable State and federal consumer protection rules.

CONCLUSION

While the Division supports the Bureau's efforts to streamline existing regulations, the Division believes it is imperative that any attempt to eliminate apparently unnecessary or burdensome requirements should be done only after careful consideration. Attempts to streamline existing regulations should not come at the expense of important consumer protections. Furthermore, shortsighted quick fixes to regulations could cost businesses and consumers more in the long term. Recent changes in the content and format of the good faith estimate and settlement statement required under RESPA created disclosure requirements that duplicate many of the requirements under TILA, and while some were improvements, the overall cost to financial institutions, which was ultimately passed on to borrowers, outweighs the perceived benefit to the consumer. Similarly, recent changes to the payment schedule under TILA provided a boon to forms providers and compliance consultants, while increasing costs for financial institutions, but have not provided significant benefit to applicants in mortgage transactions. The cost of compliance with any changes to the existing regulations should be taken into account before any new proposals are made.

Every effort should be made to eliminate duplicate or contradictory requirements in existing regulations and there are some rather obvious areas that the Bureau has already identified in its request for comments, including the regulations implementing the Registration requirement for MLOs under the SAFE Act; the regulations enforcing the Fair Credit Reporting Act; and the regulations governing

Privacy. Regardless of the ultimate structure of the regulations that the Bureau oversees, it is imperative that they are designed, organized and enforced consistently and coherently. Doing so would go a long way toward easing regulatory burden without eliminating any important consumer protections.

The Division also strongly believes that any changes to existing regulations that are proposed as part of this process should specifically state that the federal rule only supersedes the State rules to the extent they are inconsistent, and then only to the extent that a State rule is less consumer protective than the federal rule. Many States have been at the forefront of consumer protection and are in a unique position to tailor consumer protection requirements to meet the particular needs of its citizens without imposing undue regulatory burden. It is important that any changes to the existing consumer protection regulations confirm and reinforce the ability of the States to effectively protect consumers.

The Division presents the suggestions, concerns and ideas in the spirit of alleviating regulatory burden while maintaining important consumer protections. In many cases further research will be required to understand the full implications of altering current regulatory requirements. Full research before the implementation of any potential changes is worthwhile to prevent any changes that while well intentioned, would end up costing more in the long run if they are not properly constructed.

Thank you for the opportunity to comment on the proposed Regulatory Streamlining Project. I hope that these comments and suggested alternatives are considered and found helpful. If you have any questions, please feel free to contact me at (617) 956-1510, or Cynthia Begin, Chief Risk Officer at (617) 956-1523.

Sincerely,

David J. Cotney
Commissioner of Banks

APPENDIX A

Proposed Outline for Mortgage Lending Regulations

I. Authority/Purpose/Coverage, etc…
II. Definitions
III. Advertising
IV. General Disclosure Requirements
V. Application Process/Early Disclosures
VI. Disclosures Prior to Consummation
VII. Rescission
VIII. Subsequent Disclosures
    a. ARM Adjustments, Escrow disclosures, servicing disclosures, etc…
IX. Servicing Requirements
    a. Escrow, ARMS, Payoff processes, etc…
X. Fair Lending
XI. MLO Licensing and Registration
XII. HMDA Reporting
XIII. UDAAP
XIV. Enforcement
XV. Recordkeeping
XVI. Relation with Other Laws
XVII. Appendices/Model Forms/Commentary

Proposed Outline for Credit Card Regulations

I. Authority/Purpose/Coverage, etc…
II. Definitions
III. Advertising
IV. General Disclosure Requirements
V. Application /Early Disclosures
VI. Disclosures Prior to Consummation
VII. Periodic Statements
VIII. Subsequent Disclosures
IX. Servicing Requirements
X. Fair Lending
XI. UDAAP
XII. Enforcement
XIII. Recordkeeping
XIV. Relation with Other Laws
XV. Appendices/Model Forms/Commentary

APPENDIX A
(Continued)

Proposed Outline for Consumer Finance/Leasing Regulations

I. Authority/Purpose/Coverage, etc…
II. Definitions
III. Advertising
IV. General Disclosure Requirements
V. Disclosures Prior to Consummation
    a. Loan Transactions
    b. Lease Transactions
VI. Subsequent Disclosures
VII. Servicing Requirements
VIII. Fair Lending
IX. UDAAP
X. Enforcement
XI. Recordkeeping
XII. Relation with Other Laws
XIII. Appendices/Model Forms/Commentary

APPENDIX B

Proposed Outline for Deposit Regulations

I. Authority/Purpose/Coverage, etc…
II. Definitions
III. General Disclosure Requirements
IV. Initial Disclosures
    a. EFT, TIS, etc…
V. Periodic Statements
VI. Subsequent Disclosures
    a. Term Deposit Renewal notices, etc…
    b. ATM/POS Receipts
VII. Account Management & Error Resolution
    a. EFT, TIS, Privacy, etc…
VIII. Advertising
IX. UDAAP
X. Enforcement
XI. Recordkeeping
XII. Relation with Other Laws
XIII. Appendices/Model Forms/Commentary