

August 21, 2015

The Honorable David Cotney  
Commissioner  
Massachusetts Division of Banks  
1000 Washington Street, 10<sup>th</sup> Floor  
Boston, MA 02118

Dear Commissioner Cotney:

On behalf of our 170 member institutions located throughout Massachusetts and New England, the Massachusetts Bankers Association (MBA) appreciates the opportunity to provide additional comments on the Division of Banks' regulatory review process. As we stated in our written testimony at the informational hearing held on August 13, MBA believes that Governor Baker's Executive Order 562, which seeks to reduce the regulatory burden on institutions doing business in the Commonwealth, will be welcomed by our members, who are facing increased compliance costs and a rapidly evolving regulatory environment.

In addition to our testimony at the hearing as well as our written statement, MBA is pleased to submit additional suggested changes regarding 209 CMR 56.00 Foreclosure Prevention Options. Our comments are below:

- **Provisions in 209 CMR 56.00 that are Excessive, Outdated or Unduly Burdensome:**

As was noted by other commenters during the public hearing, because the regulations and underlying statute pre-date the Consumer Financial Protection Bureau's (CFPB) loss mitigation regulations, there are a number of conflicts between state and federal law that are difficult for lenders and servicers to reconcile. For example, the penalties for non-compliance in the Commonwealth's law are unnecessary, particularly when state regulators can enforce CFPB regulations.

For example, the penalty for RESPA violations under the CFPB rules is recovery of actual damages incurred by the borrower directly caused by violation; additional damages if there is a "pattern and practice" of noncompliance, up to \$2,000 for each violation; attorney's fees and costs (12 U.S.C. §2605(f)). In addition, because most all RESPA violations are also considered UDAAP violations, enforcement can be initiated by state/federal regulator even absent a borrower challenge. MBA recommends that the state regulations are revised to clarify that compliance with relevant foreclosure prevention requirements under subsequently enacted federal law affords safe harbor protection.

There are also various requirements in the regulation that only make sense in the context of a servicer employing one of the safe harbor processes. Most fundamentally, some insurers/investors may permit a loan modification even where foreclosure would yield more money under a safe harbor financial analysis, and, accordingly, financial analysis is not used to deny those customers for a loan modification. However, under current regulation, the decision

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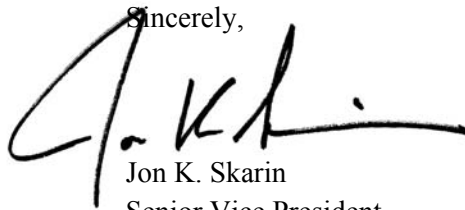
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letter to those customers must still indicate the output of a financial analysis that was never performed or, at a minimum, actually considered in the loan modification decision process. Again, we recommend that the regulations mirror applicable federal law and presume safe harbor compliance if correspondence meets federal requirements and if loan modification process is pursuant to investor/insurer requirements.

Finally, we would note that the Massachusetts regulations implement a law that appears to require lenders or investors to accept a loan modification. To our knowledge the Commonwealth is the only state that has enacted this provision and we believe that it creates a number of potential issues for lenders and servicers operating in Massachusetts.

Thank you again for the opportunity to provide additional comments as part of the Division's regulatory review process. We look forward to working with you and your staff in the coming months on revisions to the banking regulations of the Commonwealth. If you have any questions or need additional information, please contact me at (617) 523-7595 or via email: [jskarin@massbankers.org](mailto:jskarin@massbankers.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'Jon K. Skarin', with a long horizontal flourish extending to the right.

Jon K. Skarin  
Senior Vice President