

Massachusetts Credit Unions



Creating Cooperative Power

August 21, 2015

The Honorable David J. Cotney
Massachusetts Commissioner of Banks
Division of Banks and Loan Agencies
1000 Washington Street, 10th Floor
Boston, MA 02118

BY EMAIL ONLY

Dear Commissioner Cotney:

On behalf of the Massachusetts credit union community, please accept this letter in response to the request by the Massachusetts Division of Banks and Loan Agencies ("Division") for comments relative to certain regulations. As you are aware, the Cooperative Credit Union Association, Inc. is the state credit union trade association, serving approximately 180 federally chartered and state-chartered credit unions that are cooperatively owned by 2.6 million consumers as members, and operating in conjunction with the Credit Union National Association.

More specifically, the Division seeks comments on the following regulations:

- 209 CMR 18.00: Conduct of the Business of Debt Collectors and Loan Servicers
- 209 CMR 20.00: Small Loans, Sales Finance Companies and Insurance Premium Finance Companies
- 209 CMR 26.00: Loans Regulatory Board
- 209 CMR 31.00: Establishment And Operation Of Electronic Branches Of Financial Institutions And For The Protection Of Consumers In Electronic Fund Transfers
- 209 CMR 32.00: Truth in Lending
- 209 CMR 33.00: Conversion By Co-Operative Banks And Savings Banks From Mutual To Stock Form
- 209 CMR 40.00: Unfair And Deceptive Practices In Consumer Transactions
- 209 CMR 41.00: The Licensing of Mortgage Loan Originators
- 209 CMR 42.00: The Licensing of Mortgage Lenders and Mortgage Brokers
- 209 CMR 43.00: Audit Requirements For Credit Unions
- 209 CMR 44.00: Licensing Of Foreign Transmittal Agencies
- 209 CMR 45.00: The Licensing And Regulation Of Check Cashers
- 209 CMR 46.00: Community Reinvestment
- 209 CMR 48.00: Licensee Record Keeping
- 209 CMR 49.00: Insurance Sales by Banks and Credit Unions
- 209 CMR 50.00: Parity With Federal Credit Unions

- 209 CMR 52.00: Credit Insurance Disclosure Requirements
- 209 CMR 53.00: Determination and Documentation of Borrower's Interest
- 209 CMR 54.00: Mortgage Lender Community Investment
- 209 CMR 55.00: Reverse Mortgage Loans
- 209 CMR 56.00: Foreclosure Prevention Options

I. Overview

The Association commends the Division for its invitation to interested parties to suggest regulatory improvements and review its regulations as part of a broad regulatory review process. Credit unions are subject to hundreds of regulations from a multitude of agencies. This level of regulation limits credit unions' ability to serve their members. Regulatory compliance invites costs, in the form of staff time, data processing systems, administrative costs, and training. The funds that are allocated to regulatory compliance are diverted from the member service side, resulting in a reduction of the services offered to members.

The burden of complying with ever-changing regulatory requirements is particularly onerous for smaller institutions. While these comments will address the categories of regulations on which burden reduction recommendations are requested holistically, we would like to emphasize the disproportionate burden faced by small and mid-size institutions due to regulations. It is critical that the Division tailor its supervisory and regulatory requirements to reflect the complexity and risk of individual credit unions. Small and mid-size credit unions have business models, corporate structures, and risk profiles that are very different from other larger institutions supervised by the Division. A flexible approach that considers both size and risk profiles allows the Division to adjust the rigor and intensity of its supervision and supervisory expectations to each institution.

The Association recognizes that the Division is not the only regulatory agency responsible for rulemaking authority over credit unions. Moreover, some rules are required by statute, which hampers the Division's efforts for timely and substantive change. However, credit unions greatly appreciate the attention and priority that the Division has given to the ever-increasing regulatory burden.

While this regulatory review comes as a result of Executive Order 562, the Association notes that the Division offered two informational hearings in 2013 as part of an independent regulatory review process.

Finally, the Association recognizes that the Division has submitted public comments to other federal regulators, such as the Consumer Financial Protection Bureau, the Federal Financial Institutions Examination Council, and through the Economic Growth and Regulatory Paperwork Reduction Act of 1996 process, in response to requests for guidance in streamlining regulations. Comments suggested the adoption of a tiered regulatory structure to provide relief to smaller, community-based institutions. The Association supports this approach and encourages a similar regulatory format during the current review process wherever possible which would exempt smaller institutions and create a staggered rule approach with the most

significant volume of requirements on those institutions which impose the greatest risk. In addition, any aggregation of provisions by topic, and the use of consistent definitions, would be helpful.

These actions represent steps in the right direction toward reducing regulatory burden and promoting clarity for credit unions. The Association urges the Division to continue its regulatory review process, with a focus on a risk-based approach, and hopes that it will offer a road map for future rulemaking.

The Association offers the following additional suggestions for change.

II. 209 CMR 32.00: Truth in Lending
209 CMR 40.00: Unfair and Deceptive Practices in Consumer Transactions
209 CMR 53.00: Determination and Documentation of Borrower's Interest

The Association notes that the Division amended 209 CMR 32.00: Truth in Lending and 209 CMR 40.00: Unfair and Deceptive Practices in Consumer Transactions last year as a result of comments submitted during the public hearing held for that purpose. The Association provided oral and written testimony to the Division to assist in the streamlining process. The resulting regulations, which became effective on January 2, 2015, are a significant improvement and reflect many of our comments.

Both the above regulations, and 209 CMR 53.00: Determination and Documentation of Borrower's Interest, were promulgated at a time when comparable federal regulations were either non-existent or not as strong. They contained variations of similar provisions or overlap so that a violation of one provision may also have been classified as an unfair and deceptive practice. The amendments made by the Division, which streamline compliance rules by providing that compliance with the cited federal regulations constitutes compliance with the above provisions, greatly reduced the burden and economic impact on credit unions.

These amendments improved consistency with statutory changes and also resulted in a significant reduction in size of existing regulations. The adoption of this approach also allows for a more simplified incorporation of future federal changes.

The Association requests that the Division take an approach similar to that taken in its amendments of 209 CMR 32.00 and 209 CMR 40.00 with 209 CMR 53.00. The Consumer Financial Protection Bureau has promulgated regulations regarding qualified mortgages, and it is the position of the Association that deeming compliance with these federal regulations as compliance with the Division's regulations would promote further clarity and avoid compliance concerns. Consistent regulatory schemes are critical to lessen the compliance burden on credit unions, and the existence of federal, protective regulations for consumers provides a proper basis for the Division to regulate with.

Additionally, the Association notes the preservation of Massachusetts differences that are deemed more advantageous to consumers in the rulemaking. Specifically, the maintenance of

the language of 32.06A: Computation of Finance Charge is one such difference, as are proposed sections 32.13: Billing Error Resolution, which maintains only the forfeiture penalty provisions, and 32.15: Right of Rescission, which maintains expiration provisions on the right to rescind, along with their parallel sections regarding closed-end credit. The Association understands that these are statutory issues, and while we appreciate the Division's request for comments on these sections, the Association reemphasizes its position that compliance with federal provisions should be deemed full compliance with state provisions.

The principle behind the maintenance of these consumer-friendly provisions is a principle not at odds with those of the Association. However, the enhanced regulatory burden placed on credit unions by varying but overlapping provisions is a significant issue which can be alleviated by full uniformity with existing federal provisions, particularly when those federal provisions provide substantial consumer protection and benefits.

Until there are statutory changes, the Division should consider enforcement flexibility in potential non-compliance situations by credit unions. Such flexibility would protect good faith efforts to comply with the complicated regulatory schemes faced by credit unions, particularly in such cases where partnering with a new vendor or variations in employee-base, for example, may cause temporary disorder.

III. 209 CMR 26.00: Loans Regulatory Board

It is the position of the Association that an amendment be made to 209 CMR 26.00: Loans Regulatory Board, which will both benefit credit unions while continuing to protect consumers from predatory loans. The Small Loans Regulatory Board has set the maximum rates of charge for interest that should be permitted on regulated loans of \$6,000 or less. 209 CMR 26.01(1)(a) states that credit unions may charge an administrative fee of no more than \$20 upon the granting of a qualified loan. This fee is not permitted to be assessed to a borrower more than once during any 12-month period.

These small loans are an important book of business for credit unions. The limitation on the administrative fee should be removed for credit unions. This provision makes credit unions less competitive in the marketplace, resulting in a disadvantage to consumers who are limited as to where they are able to receive such small loans. Credit unions have a long history of promoting their members' best interests while fulfilling their members' needs. This limit on the administrative fee is not statutory, and proves a disadvantage to credit unions, particularly small credit unions, who are less able to compete with other financial institutions. Exempting credit unions from the limitation on the administration fee assessment will provide a more level playing field for credit unions in their loan portfolios.

IV. 209 CMR 46.00: Community Reinvestment

The Association requests that the Division consider expanding its Community Reinvestment Act ("CRA") provisions in 209 CMR 46.00. It is the position of the Association that the Division should continue its approach to CRA as conformity with applicable federal

provisions. Maintaining conformity will allow for more simplified compliance by credit unions, particular as with outside vendors, and allows for more simplified comparison.

The Association suggests that the Division include in its CRA provisions language similar to 12 CFR 345.21(f). This federal regulation states that in assessing the CRA performance of a nonminority-owned and nonwoman-owned financial institution, the applicable regulator will take into account the capital investment, loan participation, and other ventures undertaken by the financial institution in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which minority-owned, women-owned, and low-income credit unions are chartered. Such activities need not benefit the assessed financial institution's assessment area or the broader area.

It is requested that the Division consider applying this assessment consideration to credit unions when assessing CRA performance. Activities in cooperation with financial institutions owned by women and minorities, who have less access to enhanced opportunities, serve the purpose of the CRA and further support the community as well as low-income designated credit unions.

V. 209 CMR 49.00: Insurance Sales by Banks and Credit Unions

The Association suggests that the Division consider clarifying and simplifying 209 CMR 49.00: Insurance Sales by Banks and Credit Unions. Specifically, clarification is requested on 209 CMR 49.06. In response to an inquiry, the Division has informed credit unions that regarding waivers and insurance sales, they must follow the provisions of 209 CMR 49.06 rather than 209 CMR 49.06A, for purposes of a waiver.

Credit unions work with third party vendors for sales of insurance. These third party vendors, with which fees will be shared, require a producer's license from the Division of Insurance ("DOI"). In response to our inquiry, the Division confirmed that all insurance sales activities shall be conducted in accordance with the plans of operation submitted to and approved by the Division. The Division is required to approve the Plan of Operation first; subsequently, the third party vendor/credit union applies to the DOI for a producer's license. It is the credit union's responsibility to assure that the DOI's application process is complete.

It is requested that the Division consider clarifying this issue to allow for simultaneous applications or a streamlined process. As both the Division and the DOI must approve the application, it is requested that a credit union be allowed to submit the application for a producer's license simultaneously. This streamlined process will benefit the credit union in limiting administrative cost and time expenditure.

VI. 209 CMR 50.00: Parity with Federal Credit Unions

The Division is currently in the process of amending its parity regulation. The Association recognizes that this regulatory review process pursuant to Executive Order 562 may not

contemplate the addition of new authorities. The Association has separately, however, submitted recommendations for change to the Division's parity regulation, and request that those requests be incorporated into these comments. A streamlined parity regulation with improved consistency with statutory changes and expanded parity powers is requested. In order to assist the Division in streamlining this process, the Association has the additional following suggestions.

The Association suggests that the Division remove the provisions requiring administration approvals and filings related to the purchase and sale of loans, and consumer loans. Additionally, it is requested that the following products and actions be removed from the application and notice requirements: real estate participations and guaranteed auto protection/debt cancellation.

It is the position of the Association that a variety of actions and products should require notice rather than a formal application to the Division. These include the acceptance of nonmember deposits, limited fixed asset authority, and mechanical repair coverage, unless it is an insurance product.

Lastly, it is requested that the Division include a provision which will allow a low income designated credit union to apply for secondary capital authority. Rather than automatically grant this authority, the Division can review and monitor each low-income designated credit union's request of secondary capital via an application process.

VII. 209 CMR 56.00: Foreclosure Prevention Options

The Association notes with appreciation the Division's 2013 public hearing to amend 209 CMR 56.00: Foreclosure Prevention Options, and the changes that were made pursuant to the Association's comments.

The Association supports the inclusion of safe harbor provisions relative to "certain mortgage loans" at 209 CMR 56.08. We suggest an additional provision relative to the determination of "certain mortgage loans." The Association takes guidance from proposed rules by the CFPB relative to safe harbor and the ability-to-repay standards under Regulation Z. To ensure compliance with the statute, credit unions already employ a thorough, documented analysis in evaluating both their existing portfolios and all new loans to classify each loan as either falling within or outside of the statute. If for any reason the determination is not clear, credit unions treat the loans as a "certain mortgage loan." Therefore, it is suggested that creditors who can demonstrate such detailed policies, procedures, controls, and standards of review should be eligible for either a conclusive or rebuttable presumption of compliance that a reasonable, good faith determination of a "certain mortgage loan" has been made.

Additionally, the Association requests expansion of the clause 'streamlined refinance loan' contained within the definition of "full documentation" at 209 CMR 56.02 to include refinances by credit unions for members with whom a prior, long term, positive lending relationship exists. Many times these loans are held in portfolio. Credit unions often streamline

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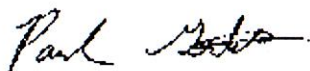
the requirements for certain underwriting documentation for loans previously originated with full documentation which are for the benefit of the consumer and are responsibly underwritten and performing loans. In these instances, based on the historic and extensive exchange of readily available and verifiable information between the parties, credit unions often offer an abbreviated refinancing process. This service reflects not only the close relationship that credit unions have with members, but also their priority of member service.

VIII. Conclusion

I urge that the Division consider the concerns voiced by Massachusetts credit unions and make the changes detailed above.

Thank you for your consideration of these views. The Association appreciates the opportunity to provide input and I remain available to address any questions or concerns at 508.229.5623 that you or your staff may have at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Gentile", with a stylized flourish at the end.

Paul C. Gentile
President/CEO

PCG/kb