



August 13, 2015
Mr. David Cotney
Commissioner of Banks
The Commonwealth of Massachusetts
1000 Washington Street, 10th Floor
Boston, Massachusetts 02118

RE: Informational Hearing on Review of Regulations per Executive Order 562

Dear Commissioner Cotney,

On behalf of the Massachusetts Mortgage Bankers Association (MMBA), we would like to thank you for the opportunity to provide commentary relative to the review of regulations per connection with Executive Order 562 issues by Governor Baker with the purpose of reducing regulatory burden. The MMBA represents 200 lending institutions made up of equal representation between depository institutions (banks and credit unions) and non-depository institutions (mortgage banker/lender companies, mortgage brokers and all ancillary companies) which facilitate mortgage transactions throughout the Commonwealth.

General Comments:

Massachusetts has a long history of being at the nation's forefront in banking regulations. Starting in 1783, the Division enacted the first law containing provisions requiring bank examinations. In 1966 the Commonwealth passed the nation's first truth in lending law and it became the model for the subsequent federal law which was enacted 2 years later. We commend the Division of Banks for their leadership and blazing the trail leading the country in tackling challenging regulatory issues. We also commend the Division of Banks for today's hearing and soliciting input on all of their regulatory issues. We know that you have been proactive in updating many of the regulations already to conform to new federal guidance and regulations.

Today we will be submitting several recommendations ranging from complete repeal of regulations to specific areas in regulations where we think improvements can be made.

The intention of this informational hearing, as provided in Executive Order Number 562, is to ensure that the government speaks in one voice, creating an efficient, coherent and consistent regulatory framework. The intention is also to ensure that consumers and the mortgage industry (banks, credit unions, licensed mortgage lenders and mortgage brokers) will be better served by reducing the number, length, and complexity of regulations, leaving only those that

are essential to the public good. In addition, our suggestions on regulatory changes also are based on criteria contained in the executive order including:

- The costs of the regulation do not exceed the benefits that would result from the regulation
- The regulation does not exceed federal requirements or duplicate local requirements;

As stated above, the Division has a long history of identifying and addressing issues in the banking and lending industry. We feel that the federal legislators and regulators have “caught up” to the issues and concerns identified by the Division of Banks. We would respectfully suggest that many of the regulations being heard today are repetitive of consumer protections included in federal regulations or that the regulations create an unwarranted burden for lenders in instances when there are procedural differences between federal and state regulations.

Recommended Regulatory Changes:

209 CMR 18:00: Conduct of the Business of Debt Collectors and Loan Servicers

Federal laws, rules and regulations along with secondary market procedures for servicing delinquent and defaulted loans provide guidance over debt collection and servicing delinquent loans from a federal level, specifically:

- Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X)
- Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts (UDAAP)
- Fair Debt Collection Practices Act (FDCPA)
- Additional regulations of the Consumer Financial Protection Bureau

The MMBA suggests the following changes to 209 CMR 18.00 based upon Executive Order 562.

18.04 -18.08: Licensing and Registration Standards

The MMBA believes that the licensing standards are excessive in comparison to other states. As an example – the requirement for personal financials for all investors in an organization including officers and directors of a corporation, partnership or association, not just employees communicating with consumers or control persons.

18.08: Notice of Significant Events and Proposed Change in Ownership or Personnel

This section requires 24 hour notice of a variety of changes in the circumstances of the debt collector or third party Servicer. We recommend that information relative to class action law suits, closing or shortage of any account, be provided in the annual license renewal application. We also recommend that for the balance of the notification requirements a more reasonable period of time be offered such as 30 days and that it run from the date of discovery of the issue.

18.14: Communication in Connection with Debt Collection

(d) This section places a limitation on the frequency a debt collector may engage in communication. The MMBA suggests that the Division revise this section and provide clarification such as if a debt collector is returning a call from a consumer.

(e) This requires the Notice of Important Rights be sent by the debt collector within 30 days after the first communication to his/her place of employment and every 6 months thereafter. The MMBA suggests that the 6 month follow-up is not needed and a burdensome

18.16 -18.17: False or Misleading Representations/Unfair Practices

These sections of the regulations are of a strict liability nature such that any infraction, regardless of the minor nature of the same, provides no tolerances for minor infractions. Further, the regulations don't allow remediation or the ability to cure the defect upon discovery. We would recommend these sections be stricken as there are protections against unfair and deceptive acts under M.G. L. CH. 93A.

(14) This section prohibits causing charges to consumers for communication, including text messaging or data usage fees. The MMBA suggests this section be repealed or revised to recognize the change in telecommunication preferred methods for consumers. If a consumer has provided their cell phone as a method of communication – then a debt collector is assumed that the consumer has accepted responsibility for any additional cost on their data plan which a debt collector would have no access to.

18.18: Validation of Debts

(3) This section mandates that a debt collector will provide all papers and electronic records signed by the consumer and a ledger for the debt showing payments, credits and charges. This requires the lender to assemble a complete loan history in a very short period of time and include all documents that may not be readily accessible. It further requires the Servicer to deliver a complete accounting of the entire loan payment history regardless of the nature of the issue raised in the validation of debt. This is extremely burdensome. The Division should strike or substantially revise this section as these requirements are excessive and exceeds regulations and guidance from the CFPB and FDIC.

209 CMR 32.00: Disclosure Of Consumer Credit Costs And Terms

The Division streamlined this regulation to follow closely with the federal regulations. The Association questions if this regulation could be repealed based upon duplication contained in the following federal regulations:

- Regulation Z, issued by the Bureau of Consumer Financial Protection to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.)
- The Credit Card Act signed into law by President Obama in 2009 effective February, 2010.

- 2013 Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X).
- Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts (UDAAP)
- Fair Debt Collection Practices Act (FDCPA)
- High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)
- Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)

There are some sections which, if 209 CMR 32.00 is NOT repealed, would need to be revised:

32.15: Right of Rescission

This section needs to agree with 12 CFR 1026.15(a) and 209 CMR 32.15(1) including that the right to rescind shall expire **three** years after the occurrence giving rise to the right of rescission.

- According to the Executive Order, the current 4 year expiration would exceed the federal guidelines and therefore would need to be revised.

32.20: Disclosure requirements regarding post-consummation events

(3) Variable-rate Adjustments.

This section should agree with 12 CFR 1026.20(c)(2). The timing of the variable rate disclosure notice should be revised from the current timing of “no sooner than 60 but no later than 30 days before the rate change” to those set forth in the corresponding federal regulations. According to the Executive Order, we believe that the current discrepancy between the federal and state timing for variable rate disclosures creates an additional cost for complying for our members without providing an advantage to consumers. Many of our lenders provide financing to properties located in neighboring states and it is extremely burdensome to have one specific product in one specific state to have different timing requirements. In addition, we do not feel that the timing is a benefit to consumers. Therefore, we believe this section should be revised per Executive Order because:

- There should be consistent regulatory framework
- The costs of the regulation exceeds the benefits that may result from the regulation
- The regulation exceeds or duplicates federal requirements

32.32: Requirements for High Cost Mortgages

This section should be in alignment with 12 CFR 1026. The current regulations use annual percentage rate (APR) thresholds of 8% (first lien) or 9% (subordinate lien) based upon Treasury

securities in comparison to the CFPB regulations that calculate based upon the (APR) exceeding the applicable average prime offer rate (APOR) for mortgage transactions.

We believe that there is not a need for a separate state high cost overlay in addition to the high cost provisions throughout the CFPB regulations referenced above.

209 CMR 32.04: Finance Charges/Review of Opinion Letters and Bulletins

This section was updated to be in compliance with 12 CFR 1026.4. The MMBA would like to respectfully suggest that the Division review past Bulletins and Opinion Letters to clarify if the opinions issued previously are no longer in effect. As an example - the Division interpreted (DOB Opinion Letter dated October 10, 2008) that the up-front insurance premium on an FHA mortgage loan is a premium for any guarantee or insurance protecting the creditor against default and therefore should be included in the "points and Fees" calculation to determine if the loan is a high cost home mortgage under chapter 183C. No other state in the country that we know of includes up-front mortgage insurance (UFMIP and VA Funding Fee) into the high cost loan calculations. This can particularly impact VA loans that have a current 3.35% funding fee and could easily become a high cost loan. With the update of this section to conform to CFPB definitions, does this overturn the Division's opinion stating that up-front funding fees need to be included in high cost calculations?

According to the Executive Order, we believe that the current high cost overlays compared to the federal high cost provisions are redundant. The dual high cost calculations create an additional cost for complying without providing an advantage to consumers. Many of our lenders provide financing to properties located in neighboring states and it is extremely burdensome to have different high cost loan calculations for both federal and state compliance. In addition, we do not feel the state specific high cost loan parameters provide any additional benefit to consumers. Therefore, we believe this section should be revised per Executive Order because:

- There should be consistent regulatory framework
- The costs of the regulation exceeds the benefits that may result from the regulation
- The regulation exceeds or duplicates federal requirements

209 CMR 40.00: UNFAIR AND DECEPTIVE PRACTICES IN CONSUMER TRANSACTIONS

The Association suggests that this regulation could be repealed based upon duplication contained in the following federal regulations:

- Regulation Z, issued by the Bureau of Consumer Financial Protection to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.)
- The Credit Card Act signed into law by President Obama in 2009 effective February, 2010
- 2013 Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X)
- 2013 Home Ownership and Equity Protection Act (HOEPA) Rule

- Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts (UDAAP)
- Fair Debt Collection Practices Act (FDCPA)
- High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)
- Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)

If 209 CMR 32.00 is NOT repealed, the definition of a High Cost Loan would need to be revised:

40.02: Definitions

Please refer to comments listed above for 209 CMR 32.32. The definition of a High Cost Loan should be in alignment with 12 CFR 1026. The current regulations use annual percentage rate (APR) thresholds of 8% (first lien) or 9% (subordinate lien) based upon Treasury securities in comparison to the CFPB regulations that calculate based upon the (APR) exceeding the applicable average prime offer rate (APOR) for mortgage transactions. Since a high percentage of loans are sold on the secondary market or underwritten for future sale and must adhere to agency requirements, we believe this section should be revised per Executive Order because:

- There should be consistent regulatory framework
- The costs of the regulation exceeds the benefits that may result from the regulation
- The regulation exceeds or duplicates federal requirements

209 CMR 41:00: The Licensing of Loan Originators

The MMBA supports both the law and regulations relating to the licensing or registration of any person, who fits the definition of a Mortgage Loan Originator or regardless of title, is in direct contact with consumers assisting and answering questions on anything regarding product, interest rates or any type of negotiation of a residential mortgage loan.

The Executive Order charges all government agencies with reviewing regulations which inhibit business growth and impose unnecessary cost and burdens. We would respectfully ask the Division to reconsider their interpretation of the SAFE Act and M.G.L. c. 255F under this Executive Order.

The mortgage industry can be cyclical – there are times during the year that are traditionally busier than others or if external factors such as an increase or decrease in mortgage interest rates cause mortgage lenders (banks, credit unions, mortgage lenders and mortgage brokers) to experience sudden increases or decreases in volume. This can create a challenge in staffing as all lenders need to ensure timely service to consumers. No company likes or can afford to continually spend resources to increase permanent staff when volume is high and decrease staff in slower market conditions. All lenders (depository and non-depository) have expended a significant amount of resources in the past few years to ensure compliance with the numerous

amounts of new regulations. The practice of hiring temporary staff or independent contractors that have little or no communication with consumers to assist with the processing and underwriting of loan files in a timely manner when volume is high should be a good and common sense business decision.

The SAFE Act, M.G.L. c. 255F and 209 CMR 41.00 all have clear definitions of what constitutes the definition of a Mortgage Loan Originator and what job duties constitute the need to be licensed or registered. What continues to be a source of confusion is the interpretation and requirement that the Division imposes on temporary clerical, processing or underwriting employees needing to be licensed mortgage loan originators.

In the Division's guidance: *FAQs on Chapter 44 of the Acts of 2009, An Act Adopting the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act)*, we find the following:

Q. Does a "loan processor or underwriter" need to obtain a mortgage loan originator license?

A. Generally no. The term "loan processor or underwriter" is defined under Chapter 255F as someone who performs mostly clerical or support duties under the direction of a licensed mortgage loan originator and does not hold themselves out in advertising or other means as being able to perform the duties of a mortgage loan originator. Such loan processors or underwriters are exempt from having to obtain a license as a mortgage loan originator unless they are working as an independent contractor, in which case they must obtain a license, regardless of the nature of their duties.

Q. What does "independent contractor" mean?

A. The U.S. Department of Housing and Urban Development (HUD, the federal agency responsible for ensuring that the states are in compliance with the federal S.A.F.E. Act) has published a series of FAQs regarding the S.A.F.E. Act. In response to a separate question, HUD states that, "**an individual who is an independent contractor is not an employee. An individual is generally considered to be an employee only if the manner and means of his or her performance of duties is subject to the control of an employer, and if his or her income is reported on a W-2 form**". See HUD's FAQs links to PDF file, Question 8 for additional information.

HUD guidance referenced by the Division's guidance:

8. Exemption for Agents of Certain Federally Regulated Financial Institutions:

QUESTION: May a state provide an exemption from state licensing requirements for individuals who are agents, but not employees, of a depository institution, a federally regulated subsidiary of a depository institution, or an institution regulated by the Farm Credit Administration?

ANSWER: No. A state must require licensure of individuals who engage in the business of a loan originator, unless an individual meets the SAFE Act's definition of a registered loan originator in section 1503(7). A registered loan originator is defined as an individual who meets the definition of a loan originator and who: (a) is an employee of a depository

institution, a federally regulated subsidiary of a depository institution, or an institution regulated by the Farm Credit Administration, and (b) is registered with the NMLSR. For example, an individual who is an independent contractor is not an employee. **An individual is generally considered to be an employee only if the manner and means of his or her performance of duties is subject to the control of an employer, and if his or her income is reported on a W-2 form.** Nor may state exempt employees of entities other than the three listed classes of institutions. For example, a holding company that merely owns one of the three listed classes of institutions is not itself one of the three listed classes of institutions.

CFPB Federal Guidance:

1008.23

Independent contractor means an individual who performs his or her duties other than at the direction of and **subject to the supervision and instruction** of an individual who is licensed and registered in accordance with § 1008.103(a), or is not required to be licensed, in accordance with § 1008.103(e)(5 – federally registered), (6- government employee), or (7- non-profit organization).

Appendix C to Part 1008—Independent Contractors and Loan Processor and Underwriter Activities That Require a State Mortgage Loan Originator License

(c) In order to conclude that an individual who performs clerical or support duties is doing so at the direction of and subject to the supervision and instruction of a loan originator who is licensed or registered in accordance with § 1008.103 (or, as applicable, an individual who is excluded from the licensing and registration requirements under § 1008.103(e)(2), (e)(6), or (e)(7)), there must be an actual nexus between the licensed or registered loan originator's (or excluded individual's) direction, supervision, and instruction and the loan processor or underwriter's activities. This actual nexus must be more than a nominal relationship on an organizational chart. For example, there is an actual nexus when:

- (1) The supervisory licensed or registered loan originator assigns, authorizes, and monitors the loan processor or underwriter employee's performance of clerical and support duties.
- (2) The supervisory licensed or registered loan originator exercises traditional supervisory responsibilities, including, but not limited to, the training, mentoring, and evaluation of the loan processor or underwriter employee.

The MMBA asks the Division to reconsider their position of temporary or contract employees needing to be licensed under 209 CMR 41.00 if the employee is paid by W-2 and is under the direct supervision of an individual who is licensed. This would allow lenders to hire temporary workers in a supervised environment to provide clerical, processing or underwriting services during high volume without having the expense of hiring permanent employees. We believe this interpretation of the regulation should be considered per Executive Order because:

- The costs of the regulation exceeds the benefits that may result from the regulation

41.04: Application Procedure

(e) Pre-Licensing Coursework

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This section should be revised for the latest content in the 3 hour state-specific education covering the following statutes and regulations:

- I. License Law and Regulation - 30 minutes
 - A. Licensing of Mortgage Loan Originators: MGL c.255F; 209 CMR 41.01 – 41.09 (15 minutes)
 - B. Licensing of Mortgage Brokers and Mortgage Lenders: MGL c. 255E; 209 CMR 42.01 - 42.12 (15 minutes)

- II. Consumer Protection – 120 Minutes
 - A. Reverse Mortgage Loans: MGL, c. 167E section 7; 209 CMR 55.00 (20 minutes)
 - B. Predatory Home Loan Practices Act: MGL, c. 183C (10 minutes)
 - C. Prohibited Acts and Practices: MGL, c. 255F, section 15; 209 CMR 41.10; 209 CMR 42.12A (30 minutes)

 - D. Refinancing in the Borrower’s Interest: MGL c. 183, section 28C; 209 CMR 53.00 (15 minutes)
 - E. Unfair or Deceptive Acts or Practices: MGL c. 93A (5 minutes)
 - F. Fees and Charges MGL c. 183, section 59; 209 CMR 32.32; 209 CMR 32.34 (20 minutes)
 - G. Advertising: 940 CMR 8.04; 209 CMR 41.12; 209 CMR 42.15 (15 minutes)
 - H. Recordkeeping: 209 CMR 42.09; 209 CMR 48.00 (5 minutes)

- III. Unique State Test Areas – 30 minutes
 - A. Community Reinvestment Act (CRA) and Fair Lending: MGL c. 255E, section 8, 209 CMR 54.00 (10 minutes)
 - B. Foreclosure Prevention Options: MGL, c. 244, sections 35A and 35B, 209 CMR 56.00 (15 minutes)
 - C. Foreclosure - Related Services: 940 CMR 25.00 (5 minutes)

209 CMR 42.00: The Licensing of Mortgage Lenders and Mortgage Brokers

42.11: Escrow Accounts

The MMBA would like to suggest that the regulation be more specific in terms of the type and title of the required escrow account. As an example:

The escrow account should have the name of licensee and words “escrow account” in the title of the account and the account must have custodial protections.

In the banking industry, a trust account is one in which the bank acts as custodian of the funds, while the trustee(s) possess legal control of the assets held in the account. This type of account would require trust documentation to be created, outlining who has powers for the trust, what the funds for the trust should be used for and under what conditions, and outline whether it is a formal or informal trust. Furthermore, if the trust is a non-personal trust, most banks would require a separate EIN. For trust compliance at a typical local bank, the documents must be

reviewed/approved by our in-house council before any account can be created/amended. This would serve as to why it is important to know exactly what the regulation means, in order to ensure the funds are being held properly and with the correct documentation.

42.12A: Prohibited Acts and Practices – (1), (2) and (5)

Sections (1) and (2):

Please refer to comments listed above for 209 CMR 32.32. The definition of a High Cost Loan should be in alignment with 12 CFR 1026. We believe these sections should be revised per Executive Order because:

- There should be consistent regulatory framework
- The costs of the regulation exceeds the benefits that may result from the regulation
- The regulation exceeds or duplicates federal requirements

Section (5): Loan Origination and Compensation Agreement

This section should be revised. The MMBA is recommending the repeal of the requirement for the Broker Compensation Agreement as we strongly feel that this form is confusing to the consumer and is duplicative of federal consumer protections. However, should the form not be repealed, the Association strongly suggests that the Division provide clarification and guidance to holders of both mortgage lender and mortgage broker licenses regarding the issuance of this form at time of application.

As of October 3rd, the definition of a mortgage application will change. The CFPB rules and guidance are to insure consumers receive a loan estimate for each product they may be interested in. This may mean that at time of application – now earlier in the mortgage process – a consumer may be receiving more than one loan estimate based upon product and it may be that a licensee is not going to be able to determine at time of application if they are acting as a mortgage broker in a transaction or a mortgage lender based upon a program or product the consumer eventually chooses. This is problematic for a variety of reasons:

- If a mortgage broker does not issue the Broker Compensation Agreement at time of application (defined by the TILA-RESPA Integrated Disclosure Rule), then they will be in violation of 209 CMR 42.12A Prohibited Acts and Practices (5).
- If a mortgage broker does issue the Broker Compensation Agreement at time of application (defined by the TILA-RESPA Integrated Disclosure Rule), and subsequently ends up as a mortgage lender in a transaction, this is a violation of 209 CMR 42.07 (4).

We believe this section should be revised per Executive Order because:

- There should be consistent regulatory framework
- The costs of the regulation exceeds the benefits that may result from the regulation
- The regulation exceeds or duplicates federal requirements

42.13: Office Locations

(1) Branch Offices: This section of the regulation needs to be clarified and potentially revised. The Division should provide clear guidance as to what constitutes a branch office in terms of frequently meeting with consumers. As an example – common sense would tell a licensee that a coffee shop would not need to be licensed but an office environment such as the sharing of a desk on a regular basis would. The MMBA would ask the Division to reconsider the 3 year experience requirements for Branch Managers as referenced in Bulletin 5.1-102. A licensed branch may not be an exclusive office containing operational staff as well as an originator –the only staff person may be the licensed loan originator and therefore may not have the minimum 3 year experience.

(3) License Posting: This section of the regulation needs to be revised or repealed. Prior to the NMLS and the passage of the SAFE Act, the Division provided licenses which could be framed and posted in a branch location. However, there is no official physical license issued which can be posted and framed. Clarity needs to be provided as to the Division’s expectations on exactly what information needs to be displayed.

42.16: Loan Origination and Compensation Agreement

The MMBA strongly suggests that this section be repealed.

The CFPB has done extensive research with consumers looking at disclosure forms, what should be disclosed and how this information is disclosed. The list of fees listed on this agreement is confusing; often the lenders are also providing a form disclosing broker fee information and the forms are not consistent. In addition, and perhaps the most important, this information is disclosed on the new integrated forms so the information provided in this separate disclosure is duplicative of federal regulation/requirements.

According to the Executive Order, we believe that the state specific additional documentation for broker compensation is duplicative of federal protections. After October 3rd, it will be much more difficult to determine a lender’s role in a mortgage transaction in the early stages of the application process to determine if this form is required in a transaction. This is another great example of Massachusetts providing consumer protection by understanding how licensed mortgage brokers are compensated – but now the federal laws have caught up and this form is simply not needed. Therefore, we believe this regulation should be repealed per Executive Order because:

- There should be consistent regulatory framework
- The costs of the regulation exceeds the benefits that may result from the regulation
- The regulation is duplicative of federal requirements

209 CMR 46.00: COMMUNITY REINVESTMENT

There have been several articles published from a variety of trade associations discussing the need for CRA Reform and we support that initiative. With the onset of technology, mobile

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banking applications and internet searching, consumers are using technology to search for the best products and interest rates when choosing a mortgage lender, not necessarily basing that choice on the location of a local community bank, credit union or mortgage lender.

As an example – the comparison ratio on the amount of mortgage applications taken inside the CRA assessment area versus outside the assessment area may no longer be as vital as it once was. We understand that CRA reform must be tackled at the federal level but would encourage the Division to review the regulation with consideration of how technology impacts CRA examinations.

Additional CRA reporting requirements were enacted by the city of Boston in 2013. A recent federal court decision (8/10/15 by U.S. District Court Judge Katherine Polk Failla) has invalidated the CRA municipal ordinance in New York City. She cited that the local regulatory regime “conflicts with federal regulations”. We can only surmise that the Boston regulation may be challenged. We respectfully submit that the whole premise of Community Reinvestment stems from the community investing in a local bank or credit union, and the bank or credit union putting those funds back out to the community. As previously stated, with the advent of internet on-line banking and lending, the lines have been dissolving and it may no longer be as relevant to have de facto mandates of lending activity in specific areas.

209 CMR 48.00: Licensee Record Keeping

48.03: How Long to Keep Books and Records

The MMBA would like to suggest the need for more clarity or guidance regarding the specific records which a licensed mortgage broker and mortgage lender must keep under this regulation.

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

The Association strongly suggests that this regulation be repealed based upon duplication contained in the following federal regulations:

- Regulation Z, issued by the Bureau of Consumer Financial Protection to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.)
- 2013 Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X)
- 2013 Home Ownership and Equity Protection Act (HOEPA) Rule
- Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts (UDAAP)
- High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)
- Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)

This regulation is another example of the Division recognizing a problem in the mortgage industry prior to federal rules and guidance. Consumers were being encouraged to frequently refinance their existing mortgage to take advantage of lowering interest rates without perhaps fully understanding the implications of financing closing costs and/or increasing principal balances. Since the implementation of 209 CMR 53.00, several consumer protection laws have been promulgated to restrict abusive lending practices.

According to the Executive Order, we believe that the state specific documentation and determination of borrower's interest are duplicative of federal protections. Qualified mortgages are already exempt from this requirement, but each loan must still be reviewed to either document the exemption or complete the required documentation. Therefore, we believe this regulation should be repealed per Executive Order because:

- There should be consistent regulatory framework
- The costs of the regulation exceeds the benefits that may result from the regulation
- The regulation is duplicative of federal requirements

209 CMR 54.00: Mortgage Lender Community Investment

Several members of the MMBA are currently involved with the MLCI Task Force in partnership with the Massachusetts Community & Banking Council (MCBC). The results of the MLCI Task Force will be shared with the Division for potential suggestions of improvements to the regulation.

209 CMR 55.00 Reverse Mortgage

The MMBA would like to make the following suggested revisions to 209 CMR 55.00:

55.02: Definitions

Mortgagor: The MMBA would like to suggest that the definition of mortgagor needs to be clarified with the following:

- Provide clarification of area median income. The Department of HUD has several choices relating to income documentation including income limits by state, county, city and MSA.
- Provide clarification and guidance as to what constitutes an asset. As an example – would an IRA account, second home, auto or jewelry be considered into the \$120,000 asset calculation? Would a licensed reverse mortgage lender be required to document value for each asset a senior listed on an application? If there was a retirement account on the application – would the lender be able to use 100%, 60% or if it could not be liquidated – 0%?

55.04: Requirement For Third Party Counseling

(5) This section needs to be revised. The effective date is August 1, 2014 per legislative extension.

The MMBA would also like to provide the Division with additional feedback on the Reverse Mortgage approval process as the Executive Order is looking for ways to encourage growth, eliminate unnecessary regulations and unnecessary cost and burden.

- **Reverse Mortgage Application Process:** There seems to be a much slower approval process for reverse mortgage lenders in comparison to licensed mortgage lenders, brokers and loan originators. We would respectfully encourage the Division to review the internal application process for reverse mortgage lenders and set an approval process within 30-60 days, assuming that the required documentation has been submitted.
- **Reverse mortgage product approval:** There are very few reverse mortgage products being offered to seniors. The documents are primarily produced by two document vendors without much variance. The MMBA would like to suggest that the Division have an approval process for each reverse mortgage product with certain parameters, and then once approved, any reverse mortgage licensee can offer that product without having to resubmit documentation. This would streamline the approval process for both the Division and reverse mortgage lenders. We would also respectfully request that the approval process for products be within 30-60 days, assuming all required documents were submitted.

209 CMR 56.00: Foreclosure Prevention Options

The Association has reviewed M.G.L. chapter 244, the implementing regulation and Executive Order 562 and we would like to make the following recommendations:

56.03: Right to Cure Notice: Content Requirements

(2) 90 Day Right to Cure Notice: MGL c. 244 §35A has a sunset provision which will go into effect at midnight on December 31, 2015, and will reduce the period of notice from 150-days to 90-days. Upon that date, the MA Gen. Laws will be less protective than the Federal CFPB regulations which state the borrower receives 120-days prior to referral to foreclosure.

The MMBA would recommend that the regulation be revised to allow for a 120-day letter, consistent with federal law, beginning January 1, 2016. We believe this regulation should be revised per Executive Order because:

- There should be consistent regulatory framework

(3) Borrower Eligibility: MGL c. 244 §35A requires that the mortgagor receive notice once every three years. There is no clarification regarding whether this is a hard date, or if it is also dependent upon whether the borrower has cured the default during that period.

The MMBA would like to make the following recommendations:

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- Provide clarity to lenders on when a new Right to Cure letter is required in cases where a borrower that has been in default for more than the three (3) year period, but has not brought the loan current at any time during that period.
- A right to cure must only be sent if the borrower/mortgagor has cured the default during the three years since the last notice of a Right to Cure.

(4) Delivery: Notice requirement states that mortgagor must receive notice at the last known address. The CFPB only requires that the lender send notice to the address in their system provided by the borrower for notice.

The MMBA would recommend that the regulation be revised to be consistent with the CFPB requirements indicating that notice to the address on file with the Mortgagee is all that is required. We believe this regulation should be revised per Executive Order because:

- There should be consistent regulatory framework

(5) Authorization to send the Right to Cure Notice: 56.03(4) states that a Mortgagee must send the notice. The MMBA would ask the Division to add language specifically Authorizing an Authorized Mortgage Servicer to send the right to cure notice, with language similar to “it agents or servicers”, consistent with current Massachusetts case law.

56.04 Right to Cure Notice

The MMBA would ask the Division to remove the word “strictly” from the requirements of the regulations, and replace with “substantially “consistent with the ruling in *U.S. Bank, N.A. v. Schumacher* (2014).

56.05: Right to Request a Modified Mortgage Loan Process

The MMBA would like to recommend changes and revisions in the following sections:

(3) Delivery: The notice requirement states that mortgagor must receive notice at the last known address. The CFPB only requires that the lender send notice to the address in their system provided by the borrower for notice

The MMBA would recommend the Division revise 56.05(3) to be consistent with the CFPB requirements indicating that notice to the address on file with the Mortgagee is all that is required. We believe this regulation should be revised per Executive Order because:

- There should be consistent regulatory framework

(4) Authorization to Send the Right to Request Loan Modification Notice: 56.03(4) states that a Mortgagee must send the notice.

The MMBA would recommend that the Division add language specifically Authorizing an Authorized Mortgage Servicer to send the right to cure notice, with language similar to “it agents or servicers”, consistent with current Massachusetts case law.

(5) Borrower’s Responses: 56.05(5)(b) states the borrower’s right to cure will be reduced from 150-days to 90-days is not responded to.

The MMBA recommend the “150” should be replaced with “120,” consistent with the CFPB beginning January 1, 2016. We believe this regulation should be revised per Executive Order because:

- There should be consistent regulatory framework

(6) Creditor’s Responses to Borrower’s request for Modification: The requirement currently states that the response is required not more than 30-days from the date of the borrower’s *“notification that the borrower intends to request a mortgage loan modification.”* But this is both inconsistent with the timeframe outlined by the CFPB, and does not address issues of missing documents, incomplete requests and incomplete packages. It further prevents the lender from extending the time due to receipt of a completed package only a few days prior to the 30-day deadline.

The MMBA would like to make the following recommendations:

- Revise language for response time to only begin running from the date the lender receives a completed package, consistent with the CFPB.
- Revise language Net Present Value Calculations consistent with CFPB.

(7) Modified Mortgage Loan Offer: This section currently requires one or two named individuals be listed on the 35A letter, which is inconsistent with CFPB, which allows for a group or team’s contact information be included as the Single Point of Contact.

The MMBA recommends that this section allow a team or group contact email and phone number be listed on 35A & 35B letters, consistent with CFPB. We believe this regulation should be revised per Executive Order because:

- There should be consistent regulatory framework

(8) Response to Modified Mortgage Loan Offer: 56.05(8)(c) states that if the borrower’s response to a notice of a right to request a loan modification is not received within 30-day, the right to cure period will be reduced from 150-days to 90-days.

The MMBA recommends that the “150” should be replaced with “120,” consistent with the CFPB beginning January 1, 2016. We believe this regulation should be revised per Executive Order because:

- There should be consistent regulatory framework
- It is more favorable to the borrower

56.06: Borrower's Good Faith Response to the Notice

(2) Outlines the documentation required to be submitted to the lender in the event of a loan modification request. The MMBA recommends this section be repealed in its entirety, as it is more burdensome than the HAMP, MHA and other Federal program requirements. 56.06(3) allows for the borrower to submit documents consistent with these programs and still be considered to have made a good faith effort to provide the documentation, thus making 56.06(2) unnecessary and duplicative.

We believe this regulation should be repealed per Executive Order because:

- There should be consistent regulatory framework
- The costs of the regulation exceeds the benefits that may result from the regulation

(3) States that if the borrower’s response to a notice of a right to request a loan modification is not received within 30-day, the right to cure period will be reduced from 150-days to 90-days. The MMBA recommends that the “150” should be replaced with “120,” consistent with the CFPB beginning January 1, 2016. We believe this regulation should be revised per Executive Order because:

- There should be consistent regulatory framework
- It is more favorable to the borrower

56.07: Good Faith Efforts by Creditors to Avoid Foreclosure

(5) Determination of Completion of Borrower's Response: Within 5 days of receiving the borrower loan modification request, the Lender must provide the borrower a written list of missing information necessary for a loan modification review to be completed. However, the timeline for the lender’s response to the request is not extended or altered to allow the borrower sufficient time to provide the additional and the lender time to review it once it has been received. Even if a lender receives the completed package on day 30, the lender must still review the entire package and provide a detailed response the same day, in order to be compliant. This is an extremely burdensome requirement.

The MMBA recommends that this section be revised for a 30-day response time to only begin running from the date the lender receives a completed package, consistent with the CFPB. We believe this regulation should be revised per Executive Order because:

- There should be consistent regulatory framework
- The costs of the regulation exceeds the benefits that may result from the regulation

Other Regulatory Comments:

Mortgage Review Board Notice/ 209 CMR 39.00

Chapter 167 of MGL contains the requirement for the mortgage and small business review boards however regulation 209 CMR 39.00 was repealed in 2005. We would like to propose that the Mortgage Review Board Notice is duplicative of federal and state efforts to provide consumers with a way to dispute or file complaints in mortgage lending.

The Massachusetts Division of Banks, the Massachusetts Attorney General's office and the CFPB all allow consumers to submit complaint directly. The CFPB Loan Toolkit which is provided to all borrowers at the time of application details how to submit a complaint. With CRA and fair lending examinations by regulators, as well as internal monitoring as part of a lender's compliance management system; the potential for redlining is closely monitored.

We would respectfully ask that the Division do an analysis of the overall expense and effectiveness of the mortgage review board process and provide statistics for the number of appeals submitted and the percentage of times the decision was overturned by the review boards. The MMBA feels that the appeal process is duplicative of other initiatives and imposes an unnecessary cost and burden to monitor and train without a verified net benefit to the consumer. The MMBA would be very willing to submit legislation to repeal the Mortgage Review Process if the evidence suggests that this process is redundant.

DOB Opinion Letters and Bulletins

We would also respectfully request that the Division review past opinion letters and bulletins to ensure that as regulations are updated, so are the applicable opinions and bulletins impacted by the regulatory changes.

We have referenced an example of this above under 209 CMR 32.04 Finance Charges and the 2008 opinion letter from the Division relating to the calculation of up-front mortgage insurance (UFMIP and VA Funding Fee) into the high cost loan calculations. Another example is DOB Regulatory Bulletin 1.3-104): Counseling and Opt-In Requirements For Subprime Adjustable Rate Mortgage Loans Made to First Time Home Loan Borrowers. This guidance is outdated and should be repealed as it is no longer relevant with all of the federal protections granted to consumers through numerous lending regulations.

Conclusion

The MMBA commends both Governor Baker and the Division for reviewing the lending and servicing regulations in an effort to eliminate unnecessary cost and burdens on our members and recognizing that several of the regulations are duplicative of federal guidance. We also commend the Division for clarifying and streamlining regulations that we feel meet the criteria of Executive Order 562. We would be pleased to answer any additional questions.

Sincerely,

A handwritten signature in black ink that reads "Deborah J. Sousa". The signature is written in a cursive, flowing style.

Deborah J. Sousa
Executive Director

Cc: Governor Charles Baker