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Mr. Thomas Curry
Commissioner of Banks
Massachusetts Division of Banks
One South Station
Boston, MA 02110

Re: 209 CMR 32.00 Disclosure of Consumer Credit Costs and Terms

Dear Mr. Curry:

Thank you for affording Countrywide Home Loans, Inc. ("Countrywide") the opportunity to comment on the proposed amendments to 209 CMR 32.00 or the High Cost Mortgage Loan provisions (the "Proposal"). The Division of Banks ("DOB") has proposed adopting slight variations of many of the provisions that have recently gone into effect in New York. Implementation of the New York requirements has been very burdensome, especially as lenders were given a very short implementation period and the New York Banking Department's interpretations of the rule during that period have been, at times, inconsistent. We urge the DOB to review the number of clarifications the New York Banking Department has issued on its website in an attempt to provide clarity to its rule. The issues that both states are attempting to address through regulation are complicated ones. It is not apparent to us, however, that the proposed controls in these regulations address the core issues associated with predatory lending. Most observers agree that fraud on the consumer is the most common element of a predatory transaction and every state in the union already has laws that address such illegal actions.

Countrywide wholeheartedly supports enforcement efforts directed at eliminating abusive lending practices engaged in by a small number of brokers, lenders and home improvement contractors. To that end, however, it is our belief that there are a number of existing state and federal laws that, if enforced, would severely limit the ability of unscrupulous brokers and lenders to prey on consumers. While we support efforts to prevent "predatory" lending, it is absolutely critical that the DOB final regulation not inadvertently or unnecessarily limit credit availability or raise the cost of legitimate home mortgage credit for consumers. As currently drafted, the Proposal will have that effect.

We strongly encourage the DOB to continue to defer completely to the Truth in Lending Act ("TILA") definitions and the HOEPA triggers. We see no benefit - and

indeed believe there is harm to consumers in the form of high costs, more limited options and confusion - in having various state thresholds that differ from the federal threshold, all of which are used to trigger disclosures and substantive prohibitions to address the very same issues. Without a doubt, consumers will face higher loan costs if lenders are forced to create expensive compliance mechanisms to meet multiple complex compliance and disclosure regimens. Countrywide strongly supports efforts to make consumers more informed about credit transactions, but we ultimately believe it is not the role of the state to make credit choices for each consumer. The right to choose how to manage financial matters, including borrowing money against one's home, must remain with the consumer.

Our specific comments are as follows:

209 CMR 32.32(1) Coverage. The Proposal would lower the federal HOEPA triggers for loans originated in Massachusetts. The Proposal contains three new thresholds for deciding when a loan is a high cost loan. The first two thresholds are new annual percentage rate ("APR") triggers which would require lenders to track Massachusetts loan originations with rates that are eight (8) percentage points over the yield on Treasury securities with comparable maturities for first mortgages or nine (9) percentage points over such securities for junior lien mortgages. These triggers are in addition to the ten (10) percentage point trigger that lenders already must monitor to determine if federal restrictions will apply. Further, lenders would be required to monitor two point and fees tests: for Massachusetts originations, lenders would track that total points and fees do not exceed five (5%) percent of the total loan amount **excluding** "bona fide loan discount points," as well as eight (8%) percent of the total loan amount **including** bona fide loan discount points to comply with federal law. In addition, the Proposal creates a new and unique APR calculation for ARM loans for purposes of determining the applicability of the rule. The Proposal would also include open-end credit but does not give guidance on how the open-end APR would be calculated. Our experience in New York has taught us that such complexity creates a programming nightmare and will surely foster inadvertent compliance violations.

As an industry, we are facing the possibility of 51 new thresholds for "high cost" mortgages. As each state adopts a different definition, lenders' compliance costs dramatically increase and of course, these costs are passed on to consumers. The reality is that lenders at whom these measures are really targeted will continue to operate just below the regulatory radar and in any event will not comply with these requirements. However, the majority of brokers and lenders making credit available to Massachusetts citizens will attempt to comply. It has been our experience that those seeking to comply will more often that not be tripped up by a resourceful plaintiffs bar that is adept at identifying potential technical violations as a basis for a class action - regardless of whether their clients have actually been harmed. Meanwhile, those consumers

Massachusetts so rightly seeks to protect will continue to be victimized by lenders who rarely give a second thought to compliance with any law other than that of the economic jungle.

The lowering of the fee threshold is particularly burdensome to lenders like Countrywide that offer settlement services through affiliated companies. Countrywide, like so many other national lenders, is working to make mortgage origination both easier and less costly for consumers. To that end, Countrywide's affiliates provide a number of services including credit reports, appraisal, flood certification, tax certification, title insurance and closing services. Under HOEPA, and the various state versions thereof, integrated national lenders like Countrywide are penalized for offering such services to consumers since the costs of such services are included in the 8% fee threshold. Other lenders, however, who provide the same services through unrelated third parties are able to exclude the fees from the HOEPA calculation and thereby possibly charge more in lender fees - possibly without hitting the HOEPA trigger. We recognize that the inclusion of fees paid to affiliated entities is consistent with the federal HOEPA standard and is not something the DOB can address in its rulemaking. We again ask, however, the DOB to retain the current federal HOEPA triggers. The 8% trigger at least allows lenders to adequately recover their costs of lending for all but the smallest loan amounts without triggering the thresholds.

Clearly the biggest impact of this type of restriction will be on smaller loans as the ability to recoup costs is more limited. The cost benefit analysis made by most lenders will weigh the **risk** of making smaller loans in Massachusetts against the economic return. Lenders may begin to impose minimum loan amounts that are fully justified from a business and economic standpoint. This will not benefit those citizens of Massachusetts who will be forced to obtain more expensive unsecured credit to meet their needs. We again strongly encourage the DOB to leave the current eight percent limit in place.

As noted above, the proposal would include open-end credit and clarification is needed on what APR calculation should be used for purposes of the trigger. As a general matter, however, we also ask the DOB to reconsider including open-end credit in the regulation's coverage. The current HOEPA definition does not include home equity lines of credit because Congress believed the extensive disclosure requirements and substantive prohibitions contained in TILA and **unique** to home equity lines provide sufficient protection. We note that consumers can obtain home equity lines at rates significantly below those available for unsecured or credit card debt. The consumer may also have the benefit of certain tax advantages from borrowing with a home equity line versus any form of unsecured credit.

Again, there are many laws already in place that address predatory practices.

Enforcement of the existing laws seems the most appropriate action to take against lenders deemed unworthy to lend in Massachusetts. Introducing new rules only serves to impose additional costs on lenders already willing to comply with the law. It does nothing to deter those determined to take advantage of Massachusetts consumers.

209CMR 32.32(2)(c) "bona fide discount points" mirrors the New York regulation and creates a presumption that one (1) point paid to reduce the interest rate by a minimum of thirty-five (35) basis points or three-eighths (3/8) of a point is a "bona fide discount point." This established equivalence is **not** consistent with established industry norms and practices for the secondary market. The values of discount point equivalents vary over time based on the level of market interest rates and assumptions as to the life of the loan. Use of a static mathematical equivalence in the regulation ignores these factors and harms the persons this bill seeks to protect by limiting credit availability. We suggest that the last sentence of the definition be deleted to permit established industry norms and practices for the secondary mortgage market transactions serve as the industry presumption. If the standard is retained, we encourage the DOB to clarify that a lender may use either value at its discretion.

209 CMR 32.32(1)(e). The definition of **"scheduled monthly payment"** implies that the lender must rely on the borrower's debts as reported on a nationally recognized consumer credit bureau report for purposes of calculating scheduled monthly payments. First, we note that many subprime lenders do not report on a regular basis to credit bureaus which makes the debt picture presented on a credit report incomplete. We strongly urge the DOB to mandate **monthly** reporting (and not merely annual reporting as in proposed section 209 CMR 32.32(6)(i)). Second, most lenders, in accordance with standard underwriting practices, do not count debt that has less than ten (10) months of payments left when calculating monthly debt obligations. If left unchanged, this definition will have the result of overstating an applicant's debt ratios and will exclude many borrowers from obtaining credit they would have otherwise obtained under today's underwriting standards. We urge the DOB to reconsider this definition.

209 CMR 32.32(3) would require lenders to include a disclosure on the **application** that the loan that will be offered to the borrower is not necessarily the least expensive loan available and the borrower is advised to shop around. At the time of application, most lenders will not know whether the loan exceeds the high cost home loan triggers. We ask the DOB to allow the disclosure to be provided at application, or if not known at application, then as soon as the lender has determined it will be a high cost loan but no later than closing.

209 CMR 32.32(5) Prohibited Acts and Practices
Repayment ability.

The DOB seeks to regulate a lender's ability to underwrite loans that qualify as "high cost home loans." Specifically, the DOB has proposed that a lender must presume a borrower is unable to repay the obligation if at time of consummation of a high cost home loan, the borrower's gross debt-to-income ratio exceeds 50%. The proposal limits this requirement to "obligors whose income, as reported on the loan application that the lender relied upon in making the credit decision, is no greater than 120% of the median family income for the Metropolitan Statistical Area ("MSA") . . . in which the property is located."

Based on 1999 data, there are twenty-four (24) different MSAs in the state with median incomes ranging from $43,600 to $60,800. There are an additional eight (8) Non-Metropolitan areas with incomes in the same range. Lenders would have to program their systems to identify in which MSA a particular property is located and then make the appropriate calculation of 120% of the income to determine whether or not the particular applicant was subject to the gross debt-to-income ratio. Once again, this is a systems nightmare and will surely foster inadvertent violations.

It also means that borrowers with higher debt-to-income ratios will be treated differently depending on where they live in the state. To the extent there may be more minorities in the poorer MSAs, the Proposal may have the unintended consequence of sanctioning discrimination on a prohibited basis. The Proposal assumes a paternalistic attitude towards persons whose incomes are less than 120% of the median income for the particular MSA in which they live. We respectfully urge the DOB not to arbitrarily limit a borrower's financing options based solely on the MSA in which the property is located. To have such disparate differences in the treatment of income when underwriting borrowers with similar credit histories makes no sense, and we believe will effectively redline entire communities in Massachusetts.

Predetermining how a lender should calculate a borrower's income is why we are so very troubled by the idea of a state establishing a maximum debt-to-income ratio. As proposed, the regulation does not take into account that many people have difficulty documenting their income. Not all applicants for a mortgage can use a W-2 to show their sole source of income. Many subprime borrowers have multiple income sources that are difficult to document and verify. For example, a borrower may be self-employed or his/her income may be from cash tips, gardening or cleaning services, child care, swap meet sales, arts/crafts sales or other sources that are difficult to confirm. An arbitrary 50% debt-to-income ratio might very well prevent these applicants, who need underwriting flexibility, from obtaining a loan since lenders will need the protection of an easily certifiable income source that is simply unavailable to such borrowers. The Proposal also does not take into account standard industry practices that permit 'grossing up' of non-taxable income, such as Social Security, pension or retirement benefits. The

purpose of this standard practice is to permit people in need of credit to obtain it by recognizing that using an unadjusted gross income number unduly and unfairly limits people with certain types of non-taxable incomes. Denying credit to persons that may well be qualified for credit but cannot obtain it in the "A" marketplace cannot be what the DOB intended.

209 CMR 32.32(6)(1) Financing of points, fees or charges. The section provides that the lender may not, directly or indirectly, require borrowers to finance an amount that exceeds 5% of the total loan amount for purchase loans. The Proposal also prohibits the financing of points, fees or charges in an amount that **exceeds** five percent of the new loan proceeds on a refinance. This means that borrowers will be required to obtain cash from some other source to be able to close these loans. These additional funds will probably be obtained at a much higher rate than the borrower is getting on the so called "high cost home loan."

Separately, the section provides that if the lender or an affiliate of the lender is the originator of the loan being refinanced, the borrower may not directly or indirectly finance any prepayment fees or penalties. It is important to note that most lenders sell their loans into the secondary market after origination and the price for such sale reflects the fact that the loan has a prepayment penalty. Loans with prepayment fees have lower interest rates since the penalty covers the shortfall caused when the borrower pays off a loan during the penalty term. Massachusetts already severely limits when a prepayment penalty may be imposed. The effect of implementing the Proposal will be that lenders will be unable to offer lower rate loan programs which means that subprime loans in Massachusetts will have higher rates that those in neighboring states.

209 CMR 32.32(6)(b) Frequent refinancing of existing high cost home loan with new high cost home loan. While the Proposal does not specifically recite the proposed provision, we anticipate that it also mirrors the language in the New York rule. As implemented in New York, this provision limits a lender to charging fees only on the amount of new proceeds in a refinancing by the same lender or an affiliate unless the last financing occurred over two years prior to the proposed refinancing. This means that a lender must send a borrower to its competition if the borrower seeks to refinance within the two year period since it does not allow the lender to be compensated for its costs in making the new loan. We do not believe this is a rational result for a regulatory scheme. We respectfully urge the DOB to reconsider this position.

Conclusion

Again, we thank the DOB for the opportunity to comment on the Proposal. We stress again that we believe active enforcement of existing federal and state regulations will better serve Massachusetts consumers, lenders and brokers rather than enacting new

and potentially conflicting regulations. We encourage the DOB to more vigorously prosecute brokers and lenders who abuse the law rather than diminishing the ability of reputable lenders to make loans that benefit many consumers.

If we can provide additional information on any of these matters, please do not hesitate to contact either Mary Jane Seebach (818-225-3361) or myself.

Very truly yours,

Sandor E. Samuels