The Commonwealth of Massachusetts

Office of the Commissioner of Banks

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Boston, Massachusetts 02110

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COMMISSIONER

February 26, 2001

Mary Jane M. Seeback
Senior Vice President, Compliance
Countrywide
4500 Park Granada, MS CH-11
Calabasa, California 91302

Dear Ms. Seeback:

This letter is in response to your correspondences dated December 29, 2000 and January 22, 2001 to the Division of Banks (the "Division") relative to recent amendments to 209 CMR 32.32 covering high cost mortgage loans. Your initial letter and subsequent e-mail raise three separate and distinct issues about the amended regulations. The Division's amendments to 209 CMR 32.32 have generated several questions. For this reason the Division established, on January 19, 2001, a question and answer section on its web site for the regulation.

In your December 29th letter you requested that the Division delay the effective date of the regulation for sixty days. As you are aware, the Division delayed the effective date of the changes to 209 CMR 32.32 and 209 CMR 42.12A from January 22, 2001 to March 22, 2001. The delayed implementation date was based on several requests, including your own. The Division changed the effective date by officially filing Emergency Regulations which were published in the Massachusetts Register #915 published on February 16, 2001. The Emergency Regulations were filed on January 23, 2001 and immediately changed the effective date from January 22nd to March 22nd, 2001. The Division is proceeding to complete the process associated with the filing of Emergency Regulations.

Your letter also raises an inconsistency under 209 CMR 32.32(5)(c) relative to a required notice to an assignee which is known to the Division. That specifically detailed assignee notice is required to state that the high cost mortgage loan is subject to special rules under the federal Truth in Lending Act. The Division is aware, and it is noted in your letter, that as a result of the amendments to 209 CMR 32.32, the regulations now apply to many loans that are not subject to the federal high cost mortgage regulations. Although it is the Division's position that the notice, in and of itself, cannot establish a legal right or create a legal liability as raised in your letter, the Division will move to change the regulation. However, upon review, it has been determined that such a change will require a formal process. The Division will proceed to include that change in conjunction with its next formal regulation process.

The third matter was raised in your January 22nd e-mail. You ask if there is, in fact, a distinction being made between 209 CMR 32.32(6)(a) and (6)(b). As stated in your letter it is clear that 209 CMR 32.32(6)(b) applies to a refinancing of an original high cost mortgage loan with a new high cost home loan. The applicability of 209 CMR 32.32(6)(a) is not as clear as to its applicability only when the original loan was a high cost mortgage loan. It is the Division's intent and position that 209 CMR 32.32(6)(a) has general applicability and is not tied to the prior loan being a high cost mortgage loan. In summary, the provisions of 209 CMR 32.32(6)(a) apply to any refinancing in which the creditor is financing an amount that exceeds 5% of the additional proceeds received by the borrower other than the exceptions set out in the regulation.

The Division's web site contains a section on Frequently Asked Questions about the regulations. You should refer to that section from time to time for additional information and responses to issues raised on the amendments to 209 CMR 32.32.

Sincerely,

Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

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