



# *The Commonwealth of Massachusetts*

*Office of the Commissioner of Banks*

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August 27, 2003

Kevin F. Kiley  
Executive Vice President  
and Chief Operating Officer  
Massachusetts Bankers Association, Inc.  
73 Tremont Street, Suite 306  
Boston, Massachusetts 02108-3906

Dear Mr. Kiley:

This letter is in response to correspondence dated July 31, 2003 from the Massachusetts Bankers Association, Inc. (the "Association") to the Division of Banks (the "Division") relative to a provision in Regulatory Bulletin 1.3-101 (the "Bulletin"), previously referenced as Administrative Bulletin 13-2C, governing adjustable rate mortgage loans. The provision at issue concerns the convertibility of an adjustable rate mortgage (an "ARM") to a fixed rate product without a fee. According to the letter, this matter has been raised to the Association by several state-chartered banks, particularly in light of the recent interest rate environment and the associated increase in refinancing. The Association asks that the Bulletin be revised to allow a fee to be charged for the conversion of an ARM to a fixed rate mortgage loan.

The issue of convertibility is specifically addressed in Section II B 5 of the Bulletin. It states as follows: "An ARM may include a provision allowing the mortgagor to elect to convert the mortgage from an adjustable rate to a fixed rate loan. No fees or points may be charged for exercising a loan conversion option." Upon review of this provision, the Division finds its applicability to be less than that which it appears to be given in the Association's letter. The convertibility of a loan can occur in two separate and distinct ways and result in different fee structures.

The ability to convert from an ARM to a fixed rate loan could result from a provision or option contained in the original loan documents. The inclusion of the convertibility option could have been reflected in the pricing of that particular ARM product or included as an incentive while the loan was being negotiated. The result is that the ability to convert the loan is reflected in the documents. It is that situation and only that one which the Bulletin addresses. The wording in Section II B 5 of the Bulletin allows an ARM to include a provision allowing the mortgagor to elect to convert the loan and prohibits any fees or points being charged the mortgagor for exercising that option that has been given. The Division's position remains that no fees or points can be charged a mortgagor to exercise a convertibility option included in the loan documents.



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The other way convertibility of a loan could arise is upon a direct request of a mortgagor who does not have such an option in his or her existing loan documents. This is a very different transaction from the exercise of an existing option and it is the position of the Division that such a situation is not covered by Section II B 5 of the Bulletin. If a mortgagor with an ARM, but without a conversion option, requests a state-chartered bank to convert the loan to a fixed rate, the bank may choose to do so and charge fees or points subject to all applicable laws. If the bank and the mortgagor agree to convert the ARM to a fixed rate loan under the authority to revise the terms of a loan, then the fees or points charged would be limited to those authorized under section 63A of chapter 183 of the General Laws. If the parties agreed to convert the loan in conjunction with a rewritten or refinanced loan, then fees and points would be subject to the disclosures required under section 63 of chapter 183 of the General Laws.

Based upon the Division's review of the Association's request and the information provided herein, the Division has determined that no changes will be made to Section II B 5 of the Bulletin.

Sincerely,



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

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