



The Commonwealth of Massachusetts

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May 26, 2005

Robert S. Leadbetter
4804 Mildred Road
Williamsburg, VA 23188

Dear Mr. Leadbetter:

This letter is in response to your correspondence of January 21 and March 16, 2005 to the Division of Banks (the "Division") relative to section 28C of chapter 183 of the General Laws ("Section 28C") and its implementing regulation, 209 CMR 53.00 *et seq.* (the "Regulation"). Section 28C was added to the General Laws by Chapter 268 of the Acts of 2004 (the "Act") and became effective on November 7, 2004. The Act had several separate and distinct thrusts. The provisions set out in Section 28C prohibit a lender from knowingly refinancing a home loan that was consummated within the prior sixty months unless the refinancing is in the borrower's interest.

The Division's Regulation seeks to provide lenders additional means of determining the borrower's interest in conjunction with the provisions set out in Section 28C. The Regulation also establishes the timing for determining the borrower's interest as well as providing for the documentation of compliance and addresses other matters raised by Section 28C. Your first letter raised several questions on compliance with the Regulation and presented your analysis. The March 16th letter was in response to the Division's request for clarification on the fourth issue raised in your original letter. I regret the extended delay in this response to your letters and numerous telephone calls to discuss these issues or to get an update on the Division's deliberations.

Your first letter requests clarification relative to the following: definition of costs and fees; yield spread premiums; amortization term and amortization period; and recoument of cost calculation, as set forth below.

- **Definition of "Costs and Fees"**

Your first letter notes that neither the underlying law nor the Regulation expressly define the term "costs and fees". You have interpreted the term "costs and fees" to be synonymous with the term "points and fees" as it is defined in the underlying and enabling legislation.

The Division consciously determined not to define "costs and fees" within the Regulation since the term was not defined in Section 28C. The Division's position is that the term is not qualified in the law and therefore all costs and fees are to be calculated.

- **Yield Spread Premiums**

Your first letter also requests clarification whether a yield spread premium should be included in the definition of costs and fees.

The Division did review and consider your analysis both for this question and the previous one on the use of the similar term "points and fees" in another provision of the Act. Your letter then fully analyzed the calculation of points and fees in Truth in Lending as well as the treatment of a yield spread premium for purposes of those calculations. The Division, however, has a different view of statutory interpretation of the Act. The definition of "points and fees" is set out in a new Chapter 183C of the General Laws, inserted by SECTION 6 of the Act. The Act, in general, sought to address certain practices in home mortgage lending. Its 10 SECTIONS had, as noted above, several different goals. It is the Division's position that the several amendments within the Act are to be viewed separately. Therefore, the Division does not equate the term "costs and fees" in Section 28C to the defined term "points and fees" in the new chapter 183C.

A yield spread premium is either a cost or a fee. Since "costs and fees" are not qualified in any way, it is the Division's position that a yield spread premium is included within "costs and fees" in Section 28C.

- **Amortization Term and Amortization Period**

Your first letter also requests clarification of the requirement that lenders compare the amortization period of the new home loan to the original amortization term of the old home loan for purposes of determining whether the new loan meets the compliance requirement. The issue raised is the use of the different words "period" and "term" in reference to amortization. The analysis set out in your letter is correct that in each case the regulation refers to the original amortization for the old and new loan. The Division's position is confirmed in the response to the last question (3), with an example in your second letter.

- **Recoupment of Cost Calculation**

Your first letter notes that costs of refinancing the home are required to be recouped in two years under a certain provision of the Regulation. As requested by the Division, your March 16th letter supplemented the fourth issue raised in your original letter relative to the recoupment of costs. This test is set out in 209 CMR 53.04(1)(d) and is recited in your letter. The Division appreciated your efforts to break down and identify the specific matters at issue. The Division's responses to your questions under that provision of the Regulation are as follows:

1. With respect to the borrower's recouping the costs of refinancing of the home loan within two years, taking into account the costs and fees:

- a. Must the lender include any prepayment charge owing on the current loan in the calculation of costs and fees?

Yes. It is the Division's position that all charges of any kind are to be included in the calculation of costs and fees.

- b. May the lender use the total payment savings to test for this requirement or must it be strict mortgage payment to mortgage payment comparison? (Example provided.)

The example cited includes credit card debt being rolled into the refinanced mortgage loan. The Division has significant concerns on that practice being used under this provision of the Regulation. Therefore, in response to your question, the comparison should be mortgage payment to mortgage payment analysis for the purposes of 209 CMR 53.04(1)(d). However, the above position does not preclude the example given from being tested to determine the borrower's interest under other provisions of 209 CMR 53.04.

2. With respect to the requirement that the interest rate on the new home loan be reduced:

- a. Can the lender consider the requirement met if the borrower's current home loan is a fixed-rate loan and the new loan is an adjustable-rate loan or a fixed/adjustable hybrid?

No. For a number of reasons, including the response to the next question, the Division cannot conclude that the sole fact that a loan has changed from a fixed rate loan to an adjustable rate or a fixed/adjustable hybrid would lead to a determination that the refinancing is in the borrower's interest.

- b. When the new loan is an adjustable-rate loan, is the lender permitted to use the start rate to determine if this requirement has been met? If not, please clarify what is required.

No. If the new loan is an adjustable rate loan the lender is not permitted to use a start or an initial rate for the new loan. The rate that should be used for the calculation is to be consistent with the provisions of Truth in Lending, Massachusetts General Laws chapter 140D and its implementing regulation, 209 CMR 32.00 *et seq.* as well as the Staff Commentary to federal Regulation Z. As set out in Section 226.22(a)(1)4. of the Staff Commentary, when a transaction involves different rates at different times, then a single composite annual percentage rate must be calculated and disclosed for the entire transaction.

3. Please clarify the amortization requirement. Can the lender consider this requirement met if the term of the new loan is equal to or less than the original term of the current loan? (Example provided.)

Yes. It is the position of the Division that the term of the new loan is to be compared to the original term of the current loan.

I believe this letter is responsive to each of the issues as set out in your letters and discussed with you in our several telephone calls. Again, I regret the delay in this response.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,



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