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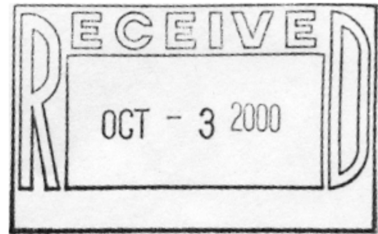

October 2, 2000

Commonwealth of Massachusetts
Office of the Commissioner of Banks
One South Station
Boston, Massachusetts 02110

WRITTEN TESTIMONY

Relative to proposed revisions to the
Commonwealth of Massachusetts
Division of Banks' High Rate Mortgage Loan Regulations

CMR 32.00
32.32 Requirements for Certain Closed-End Home Mortgages.

Lower High Rate Loan interest rate and loan fee thresholds (fee trigger provisions)

The proposed amendment to the fee trigger threshold provisions which provides that mortgage loans will be subject to the high rate loan regulations if the total points and fees exceed 5 percent of the total loan amount or $400, as adjusted by the CPI need to delineate which fees will be included in the calculation of this fee trigger.

Specifically, are Yield Spread Premiums (YSP) which are specific to mortgage brokerage and not to the lending community intended to be included in the fee trigger. If the calculation includes YSP on the basis that it contributes to an increase in the final cost of credit to the consumer, then should Service Release Premiums (SRP) charged after loan closing but which also contribute to the cost of credit also be addressed under the provisions of Section 32? If not addressed in amended regulations the inclusion (or exclusion) of any fees particular to specific lenders, brokers or wholesalers of mortgages has the potential to create an un-level playing field.

It should be noted that the inclusion of YSP in the fee trigger threshold calculation makes fewer net dollars available to the consumer in the transaction since Wholesalers pay YSP and therefore will not affect Loan-To-Value ratios.

Under any definition of fees true "third party" fees should not be included in the fee trigger threshold calculation. Qualifying fees should be those already included in the calculation of APR as a part of the standard RESPA calculation. A separate calculation only serves to confuse consumers and create a burden on lenders

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Extend High Rate Loan regulations to certain open-end credit transactions
Need to define "certain". According to the information we have gathered, there appears to be a problem in only very specific types of open end credit transactions. (Equity Lines of Credit for instance).

Prohibit loan "Flipping"(Refinancing limited to (a) after 2 years or (b) at any time if new or additional funds are advanced)

Certain definitions within this section of the proposed amendments need clarification.

Under an open-ended definition "additional funds" could be interpreted as a token (small) loan amount.

Other unanswered questions include: Are these restrictions appropriate in the event a consumers wishes to refinance in a shorter time frame based upon their ability to secure a lower rate? If refinancing is undertaken with a second lender within the 2-year time frame is there an obligation on the part of that lender for discovery that the homeowners' current loan falls under HOEPA? It is possible that this amendment may be imposing a de facto pre-payment penalty by restricting the consumers' ability to refinance for wholly appropriate reasons? Consumers (particularly those with impaired credit) may have credit needs that would be best met through refinancing within the first two years of original loan closing and those same consumers are frequently more comfortable being able to return to a lender already familiar with their circumstances and credit background.

Prohibit loan modification or deferral fees
So long as these do not result in a material benefit to the consumer.

Prohibit "Packing" of credit insurance and other products
The sale of credit insurance and other associated products could be restricted to be offered only after the closing of the loan. There should be no requirement or inference of requirement that credit insurance must be taken by a consumer.

Prohibit the financing of credit insurance and other products
Minimally if insurance premiums are prepaid then provision needs to be made for pro-rata reimbursement upon cancellation (retirement of the loan). Restrict single premium policies. Again, there should be no requirement or inference of requirement that credit insurance must be taken by a consumer.

Prohibit making loans where the borrower has no reasonable ability or means of repaying based upon "verified" income sources
We suggest that the amended regulation "prohibit making loans where the borrower has no reasonable ability or means of repaying." (delete "based upon 'verified' income sources"

Restricting the definition under Section 32 of a borrower's ability to repay based solely upon "verified" income sources fails to acknowledge the value of other prudent and time

tested underwriting standards which commonly embrace additional methods of verifying a borrower's ability to repay. The real issue that needs to be addressed is that of "equity stripping" and basing a lending decision solely on a borrowers collateral.

Definitions which narrowly restrict a broker or lenders ability to make prudent underwriting decisions place the regulatory authority in the position of imposing underwriting standards which may or may not conform to market driven consumer credit needs.

Encourage financial counseling from approved providers (Mandatory counseling for borrowers 60 years and older)
Although financial counseling appears to be consistent with the underlying assumption that an informed consumer provides the best protection against abusive lending practices mandatory counseling should not be required.

Adequate disclosures presently exist explaining the entire loan process disclosing all fees associated with the transaction. The Notice to Massachusetts Property Applicants states that consumers can have an attorney of their own to represent them. The Mortgage Loan Origination Agreement delineates the role of the lender or broker and how the process works. There is an established recession period for consumers to seek counseling and advice. If there was mandatory counseling who would do it and how would they be certified? What kind of liability would they incur?

Mandate signature line 12 point disclosure regarding risks and less costly financing alternatives
There are currently disclosures prior to and at closing informing consumers about the transaction they are entering into. All fees are disclosed and information provided. It is our belief that adding to the already prodigious number of disclosure documents already required at closing will only add confusion to the consumer's understanding of their options.

Prohibit failing to report, or selective reporting of, favorable credit information to credit bureaus
Should read "accurate reporting of any credit information, favorable or unfavorable".

Impose advertising limitations on high cost loans
No specifics and very difficult to do. Many times a broker or lender would not know if the loan is going to be a high cost loan until after initial conversations with the consumer.

James C. Dougherty
President
Massachusetts Mortgage Association