A Household International
Company

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Household

Via Federal Express

October 2, 2000

Commissioner Thomas J. Curry
Office of the Commissioner of Banks
The Commonwealth of Massachusetts
One South Station
Boston, Massachusetts 02110

Re: Proposed Amendments to 209 CMR 32.32
High Cost Mortgage Loan Provisions

Dear Mr. Curry

Household Finance Corporation (HFC) and Beneficial Corporation, subsidiaries of Household International, Inc. (HI) appreciate the opportunity to comment on the Massachusetts Division of Banks proposed changes and additions to its regulations dealing with high cost mortgage loans. Household commends the Banking Department and its staff for holding public hearings across the state and for working diligently with not only the consumers but also the lending industry to ensure that these proposed regulations do not unduly restrict the availability of credit to Massachusetts residents.

HI is a publicly owned financial services company. We offer a broad range of financial services and products to consumers and small businesses. Our company employs more than 22,000 people and we serve approximately 30 million customers in the United States, Canada, and the United Kingdom. HFC is the Company's oldest and largest subsidiary, and together with Beneficial, we offer a variety of secured and unsecured products to our customers through a network of approximately 1378 branch offices located in 46 states throughout the country. In Massachusetts, we have 31 branches licensed as Mortgage Lenders.

Household International is a major player in the home equity market. On a managed basis, our consumer loan receivables portfolio exceeds $71 billion as of the end of 1999. In Massachusetts, we have over $628 million in loans to Massachusetts residents.

With respect to our customers, the focus of Household is on providing our customers with competent, needs-based service which recognizes that when our customer comes to us, he or she is somewhat vulnerable and in need of assistance through difficult times.

In order to simplify the presentation of our comments, they will follow the same order as they appear in the Division's proposed regulations. Given that the Proposed High Cost Loan Amendments to 209 CMR 40.00 is intended to compliment the substantive high rate loan consumer protection changes found in the proposed amendments to 209 CMR 32.32(1)-(6), we will not duplicate our comments to these parallel sections. Instead, we will present our comments below as to 209 CMR 32,32(1)-(6). However, these comments are equally applicable to the comparable provisions of 209 CMR 40.00. Household does wish to state, however, that it considers two of the Division's proposed changes to be particularly important. These are: proposed changes to 209 CMR 32.32, which addresses the definition of high cost mortgage; and proposed changes to 209 CMR 32.32(6) which deals with the ability of the borrower to finance points and fees or charges.

Our specific commit and recommendations are listed below:

209 CMR 32.32(1) – Coverage

Household strongly urges the Division to conform its definition of "high cost home loan" to follow the definition used in the Federal Home Ownership & Equity Protection Act of 1994 ("HOEPA") and its implementing regulations.

Household testified in favor of the Federal Home Ownership and Equity Protection Act (HOEPA) in 1994. Indeed, many of the issues being considered by the Department were considered in great detail in 1994. The original senate bill included open-end credit in the federal definition of high cost mortgages and also required credit insurance to be included in the definition of points. We submit the reason for excluding open end credit from the definitions is as valid today as it was in 1994: The abuse of too frequent refinancing (flipping) and repetitive charging of points and fees are avoided with open end loans. Open credit lines allow borrowers to borrow the money they need over a period of time without refinancing and thereby avoiding refinancing costs like points and fees. Open-end lines of credit should be excluded from the definition of high cost mortgage and the thresholds should conform to the federal thresholds.

The "points and fees" threshold should likewise conform to HOEPA and the regulations issued pursuant to HOEPA.

In the event that the Division will not adopt conforming thresholds for high cost mortgages, it is submitted that adoption of the HOEPA threshold for APR's on first mortgages would be helpful to the industry without impairing, the goals of the Division.

209 CMR 32.32(2) - Definitions

Proposed regulation 32.32(2)(b) definition of "Affiliate"

Household urges the Division to retain its current definition of "Affiliate" which conforms to that set forth in the Bank Holding Company Act of 1956.

Proposed regulation 32.32(2)(c) definition of "bona fide loan discount points"

The Department's recognition of the value of bona fide loan discount points to the consumers is commendable. Household recommends that the Division adopt the industry standard of 25 b.p. reduction as the presumptive standard. This flexibility will enable lenders to better offer a product which meets the particular needs of a borrower.

Proposed regulations 32.32(2)(d) and (e) definition of "high cost home loan" and "scheduled monthly payments"

Household strongly urges the Division to conform its definition of "high cost home loan" to follow the definition used in the Federal Home Ownership & Equity Protection Act of 1994 ("HOEPA") and its implementing regulations, for the reasons outlined in our comments to proposed regulation 32.32(1).

209 CMR 32.32(3) - Disclosures

Proposed regulation 32.32(3)(e)(1) – Disclosure on Application

Proposed regulation 32.32(3)(e)(1) requires that the statement "The loan which will be offered to you is not necessarily the least expensive loan available to you and you are advised to shop around to determine comparative interest rates, points and other fees and charges."

This statement is proposed to be required directly above the borrower's signature line on an application. This presents problems for telephone applications, E-commerce applications and lenders who do not have a signed application process. It is submitted that this statement not be required on the application, but rather if the Division feels it is necessary, it should be added to the counseling disclosure described in proposed regulation 32.32(6)(1)(m).

Proposed regulation 32.32(3)(e)(2) – Additional Disclosure

Proposed regulation 32.32(3)(e)(2) requires that the statement "Although your aggregate monthly debt payment may decrease, the high cost home loan may

increase both **a**. your aggregate number of monthly debt payments and **b.** the aggregate amount paid by you over the term of the high cost home loan" if such are likely the case.

Household urges the Division to reconsider adding any additional disclosures. Massachusetts residents applying for loans presently receive not only the HOEPA and other federally mandated disclosures, but also numerous disclosures required by Massachusetts law. We believe that we need to simplify and improve the clarity of existing disclosures. Many examples of predatory lending involve consumers who did not understand the transaction they agreed to, despite numerous disclosures given days in advance. We strongly believe that we need better disclosures, not more disclosures.

209 CMR 32.32(4) - Limitations

Proposed regulation 32.32.(4)(a)(1) and (4)(g) limitations

It is submitted that decreasing the period in which a prepayment penalty may be levied from the current five (5) years to three (3) years would place restrictions on second lien loans not currently in Massachusetts General Laws, Chapter 183, Section 56. The Division has noted in previously issued opinion letters that Section 56 applies only to first lien loans and that a lender may establish any prepayment penalty provided it is disclosed in the loan agreement.

The proposed changes to regulation 32.32(4)(g) would result in inconsistency with federal regulations, which allow the use of unverified income if the lender has a reasonable basis to believe that the income exists and will support the loan. This more restriction language is likely to result in less credit being available to consumers.

209 CMR 32.32(5) – Prohibited Acts and Practices

- ### Proposed regulation 32.32.(5)(a) – repayment ability

Probably the most difficult issue in these regulations is the issue of the borrower's ability to repay. The current federal high cost mortgage provisions say a lender may not engage in a pattern or practice of extending credit to a consumer based on the consumer's collateral if, considering the consumer's current and expected income, current obligations, and employment status, the consumer will be unable to make the scheduled payments to repay the obligation.

The Reg. Z Commentary allows that any expected income can be considered by the creditor, except equity income that the consumer would obtain through the foreclosure of a mortgage. For example, a creditor may use information about income other than regular salary or wages such as gifts, expected retirement payments, or income from housecleaning or childcare. The creditor also may use unverified income, as long as the creditor has a reasonable basis for believing that the income exists and will support the loan.

Because the federal regulations specifically allow unverified income to be used, this latitude should be likewise stated in Section 32.32(5)(a) of these regulations because the phrase "any other reasonable means" will be interpreted by some to exclude unverified income.

The proposed regulations would also institute this 50% threshold only as to those borrowers whose income, as stated on the credit application, is no greater than 120% of the median family income for the Metropolitan Statistical Area ("MSA") in which the property is located (or if not located within a MSA, 120% of the non-metropolitan median family income for Massachusetts). We are concerned that treating consumers differently based on property location could also be perceived negatively as a form of redlining.

Lenders and borrowers should be able to judge the ability to repay on a case by case basis. A customer's payment history with other creditors can be a very valid indicator in a credit decision. We submit that this regulation should follow the federal standard and prohibit a pattern and practice rather than placing each applicable high cost mortgage loan made in the Commonwealth of Massachusetts subject to the 50 percent safe harbor.

Also a clarification is needed to make clear that no presumption of inability to pay occurs solely from the fact that a loan was made to an obligor which exceeded 50% of the obligor's monthly gross income.

209 CMR 32.32(6) – Unfair High Cost Home Loan Practices

Proposed regulation 32.32(6)(1)(a) - financing of points and fees or charges payable to third parties

The prohibition of financing more than 5 percent (of the principal amount of the loan) of points and fees or charges payable to third parties will lead to unintended consequences. Many borrowers need to finance points and fees, including fees payable to third parties. If the borrower is denied the opportunity to finance these in a real estate secured loan, he/she may be forced to obtain unsecured credit to

pay the fees at a higher rate and perhaps loose any chance of tax deductions of the interest payment. This 5 percent limit should be raised to 8 percent of the total principal amount of the loan, and term "principal amount of loan" should be defined.

The additional prohibition against the financing of fire, and miscellaneous property and/or life insurance, which would be applicable only to consumers who are subject to the provisions set forth in 209 CMR 32.32(5)(a), would make it even more difficult for these borrowers to obtain credit. We would suggest that the Division eliminate these distinctions creating a subgroup within the high cost home loan consumers.

Although we commend the Department for excluding certain payments to third parties, the list needs to be expanded to include all types of insurance (including credit insurance and fire insurance) recording and releasing fees and probably other third party fees that may arise in the future.

In order that a consumer be able to take full advantage of bona fide discount points, it is especially important that a consumer be able to finance 100% of bona fide loan discount points.

Proposed regulation 32.32(6)(1)(b) – frequent refinancing of existing high cost home loan with new high cost home loan

It is submitted that placing a restriction on the points and fees charged in connection with a refinancing of a high cost home loan that occur within two years of the current refinancing might have the unintended effect of limiting a consumer's access to additional credit. Although a lender would certainly be able to limit any points it charged to the additional proceeds, certain third party fees would still be based on the full amount of the loan. If these amounts could not be financed, the borrower would have to pay these costs out of pocket.

Proposed regulation 32.32(6)(1)(c) – Packing

We strongly urge the Division to reconsider adding yet another disclosure form for consumers in Massachusetts. Current federal laws already address the issues of the voluntariness and cost of credit insurance financed as part of the loan. Additionally, Massachusetts law already contains a mandatory disclosure regarding the voluntary nature of credit insurance, which is placed in close proximity to the credit insurance election. We strongly believe that we need better disclosures, not more disclosures.

Proposed regulation 32.32(6)(1)(f) – unconscionable rates and terms

The definition of unconscionable is still too vague for compliance by lenders and can only lead to frivolous and costly litigation. It is submitted that only the Division should be able to make a finding of an unconscionable practice after a full hearing.

Proposed regulation 32.32(6)(1)(h) - limitations on arbitration clauses

The issue of fair arbitration clauses has received active attention by the courts in recent times. We submit that rather than adopt a presumption of fairness in this rapidly evolving area, that the standards should be left to the courts. While Household's arbitration clause complies with the principals of the National Consumer Dispute Advisory Committee as they presently exist, changes in the standards of the Committee could change leaving Household and other lenders outside the presumption of fairness.

Proposed regulation 32.32(6)(1)(j) – Single premium credit insurance

The decision to exclude credit insurance from the definition of "points and fees" was a valid decision of Congress when HOEPA was passed. The purchase of credit insurance, including single premium credit insurance, is not required by the lender and is a voluntary decision of the borrower. Credit insurance provides a benefit to consumers and they continue to elect to purchase it. It is a product which the customer sees to be of value.

We do not believe that financing credit insurance premiums has been a problem in the Commonwealth of Massachusetts. It is submitted that there is no need to impair financing of advance single premiums without any indication of abusive practices related to financing.

Proposed regulation 32.32(6)(1)(m) – counseling disclosures

Household supports better information and education of consumers. However, the requirement that a list of counselors by given only to persons, who have applied for a high cost home loan may be perceived by some of our customers as being discriminatory, demeaning, and judgmental as to their ability to make an independent financial decision free of governmental oversight. In opting for government mandated counseling, a host of ancillary issues arise including the question of education and qualification of counselors. The issue of conflicts of interest must also be addressed by the Department.

If the counseling disclosure is required, we submit the disclosure should also include the disclosure proposed in 209 CMR 32.32(3)(c)(1) for the reasons discussed above.

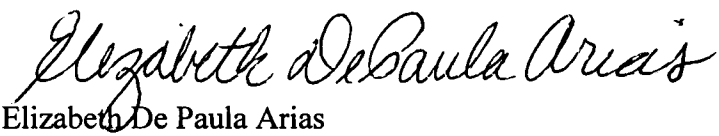
Effective date

Household respectfully requests at least six months to implement any changes to comply with the final regulations. Training, forms and procedures as well as certain computer reprogramming will require at least this time period.

Conclusion

Thank you for giving us the opportunity to comment on the proposed regulations. HFC has always been eager to work with the Commonwealth of Massachusetts Division of Banks and legislature in the formulation of public policy; especially to correct the abuses caused by the few who disregard the canons of good and ethical business. We have concerns that the regulations under consideration for Massachusetts could potentially impose more harm than relief by jeopardizing lenders' ability to make credit available to their traditional working-class base of households. We hope that you will consider our views and that you will provide us with an opportunity to continue to work with you in the development of these regulations.

Very truly yours,



Elizabeth De Paula Arias

cc: Ronald J. Pugliese