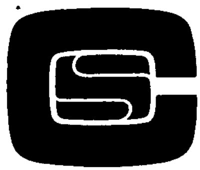

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October 4, 2000

Thomas J. Curry
Commissioner of Banks
Commonwealth of Massachusetts
One South Station
Boston, MA 02110

SUBJECT Proposed High Rate Mortgage Loan Regulations

Dear Commissioner:

Thank you for the opportunity to comment on the proposed high rate mortgage loan regulations. In general, we agree with the Division's assertion that a regulatory approach coupled with consumer education is the most effective manner to address the practices of predatory lenders within the Commonwealth. Massachusetts Bankers Association and member banks have played an active role in working to educate consumers on this problem. As a member we have distributed copies of the "Beware of Easy Credit" brochure to educate consumer on the dangers of predatory lenders. In addition, MBA has released a set of guidelines for subprime lending for banks to adopt.

The Division has stated in its high cost mortgage loan proposal that the regulations are not intended to regulate or otherwise restrict conventional mortgage lending practices or responsible forms of "subprime lending." We are concerned that the proposed regulations could impede loans originated to low-to-moderate income borrowers by tightening the fees and points threshold trigger. Also, the regulations should not prevent lenders from reasonably and appropriately pricing products for high-risk borrowers. With these general observations, we would ask that you consider the following:

Interest Rate

We agree with the Divisions proposed changes that would lower the interest rate threshold trigger from 10% to 8% over the yield on Treasury Securities having comparable periods of maturity. The threshold is to be based on the fully indexed adjustable rate mortgage rather than the introductory rate. We feel the regulations should be based on the introductory rate to provide the most protection to the consumer. While the Treasury Yield standard will suffice in most instances, on certain loans the standard poses a problem since the prime rate, not the Treasury Yield, is used as a benchmark in equity lines of credit and closed-end junior mortgages. In order to cover these loans, the proposal should include a verifiable Prime Rate obtained from a widely available source such as the Wall Street Journal.

2. Fees and Points Trigger

Under 209 CMR 32.32(1)(a)2 of the proposed regulations, the fees and points provisions for high cost loans would be decreased to include mortgage loans in which the total amount of fees and points exceeds 5% of the loan (decreased from 8%) or $400 as adjusted by the CPI. Bona fide fees are excluded from the calculation of the fees provided a discount point reduces the interest rate by a minimum of 35 basis points or 3/8 of a point. This is a critical aspect of the proposal because it has the greatest potential for determining whether loans not currently considered subprime will be subject to the high cost loan provisions.

While we appreciate the efforts to eliminate excessive fees, we are concerned that the minimum reduction adjustments in the definition of a bona fide point are too high. On most standard loan products, a discount point will only reduce the interest rate by 25 basis points. As written, few discount points would qualify as "bona fide discount points" eligible for exclusion from the fees and points threshold under current industry practices. We believe the definition of a point as currently included in the regulation may have unintended consequences for responsible lenders in both prime and subprime markets. For some conventional lenders, a large portion of their loan portfolio could be categorized as high cost loans because of this stringent definition. Therefore, we would ask the Division to redefine "bona fide discount point" as one that reduces the interest rate by a minimum of 25 basis points. Since these adjustments are largely a factor of the market and as a result will vary, fixed values may not be appropriate.

The new fees and points threshold as a percentage of the amount borrowed could be problematic and unworkable on small loans as the proposal includes purchase money loans and equity lines of credit.

Disclosure Notices

The proposal would require a 12-point font consumer disclosure directly above the signature line on the application that notifies the borrower that the loan "is not necessarily the least expensive loan available" and gives advice to "shop around." This requirement would be problematic because lenders may not know at the time of application whether a borrower will actually receive a high-cost loan.

Another problem relates to the timing of a disclosure notification regarding payments. The proposal states that "at or prior to the time of application, a creditor must also deliver, place in the mail, fax or electronically transmit a consumer disclosure regarding possible increased aggregate payments." This requirement would be impractical and burdensome, especially if the lender is unsure whether the loan will meet the high-cost provisions. Minimally, lenders should be provided a 24-hour time frame to provide the new disclosures.

4. Single Loan Violations

The proposal amends 209 CMR 32.32(5)(a) to make equity-based lending or lending based on a borrower's equity position rather than their ability to repay the loan a prohibited practice. Furthermore, it would eliminate the "pattern and practice" requirements for determining whether a violation has occurred. Instead, a single improper high-cost collateral-based loan would constitute a prohibited practice. A lender that errs in making a repayment determination would be found in violation of this section and subject to regulatory enforcement. This approach would result in technical violations rather than intentional lending abuses. For this reason, we strongly believe that the "pattern and practice" standard for determining violations should be maintained.

5. Credit Reporting

The proposal would make it an unfair and deceptive to fail to report borrower credit histories at least annually. We believe that lenders who report to credit bureaus should report all credit histories.

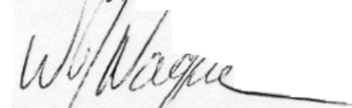
6. Counseling Requirement for Elder Borrowers

Finally, some have suggested that the mandatory-counseling requirement for borrowers over 59 years of age is discriminatory and may place a greater burden on a borrower because of his/her age. While we understand the goal to protect elderly borrowers, who are common targets of predatory lenders, borrowers at other ages have also been victims of predatory lenders. One possible solution is to require counseling for <u>all</u> high-cost loan borrowers.

It is our belief that these regulations will significantly strengthen the Commonwealth's ability to protect citizens from unfair and abusive lending practices that have historically been the dominion of non-depository lenders.

Thank you for your consideration of these comments.

Sincerely,



William J. Wagner
President