NEW ENGLAND FINANCIAL SERVICES ASSOCIATION

DIVISION OF BANKS
00 OCT 10 PM 12:56

October 6, 2000

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

Re: **209 CMR 32.00: Disclosure of Consumer Credit Costs and Terms**
209 CMR 42.00: The Licensing of Mortgage Lenders and Mortgage Brokers
209 CMR 40.00: Unfair and Deceptive Practices in Consumer Transactions

Dear Commissioner Curry:

On behalf of the members of the New England Financial Services Association, I want to thank you for affording us the opportunity to comment on the above listed proposed regulation. This letter is follow-up to the testimony I delivered at the Division of Bank's public hearing on September 21, 2000.

As you know, the issue of predatory lending has surfaced in other states and we wholeheartedly support regulatory action to rid this practice from the Commonwealth of Massachusetts. Your Division has demonstrated in the past that strict enforcement of existing laws is the key element to address this problem and we applaud the Division's "zero tolerance" position that it has taken on predatory and abusive lending practices.

Many of NEFSA's members service the non-prime lending market. Non-prime lenders play a very important role in making credit available to people who do not qualify for traditional bank loans. That distinction is very important and I appreciate comments you have made emphasizing that very point. Your testimony before the U.S. House of Representatives' Committee on Banking and Financial Services on May 24, 2000 hits exactly the point we now face when you said "the challenge is to prevent abuses without hindering efforts to incorporate risk-based pricing in ways that expand the lending market and the availability of flexible loan products. In our effort to protect consumers we must

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balance our actions in order to avoid the unintended consequence of eliminating consumers' access to the very credit or services they need to improve their economic situation." Our concern is that there are provisions in the proposed regulation that will limit credit options for non-prime borrowers and result in higher costs. At legislative hearings and federal regulatory meetings, many lenders have said they will not make "high cost" mortgage loans or loans that exceed the trigger rates. There is no doubt that this means fewer credit options for non-prime borrowers. Less competition and more costly regulations mean the cost for non-prime loans will go up. I know that is not the intent of these regulations but I fear it may be the unforeseen result. The members of NEFSA strongly urge you to set the trigger rates for "high cost" mortgage loans at ten percentage points above the comparable federal treasury rate rather than the eight points above the treasury rate for first mortgage loans and nine percentage points above the treasury rate for junior mortgages as stipulated in the proposed regulation. The ten-percentage point standard is the federal standard under the Home Owners Equity Protection Act. North Carolina enacted the ten-percentage point trigger this year when it passed legislation to deal with predatory lending. The abuses that have occurred in the Commonwealth have far exceeded a ten-percentage point level. We hope you will seriously reconsider this aspect of the proposed regulation.

Under the "definitions" provision of 209 CMR 32.32 (2)(a)2, we propose changing the term "all compensation paid to mortgage brokers" to "all compensation paid to mortgage brokers by the borrowers". This change would not negatively impact any borrower but there may be instances where a fee is paid to a mortgage broker that does not come from the borrower and therefore should not be restricted.

Under the "disclosures" provision of 209 CMR 32.32 (3), a special disclosure must be given to applicants containing (a) a notice the lender will have a mortgage on the applicant's home, which home could be lost if the applicant does not meet his/her loan obligations, (b) Annual Percentage Rate, (c) the amount of the regular monthly payment, (d) variable rate information, if applicable. This is the same disclosure as is required by HOEPA, therefore we propose clarification that the HOEPA disclosure would satisfy this requirement. It is unclear as to when this disclosure must be given and we propose using the HOEPA requirement that it be given at least three days prior to closing.

Under this same section, 209 CMR 32.32(3)(e)1 would require a statement in 12 point type be printed right above the borrower's signature on the application form advising the applicant to shop around to get the best interest rate, points, etc. Because many applications are taken by telephone, this provision is not practical under those circumstances. We suggest either elimination of this disclosure or establishing that this disclosure, and others in this regulation, be sent to the applicant and that the applicant's signature be obtained at the closing.

The disclosure required under 209 CMR 32.32(3)(e)2 would have the same compliance issues as stated above.

Under the "limitations" provision of 209 CMR 32.32(4), the 50% debt to income test would remove some flexibility that helps some borrowers. We propose eliminating this provision.

Under the "prohibited practices" provision of 209 CMR 32.32(5), we propose the Division of Banks publish the appropriate MSA statements periodically, so that licensees can rely on the last one published for at least 60 days. This will eliminate difficulties in ascertaining and determining the most recent estimate available.

Under the "loan packing" provision o 209 CMR 32.32(6)(c), the disclosure will be difficult, if not impossible to perform and prove if the application is taken by telephone. As provided in earlier comments, we suggest provisions be included to take into consideration applications that are not in writing.

In addition, we propose clarifying the language in the section dealing with "financing of points, fees or charges" [(209 CMR 32.32(6)(1)(a)]. Language should be added to make this section consistent with other sections whereby "for refinancings, <u>within two years of the current financing,</u> a creditor may not finance such points, fees or charges in an amount that exceeds five percent of the additional proceeds received by the borrowers in connection with the refinancing other then appraisal fees, credit reports, mortgage tax, fire and miscellaneous property insurance, voluntary credit, disability, unemployment and/or life insurance, title report and title insurance charges."

Under the "single premium credit insurance" provision of 209 CMR 32.32(6)(j), it is difficult to determine why the proposed regulation contains this provision prohibiting single premium credit insurance, when a number of earlier provisions deal extensively with the financing of credit insurance. Credit insurance is voluntary by law, no borrower is required to purchase this product and disclosures are made to insure the borrower is aware of this. For many non-prime borrowers, they do not have the insurance protections that prime borrowers have and credit insurance fills a significant financial void. We believe borrowers should be allowed to voluntarily purchase this coverage if it fits their needs. While we continue to support proper disclosures, we urge you not to outright eliminate this option coverage for many people who want it and need it.

Under the "counseling" provision of 209 CMR 32.32(6)(m), written disclosure of a list of counselors at the time of application will generally be difficult, especially when applications are not taken in writing (i.e. telephone). We believe this disclosure will serve its purpose if delivered not less than 3 days prior to closing.

Under this same provision, we suggest careful consideration be given to singling out a class of borrowers (i.e. borrowers over 60 years of age). Issues of discrimination may come into play and this provision may even be in violation of the Equal Credit Opportunity Act. We suggest voluntary counseling programs substitute this mandatory language.

We appreciate this opportunity to comment on the proposed regulations. The members of NEFSA thank you in advance for considering these comments which we believe will help address the problem of predatory lending while setting standards that minimize the effect on legitimate non-prime lenders and non-prime borrowers.

Sincerely,

James M. Demers
President

NEW ENGLAND FINANCIAL SERVICES ASSOCIATION

DIVISION OF BANKS
00 OCT 10 PM 12:48

October 7, 2000

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

Re: 209 CMR 32.00: Disclosure of Consumer Credit Costs and Terms
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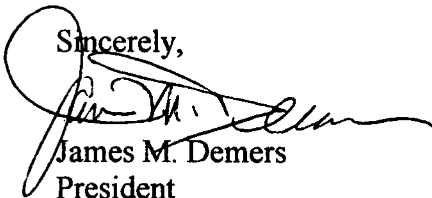
Dear Commissioner Curry:

The New England Financial Services Association wishes to bring one additional comment to your attention with regard to the above referenced proposed regulations. This letter is in addition to comments which where mailed to you yesterday.

209 CMR 32.32(6)(1)(a) appears to missing clarifying language and it should be consistent with 32.32(6)(a) whereby it applies only to those instances where the high cost mortgage being refinanced is a loan made by the creditor or it's affiliate.

We hope this comment is helpful. Please do not hesitate contacting me should you have any questions or needs.

Sincerely,



James M. Demers
President

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