

Statement of
Director of Consumer Affairs and Business Regulation
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Relative to Division of Banks Hearings on
High-Cost Home Equity Lending
September 19, 20, 21, 2000

Thank you for this opportunity to speak about “predatory” mortgage lending and how we can further combat its attendant abuses. Predatory lending has no place in this Commonwealth. We pledge to do everything within our existing authority to stop this form of white collar mugging that robs people of the equity in their homes, places them on a cycle of debt, jeopardizes the sustainability of home ownership, destabilizes neighborhoods, and thwarts the transfer of the hard earned wealth of working people to succeeding generations. This unconscionable practice preys on the elderly and virtually assures that financially unsophisticated working people and the poor whom these lenders target consign themselves to longterm, if not permanent financial distress.

I commend the Division of Banks for maintaining continued focus on the issue of predatory lending. As you consider this issue, urge you to consider its definitional, legal and regulatory complexity. I also urge you to carefully weigh how predatory lending, which is illegal and clearly immoral, differs from other legitimate forms of lending. For example, flexible mortgage loan programs under the Massachusetts and Federal Community Reinvestment Acts (“CRA”) and responsible forms of subprime lending have resulted in the extension of credit to countless numbers of creditworthy people who, in the past, did not fit easily into conventional loan underwriting standards.

Let me articulate important governing principles as we work together to solve this problem. Hopefully, this process will also yield a framework for a workable solution to the problem of predatory mortgage lending. Any must encompass the following principles if it is to be effective in combating high cost mortgage loan abuses:

There must be clear and meaningful advance disclosures of high cost loan terms and the financial risks inherent in these types of loans.

- The extension of high cost credit should only be made to borrowers with the present and verified ability to repay the loan according to its terms and not on the basis of collateral values.
- Mandatory financing of points and fees or single premium credit insurance should be prohibited in high cost loans.

Points or loan fees charged in high rate loan transactions that are unconscionable or significantly deviate from industry-wide standards should be prohibited.

- Loan modification, deferral or renewal fees charged in high rate loans should be prohibited unless the borrower receives a tangible net economic benefit in the form of a refinanced conventional loan or a substantially lower APR rate on a refinanced high cost loan.
- Onerous or oppressive loan terms in high rate loans, such as punitive prepayment penalty, mandatory arbitration and balloon payment provisions, should be restricted or prohibited.

Frequent refinancing or “loan flipping” which increases loan balances or eliminates the borrower's equity rather than providing a net economic benefit to the borrower should be prohibited in high rate loans.

High cost lenders should be required to report favorable credit histories in order to enable borrowers to transition into conventional loan products.

Credit counseling for high cost loan borrowers should be required or at least encouraged.

- Public consumer education efforts must target at risk borrowers to inform them of the risks of “easy credit” before they borrow.

The preceding principles will help assure a well-defined regulatory framework to combat predatory lending. A tightened regulatory structure alone, however, will not eradicate predatory mortgage lending practices or deter unscrupulous lenders from targeting Massachusetts citizens. A three pronged approach, which combines strict rules with effective enforcement and increased consumer education, is a strong and comprehensive way to address these practices.

We remain committed to the Division of Banks’ ongoing enforcement of both the 1991 Mortgage Lender and Mortgage Broker Licensing Act and the Attorney General’s Mortgage Broker and Mortgage Lender Consumer Protection regulations. This on-site examination program, which verifies compliance with state and federal consumer protection laws, is one effective and proven tool for identifying and curbing predatory mortgage lending practices.

I recognize that this morning's session is focusing on the regulatory aspects of high cost lending. However, a crucial weapon against predatory lenders is consumer education and counseling. As the Commonwealth's Consumer Affairs Director, I have consistently observed that education is a critical form of consumer protection. We hope that early intervention will help prevent the unsophisticated, credulous, or desperate borrower from entering into unsuitable high cost loans and that it will help direct individuals with high mortgage and other debt to reputable credit and other counseling services that offer independent advice and viable financial alternatives. We are in the process of establishing a working group on this issue consisting of advocacy, industry, and watchdog groups. It is our hope that this group will help us to monitor the effectiveness of our efforts, to spot trends in lending, and to respond quickly to consumer concerns. Many thanks for the opportunity to testify today in support of these regulations.