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October 9, 2000

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

SUBJECT: 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,

Founded in 1916, the American Financial Services Association is the national trade association for finance companies, "captive" auto finance/leasing companies and other market funded financial services firms that lend to consumers and small businesses. Many of our members service the sub-prime lending market. Over the past several years, the rise in sub-prime lending has significantly expanded access to credit to tens of millions of Americans who were previously excluded from home ownership and the benefits of equity in existing homes.

Sub-prime lending products have had a very positive impact on our economy. Sub-prime lending has proven to be of enormous value to borrowers with imperfect credit profiles, to communities that have been revitalized and stabilized, and to families who the American dream of home ownership had previously been denied. Borrower satisfaction with home equity loans, including sub-prime loans, is extremely high, 94 to 98% overall. At any given time, the vast majority of borrowers are current with their monthly mortgage payments. Moody's which collects data on charge off rates, which are not limited to just foreclosures, reports that charge off rates for sub-prime loans are 1.4% and 1.6% for all home equity loans. Responsible sub-prime lending and the security of credit availability should be allowed to continue and flourish in the United States.

The issue of predatory lending has surfaced in Massachusetts as well as in many other states. Much of this debate is driven by anecdotal stories of abuses. These abuses are abhorred by the sub-prime industry and we support efforts to rid the industry of "bad actors." From anecdotes, we know that a small minority of lenders and brokers engage in illegal practices involving abusive and unfair activity that harms some borrowers by trapping them in loans with terms and conditions that they do not understand, are unable to satisfy, and result in equity stripping or foreclosure. These anecdotal stories are rife with deceptive practices, distortion and ignoring of existing rules on disclosure and documentation, and outright fraud. Such illegal practices need highly visible and strong enforcement by government agencies at both the federal and state level.

But beyond these anecdotes that highlight illegal acts; there is virtually no factual information available to enlighten public debate. While "illegal lending" can be defined, even the federal agencies

with responsibility in the area are unable to define “predatory lending.” Improper weight given to anecdotal stories of abuse only obscures discussion of the issue.

Although well-intentioned, some of the proposals in this regulation seek to block practices, which, when applied responsibly, are beneficial to consumers. These are extremely complicated issues. Several of these prohibitions can have negative effects on borrowers that are not intended. We believe any blanket prohibitions or changes should be examined carefully using data that is systematically collected, to be sure they do not do more harm to consumers than good.

Proposals that attempt to prevent abuses by hindering risk-based pricing limit the availability of credit and the development of flexible loan products. In many different forums, lenders have stated they will not make “high cost” mortgage loans or loans that exceed the trigger rates. There is debate regarding whether lowering the trigger rates will actually encompass more loans thereby providing more disclosure and oversight for this segment of lending or simply encourage lenders to no longer lend to customers in that risk profile. More lenders avoiding this segment of mortgage lending means less competition. Less competition opens the door for more abuse from “bad actors.” It means fewer credit options and less flexible loan products for sub-prime borrowers.

Of increasing concern is compliance with a patchwork of legislation and regulations across the country that deviate from the federal standard under the Home Owners Equity Protection Act (HOEPA). We encourage you to duplicate the federal standard as North Carolina did legislatively last year. Many of the abuses that have occurred in Massachusetts have far exceeded this threshold. We would also request avoiding duplicative disclosures currently provided to borrowers under HOEPA.

We support disclosures ensuring that creditors choose single premium credit insurance knowingly and willingly. Prohibition of this product to consumers limits the options available to them to purchase insurance that protects their most valuable asset, their home. Many sub-prime borrowers are woefully uninsured and credit insurance fills a significant void. For many, credit insurance is an inexpensive way to acquire needed insurance. Proper disclosures are necessary to ensure an informed consumer but we would urge you not to eliminate this choice for consumers.

An informed consumer is the best customer. Federal law requires meaningful and understandable disclosures of loan agreement terms so borrowers can make an informed decision. Too many additional disclosures often confuse rather than clarify an already complicated process.

Legitimate and responsible sub-prime lenders aim to ascertain that a borrower can fulfill his or her commitment. We make loans only in cases where we reasonably believe the borrower will be able to repay the obligation in a timely manner. Lenders have a strong economic reason to negotiate with borrowers and avoid foreclosure. Lenders make money by the repayment of loans and almost always lose money in foreclosures – typically half of the principal amount of the loan.

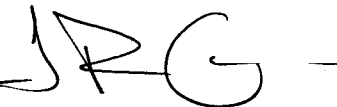
Legitimate and responsible sub-prime lenders periodically report borrowers’ payment histories to nationally recognized credit bureaus. This allows customers with timely and responsible payment histories to benefit by demonstrating their payment histories to other lenders. Many lenders now offer improving rates within their loan based on good payment history obviating the need to refinance in order to improve their rates or terms.

Through responsible sub-prime lending, millions of Americans are able to pay for education, health care, home improvements and other needs that they otherwise would not have been able to afford. A few unscrupulous lenders and brokers can undo these benefits if they are allowed to proliferate by

breaking the law without fear of punishment. Public policy based on anecdotal stories or already illegal abuses can undo those benefits as well.

We appreciate the opportunity to comment on the proposed regulations. We support your efforts to address the problem of predatory lending and encourage you to set standards that minimize the effect on legitimate sub-prime lenders and maintain the availability of credit for those borrowers attempting to realize the American dream of home ownership.

Respectfully,

A handwritten signature in black ink, consisting of the letters 'L', 'R', and 'C' in a stylized, cursive font. The 'L' and 'R' are connected, and the 'C' is a large, rounded letter. There is a small horizontal line to the right of the signature.

L. Richard Covert
Vice President, State Government Relations
American Financial Services Association