Testimony of Philip Freehan, Executive Vice President
East Boston Savings Bank
On Behalf of the Massachusetts Bankers Association
Before The Division of Banks On High Cost Mortgage Regulations
September 21, 2000

Good afternoon Commissioner Curry and members of the Division of Banks staff. I am Phil Freehan, Executive Vice President of East Boston Savings Bank and chair of the Massachusetts Bankers Association's Real Estate Finance Committee. I am appearing along with Tanya Duncan director of federal regulatory and legislative policy at the Massachusetts Bankers Association on behalf of over 200 commercial, co-operative, and savings banks and savings and loan associations. We are pleased to offer testimony on the Division's High Cost Loan proposal. We strongly believe 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 institution lenders.

In general, MBA members agree with the Division's ascertion that a regulatory approach coupled with consumer education is the most effective manner to address the practices of predatory lenders within the Commonwealth. The MBA and its members have played an active role in working to educate consumers on this problem. Our efforts concentrated on the dual goal to increase consumer awareness of unscrupulous lenders and to emphasize our support for ongoing regulatory efforts to prevent abuses and ensure that consumers in the Commonwealth are being treated fairly. As I highlight these efforts, you may refer to the materials on the initiatives attached to the testimony.

- Last year the MBA helped to sponsor the Massachusetts Community Banking Council's (MCBC) *Don't Borrow Trouble* campaign in Boston;

- Our members voluntarily distributed thousands of copies of the *Beware of Easy Credit* brochure to educate consumers about the dangers of predatory lenders;

- MBA released, for adoption by Massachusetts' banks, a set of guidelines on subprime lending and we

  Established a Foreclosure Prevention Program with the National Consumer Law Center (NCLC) to promote sustainable home ownership for those in jeopardy of losing their home. Currently over 75 banks are participating in this program with more expected throughout the year.

In addition, MBA was pleased to have the opportunity to work with the Division of Banks, Executive Office of Consumer Affairs and Business Regulation and the MCDC to establish a statewide toll-free consumer hotline to assist consumers with various mortgage loan related concerns and questions, as part of the *Don't Borrow Trouble* campaign.

The Division has stated both publicly and in its high cost mortgage loan proposal summary that the regulations are not intended to regulate or otherwise restrict conventional mortgage lending practices or responsible forms of "subprime lending." Some MBA members have expressed concern that the proposed regulations could impede loans originated to low-to-moderate borrowers by tightening the fees and points threshold trigger. Also, from a safety and soundness perspective, the regulations should not prevent lenders from reasonably and appropriately pricing products for high-risk borrowers. While these are general observations, I would like to discuss more specific areas of concern and make recommendations for the final rules.

I. Interest Rate

The MBA agrees with the Division's proposed changes to 209 CMR 32.32 (1)(a)1 that would lower the interest rate threshold trigger from 10% to 8% over the yield on Treasury Securities having comparable periods of maturity. In the summary, the proposal states that the threshold is to be based upon the fully indexed adjustable rate mortgage rather than the introductory rate. The regulations should be based on the introductory rate to provide the most protection to borrowers. 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 published source such as the *Wall Street Journal.*

II. 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. Bonafide 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 efforts to eliminate excessive fees, some of our members have raised concerns 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.

Given the expanded scope of the proposed regulations to purchase money loans and equity lines of credit, the new fees and points threshold as a percentage of the amount borrowed could be problematic and unworkable on small loans.

Finally, short-term bridge loans extended for up to 12 months should be exempt under these provisions, since they typically include higher interest rates but are not predatory.

III. 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.

IV. Single Loan Violation

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" requirement 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.

V. Credit Reporting

The proposal would make it an unfair and deceptive practice to fail to report borrower credit histories at least annually. We believe that lenders who report to credit bureaus should report all credit histories; however, if a lender does not currently report credit histories on any of its borrowers, it should not be required to do so under the regulations.

VI. 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 elder 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 *all* high-cost loan borrowers.

VII. Closing Comments

I appreciate the opportunity to appear before you today to address this important issue and would be glad to attempt to answer any questions that you may have now, or any subsequent questions.

Susan\KEVIN\Testimony\DOB highcost.doc

CONSUMER CHECKLIST

Yes	No	
☐	☐	Have you "shopped around" to compare rates and terms?
☐	☐	Can you say with confidence that you were not pressured to sign?
☐	☐	Have you consulted with a lawyer before signing any documents?
☐	☐	Can you repay the loan based on your current or expected income?
☐	☐	Have you asked the broker to disclose his or her fee(s)?
☐	☐	Do you understand "points" and the number of points that you will pay on the loan?
☐	☐	Do you completely understand the terms of the loan *(i.e, how much you will pay over the course of the loan)*?
☐	☐	Have you read all the disclosures including the good faith estimate and rate-lock disclosure?
☐	☐	Is the loan application completely filled in before signing?
☐	☐	Do you know the amount of your closing costs prior to the closing?
☐	☐	Have you checked to ensure that the agreed-upon terms are still the same at the closing?

Where To Go For Help

Office of Consumer Affairs ......1(888) 283-3757
Home-contracting information and contractor-complaint arbitration

Office of the
Attorney General ....Boston (617) 727-8400
Springfield (413) 784-1240
Consumer complaints and company history

Division of Banks 1-800-495-BANK
State-chartered banks, state-chartered credit unions, mortgage brokers, and mortgage companies

Better Business Bureaus....Boston (617) 426-9000
Worcester (508) 755-2548
Springfield (413) 734-3114
Consumer complaints and company history

Consumer Credit Counseling Agency
(Check local phone book)

Federal Reserve Bank of Boston..(617) 973-3755
Mortgage questions and publications

Federal Trade Commission..........(877) 382-4357
FTC-HELP
Toll-Free
Regulates most nonbank finance companies and provides consumer advice on how to resolve complaints.

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MASSACHUSETTS BANKERS ASSOCIATION

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Beware of Easy Credit

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Today, consumers receive a bewildering amount of information on television and radio, in print advertising and direct mail, offering a variety of forms of credit. Regrettably, some of these offers attempt to entice consumers into mortgages, home-equity loans, credit cards, or other products which are hard to understand or too expensive. It's important to note that all credit offerings are not the same, and as a consumer you need to **Beware of Easy Credit!** The following are tips developed by the Massachusetts Bankers Association to help you guard against the tactics of predatory lenders – lenders who offer exorbitant lending terms and up-front costs that exceed the borrower's ability to repay the loan.

Tips:

1. **BEWARE OF "EASY CREDIT."** Say no to any deal where you are told your credit history doesn't matter. It does! Be sure to thoroughly investigate credit solicitations or offers that sound too good to be true – they probably are.

2. **DEAL WITH REGULATED COMPANIES.** All Massachusetts banks, mortgage companies and brokers, finance companies, and small-loan businesses are supervised or licensed by state and/or federal government agencies. If you have concerns about a lender, call the agencies listed on the back of this brochure to check the lender's reputation.

3. **COMPARISON SHOP BEFORE SIGNING.** In selecting a lender, comparison shop the terms and conditions of your loan, not just the initial price. In particular, compare the annual percentage rate (APR) from at least three lenders. Be sure that, in addition to the interest rate you will be paying, you understand all fees, charges and terms of the loan, as there are many different programs or products available. There might be a product that better suits your financial needs, or you may qualify for a program with lower fees or APR. Also, be aware that insurance "extras" are optional.

4. **DO NOT APPLY FOR MORE CREDIT THAN YOU CAN AFFORD.** Before you sign for any loan, find out what your monthly payment will be and how it fits your budget. Generally, most reputable lenders will suggest that your monthly housing expenses should not exceed 33% of your gross monthly income. Remember that the loan you sign for is the loan you own, and you will have to live with the monthly payments. Your total debt should not exceed 38%–40% of your gross monthly income.

5. **UNDERSTAND THAT PAYMENTS ON ADJUSTABLE-RATE LOANS MAY CHANGE.** No one can guarantee what future rates will be. If the loan you are applying for is adjustable or variable, make sure you know the maximum rate that can be charged and that you can afford future rate increases. Make sure you understand how and when your rate will be adjusted. Be sure to ask your lender about the index, margin and interest-rate caps.

6. **BEWARE OF HIGH LOAN-TO-VALUE (LTV) LOANS.** High LTV loans decrease the available equity in your property. In addition, if property values fail to increase or if they decrease, you may be unable to sell the property at a price that will pay off the mortgage.

7. **UNDERSTAND THE TRANSACTION.** Read all disclosures before you apply for a loan, get all the loan terms (i.e., prepayment penalties, number of points, brokers fees, etc.) and carefully review all of the disclosures. If you do not understand the disclosure statements, ask your banker, broker, attorney, or the appropriate agency listed on the back of this brochure for assistance.

8. **SEEK LEGAL OR PROFESSIONAL ADVICE.** Loan transactions can often be confusing for consumers. Don't be afraid to ask questions of your lender, and when appropriate, get legal and/or other professional advice. There are many neighborhood agencies that offer counseling and assistance on home loans.

9. **NEVER SIGN BLANK FORMS.** Make sure all of the documents for your loan transactions are complete and that you understand them before you sign. **Never Sign Blank Forms!** If you don't understand the documents or need clarification, ask your lender, attorney, or agencies listed on the back of this brochure. Always get copies of all of the loan documents that you sign.

10. **CHECK YOUR CANCELLATION RIGHTS.** If you refinance your mortgage or take out a second mortgage or home-equity loan on your primary residence, you are entitled to cancel the transaction within three business days. This is known as the right of rescission. If you arrive at your real estate closing and the terms of the loan are not as they were disclosed, you have time to review the documents and cancel the transaction. Make sure that you cancel in writing and keep a copy for your records.

11. **CONTACT YOUR LENDER AND SEEK CREDIT COUNSELING.** If you are experiencing financial difficulties in making payments on your mortgage or any loan, you should immediately contact your banker or lender to discuss an acceptable payment plan. Consumers can also work with a variety of credit-counseling agencies in Massachusetts. A credit-counseling agency can explain the options available to help you manage your debt and work towards resolving your credit problems.

Guidelines for Subprime Lenders

The Massachusetts Bankers Association and the Massachusetts Mortgage Bankers Association are jointly issuing guidelines for subprime lenders aimed at establishing broad principles that preserve the integrity of subprime lending. The industry groups named above are committed to high ethical standards for the industry, including the protection of borrowers from unfair and deceptive practices, compliance with state and federal consumer protection and fair lending laws and appropriate regulatory oversight. To this end, the industry groups support:

- The notion that an informed consumer is the best consumer. In promoting this idea, we believe that responsible subprime lenders: 1) make all appropriate disclosures within the time period required by federal and state laws; 2) inform applicants of all loan programs for which they qualify; and 3) make available appropriate information regarding credit or home buying counseling.

  Responsible lending that is mutually beneficial and protects both consumer and business interests. This includes avoiding practices such as: 1) frequent refinancing or "flipping"; 2) negative amortization loans where a borrower is delinquent, at-risk or the loan will exceed 100% LTV; 3) "packing"—adding insurance and other services without the customer's full understanding; and 4) lending decisions based exclusively on collateral without consideration of other factors.

  Training and/or hiring of qualified individuals to originate these specialized loans. Additionally, lenders should evaluate their compensation structure and sales practices to discourage abusive lending practices and high-pressure sales tactics.

  Regulatory enforcement to stop prohibited practices by lenders that willfully violate consumer protection laws and engage in otherwise unfair and deceptive practices.

  Denouncing discriminatory lending practices that violate the Fair Housing Act, Massachusetts General Laws or the Equal Credit Opportunity Act on the basis of a protected class or location of the property.

  The establishment of internal controls and management policies that ensure adherence to appropriate state and federal laws and regulations, and accurate records of financial transactions.

  Insuring that subprime lending underwriters and investors oppose predatory lending practices by refusing to extend credit to or purchase loans from lenders engaged in unethical and abusive lending.

MASSACHUSETTS BANKERS ASSOCIATION
FORECLOSURE PREVENTION PROJECT

Project Description

The Massachusetts Bankers Association Foreclosure Prevention Project is a co-operative program providing financial counseling to low and moderate-income homeowners across Massachusetts. Participating MBA member lenders have provided support for the development and distribution of consumer education materials specifically designed to help homeowners avoid or address a mortgage default. Participating lenders may also refer troubled borrowers to a community-based housing counselor to determine if there is a realistic alternative to foreclosure for the family.

The Project's primary goal is to help families, communities, and lenders avoid the personal and financial losses associated with foreclosure. Many families face an unavoidable financial hardship at one time or another. The MBA Foreclosure Prevention Project provides these families with an important opportunity to work co-operatively with their lender when hardship strikes and to protect the investments they have made in their homes and their communities.

The Project collaboration includes the participating MBA lenders, the National Consumer Law Center, and seven Massachusetts non-profit housing agencies.

Participating Lenders

Abington Savings Bank
Andover Bank
Athol Savings Bank
Belmont Savings Bank
Berkshire Bank
Boston Bank of Commerce
Boston Federal Savings Bank
Bridgewater Savings Bank
Bristol County Savings Bank
Brookline Savings Bank
Cambridge Trust Company
Canton Co-operative Bank
Cape Cod Five Cents Savings
Central Co-operative Bank
Charter Bank
Citizens Bank of MA
Citizens-Union Savings Bank
City Savings Bank
Commerce Bank & Trust
Compass Bank
Danvers Savings Bank
Dedham Co-operative Bank
Dedham Institution for Savings
Eagle Bank
East Boston Savings Bank
Eastern Bank
Fall River Five Cents Savings
Fitchburg Savings Bank
FleetBoston
Florence Savings Bank
Foxborough Savings Bank
Framingham Co-operative Bank
Greenfield Savings Bank
Hoosac Bank
Hyde Park Co-operative Bank
Hyde Park Savings Bank
Lawrence Savings Bank
Lowell Five Cent Savings Bank
Mansfield Co-operative Bank
Marlborough Savings Bank
Medford Co-operative Bank
MedfordBank
Middlesex Savings Bank
Millbury Savings Bank
Mt. Washington Co-operative Bank
North Shore Bank
People's Savings Bank of Brockton
Peoples Savings Bank of Holyoke
Pittsfield Co-operative Bank
Plymouth Savings Bank
Randolph Savings Bank
Rockland Trust Company
Sharon Co-operative Bank
South Shore Co-operative Bank
South Shore Savings Bank
Stoneham Bank
Stoneham Savings Bank
The Bank of Canton
The Savings Bank
UniBank For Savings
Wainwright Bank & Trust Company
Wakefield Co-operative
Warren Bank
Washington Savings Bank
Watertown Savings Bank
Webster Five Cents Savings Bank
Westborough Bank
Wincester Savings Bank
Winter Hill Federal Savings Bank
Woronoco Savings Bank
Wrentham Co-operative Bank

Massachusetts

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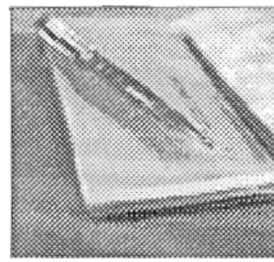
Homeowner's Guide to Addressing Financial Problems

Almost every family faces temporary financial difficulties at one time or another. Missing mortgage payments may put your home at risk. If your family has money problems, here are some important things to keep in mind:

Get Help Quickly. There are always more options for managing a small problem than a big one.



Reorder Your Priorities. During a financial crisis, it is important to make good decisions about which debts to pay first. Foreclosure means not only loss of shelter, but also loss of many years investment. For this reason, you will almost always want to consider the mortgage a high priority among your debts if you are facing financial problems and own your home.

Don't Borrow Trouble. If you are experiencing financial problems, borrowing more money to pay your existing debts is usually a bad idea. The more you owe, the harder it will be to get back on your feet. Watch out for "get rich quick" schemes, high cost financing deals, and offers that sound to good to be true. These will almost always make your problems worse.

Explain Your Problems to People Who Can Help. Although it may be painful to talk about your family's difficulties, we need information in order to help. We offer programs, including free counseling assistance from community-based non-profit agencies to help you protect the investment you have made in your home and in this community.

WE CARE.

Our goal is to help you get back on your feet ... without losing your home.

Provided by:

The Massachusetts Bankers Association Foreclosure Prevention Project is supported by participating member lenders. In collaboration with community-based counseling agencies and the National Consumer Law Center, the program offers consumer education and counseling resources to homeowners facing financial hardship.