

August 12, 2005

The Honorable Steven T. James
Clerk of the House of Representatives
State House, Room 145
Boston, Massachusetts 02133

Dear Mr. James:

Enclosed for filing please find the Division of Banks' (the "Division") proposed amendments to 209 CMR 40.00 *et seq.*, *Unfair and Deceptive Practices in Consumer Transactions*, pursuant to Chapter 268 of the Acts of 2004 and Massachusetts General Laws chapter 167, section 2A. Copies of said Chapter 268 and said section 2A of chapter 167 are attached to this letter. The proposed amendments, found at Appendix A, are required to be filed with your office pursuant to said section 2A of chapter 167. The Division's required statement that it has complied with the pertinent provisions of Massachusetts General Laws chapter 30A is found at Appendix B.

A public hearing on these amendments was held pursuant to Massachusetts General Laws chapter 30A on Wednesday, March 9, 2005 and written comments were accepted through 5:00 p.m. on Wednesday, March 16, 2005. Oral comments and written comments were received from eight entities.

When concerns were raised on certain high cost home loan practices the Division addressed these concerns by promulgating regulations. Although the regulations were not found lacking, some proponents believed that this matter was best addressed in statute. Their efforts, in part, are reflected in the passage of Chapter 268 of the Acts of 2004.

On March 22, 2001, the Division's first high cost home loan regulations went into effect. The purpose of the regulations was to address abusive practices in the high cost mortgage lending industry commonly referred to as "predatory" mortgage lending. Upon review of the regulations and in light of amendments to the federal Truth-in-Lending Regulation Z, the Division proposed additional changes in 2002, which became effective in final form on October 1, 2002. All of the amendments were identical to both 209 CMR 32.00, pursuant to the state Truth-in-Lending statute, General Laws 140D, section 3, and 209 CMR 40.00 pursuant to General Laws chapter 167, sections 2A through 2G, inclusive, which covers all federally-chartered institutions that are exempt from the Commonwealth's Truth-in-Lending statute.

The purpose of the attached amendments is to further address certain abuses in the high cost lending industry to reflect recent statutory requirements. Chapter 268 of the Acts of 2004

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was signed into law on August 9, 2004 and became effective on November 7, 2004. One of the main purposes of Chapter 268 was to address abusive predatory lending practices in home mortgage lending. It did so, in SECTION 6, by establishing a new chapter of the General Laws chapter 183C, entitled "Predatory Home Loan Practices." These new provisions require the proposed amendments to 209 CMR 32.00, which is applicable to state-chartered banks, licensed lenders, and other lenders, and 209 CMR 40.00, which is applicable to federally-chartered banks. The proposed amendments to 209 CMR 32.00 have been filed separately with the Secretary of the Commonwealth.

Some of the major subjects addressed in the regulations are: disclosure and prohibited acts, including financing of points, fees or charges; packing of high cost home loans; recommending or encouraging default, advertising, unconscionable rates and terms, unreasonable charges, oppressive mandatory arbitration clause or waiver of participation in class action suits, single-premium credit insurance, and modification or deferral fees. Although a few substantive changes were made to the Division's regulations subsequent to the public hearing on March 9, 2005, the Division does not consider the amendments to significantly alter the regulations.

The Joint Committee on Financial Services and its staff may contact me at (617) 956-1510 or the Division's Legal Unit at (617) 956-1520, if they have any questions regarding these proposed regulations.

Very truly yours,

Steven L. Antonakes
Commissioner of Banks