



THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF BANKS
1000 Washington Street, 10th Floor, Boston, Massachusetts 02118

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COMMISSIONER OF BANKS

March 16, 2016

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' (Division) summary of its proposed amendments to 209 CMR 40.00 *et seq.*, *Unfair and Deceptive Practices in Consumer Transactions*, which are the implementing regulations for Massachusetts General Laws chapter 167, section 2A.

This statute authorizes the Commissioner of Banks to propose regulations, subject to Legislative review, to promulgate regulations governing high cost, high rate mortgage loans; require certain disclosures; and include certain prohibitions. 209 CMR 40.00 applies to any bank, any Massachusetts or out-of-state branch, any association or corporation chartered and authorized to do a banking business by a state of the United States other than the Commonwealth, by the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States or by a country other than the United States, or a national banking association, federal savings and loan association, federal savings bank or federal credit union, which has its main office located in the Commonwealth or in any of the above-listed jurisdictions. For ease of reference, the above-listed entities are referred to as "specified entities" below.

A copy of the statute is attached to this letter. This summary and a copy of the proposed amendments, found at Appendix A, are required to be filed with your office pursuant to the statute. The Division's required statement that it has complied with the pertinent provisions of Massachusetts General Laws chapter 30A is found at Appendix B.

Summary of Proposed Amendments

The proposed amendments are intended to streamline 209 CMR 40.00 for easier compliance by providing that compliance with cited provisions of the regulations of the Consumer Financial Protection Bureau (CFPB) constitutes compliance with 209 CMR 40.00. The proposed amendments are also intended to clarify language and improve organization and readability of the regulation in a way that incorporates future federal changes while preserving certain Massachusetts differences that are statutorily required and deemed more advantageous to consumers, including the definition of high cost home loan or high cost mortgage and the method of calculating points and fees.

Section-by-Section Summary

A section-by-section summary of the proposed amendments to 209 CMR 40.00 *et seq.* follows. It should be noted that citations below are to the proposed amendments to 209 CMR 40.00 *et seq.*

40.01 Purpose and Scope

The sentence relative to the authority for this regulation is deleted.

40.02 Definitions



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The definition of “Annual Percentage Rate” is updated to correct the title of the Federal Truth in Lending Act and to reference the citation to the CFPB regulation, 12 CFR 1026.

The definition of “Bank” is amended by the addition of the word “means” for consistency with other definitions in 209 CMR 40.00 and by the addition of “including any internet bank” in order to remain consistent with the statutory definition of bank.

The definition of “Benchmark Rate” is amended by the addition of the word “means” for consistency with other definitions in 209 CMR 40.00.

A definition of “*Bona Fide Error*” is added based upon the language used in M.G.L. c. 140D, section 32(c).

The definition of “Cosigner” is amended by removing the underlining under the word “cosigner” in clauses (b) and (c).

The definition of “Federal Bank” is amended to delete the words “the main office of which is located in the Commonwealth.”

The definition of “High Cost Home Loan” is amended as follows:

- Adds “or High Cost Mortgage” to the title.
- Deletes the word “either” in section (a).
- Adds new clause (a)3., so that a consumer credit transactions that is secured by the consumer’s principal dwelling in which the annual percentage rate, points and fees, and or penalties exceed the limitations as described pursuant to 12 CFR 1026.32(a)(1) would also meet the definition of a High Cost Home Loan or High Cost Mortgage.
- Amends clause (b) with updates to the CFPB citation regarding reverse mortgages, 12 CFR 1026.33.

The definition of “Lender” is amended by deleting “an entity” and replacing it with “a person”.

The definition of “Points and Fees” is amended as follows:

- in clause (a)1. to update the CFPB citation to 12 CFR 1026.4(a) and (b) and delete the reference to 209 CMR 32.04(2);
- in clause (a)2. to update the CFPB citation to 12 CFR 1026.4(c)(7) and update the reference to 209 CMR 32.04;
- in clause (a)7.b. to update the CFPB citation to 12 CFR 1026.4(d)(2) and update the reference to 209 CMR 32.04.

The definition of “Scheduled Monthly Payments” is deleted.

The first letter of each word in the definition title, “Total loan amount,” is capitalized. The title now reads “Total Loan Amount”.



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40.03 **Violations of Truth in Lending**

The reference to “high cost home loan” is amended to “high cost mortgage”.

40.04 **High Cost Mortgage Disclosures**

This section is amended to change the title from “High Cost Home Loan Disclosures” to “High Cost Mortgage Disclosures”.

The phrase “, except a lender subject to 209 CMR 40.03” is deleted and replaced with “not subject to 209 CMR 32.00”.

This section is also amended to include the CFPB citation, 12 CFR 1026.32(c). The remainder of the section is deleted.

40.05 **High Cost Mortgage Limitations**

This section is amended to change the title from “High Cost Home Loan Limitations” to “High Cost Mortgage Limitations”.

The phrase “, except a lender subject to 209 CMR 40.03” is deleted and replaced with “not subject to 209 CMR 32.00”.

This section is also amended to include the CFPB citation, 12 CFR 1026.32(d). The remainder of the section is deleted.

40.06 **Prohibited Acts or Practices in Connection with High Cost Mortgages**

This section is amended to change the title from “Prohibited High Cost Home Loan Acts and Practices in Connection with Credit Secured by a Consumer’s Dwelling” to “Prohibited Acts or Practices in Connection with High Cost Mortgages”.

The sentence, “In connection with the extension of a high cost home loan, it is a deceptive act or practice for a lender, except a lender subject to 209 CMR 40.03, to engage in any of the following:” is amended to state, “It is a deceptive act or practice for a lender not subject to 209 CMR 32.00 to engage in any act or practice prohibited under 12 CFR 1026.34 in connection with the extension of a high cost home loan.” The remainder of the section is deleted.

40.07 **Unfair High Cost Mortgage Practices**

This section is amended to change the title from “Unfair High Cost Home Loan Practices” to “Unfair High Cost Mortgage Practices”.

The phrase “, except a lender subject to 209 CMR 40.03” is deleted and replaced with “not subject to 209 CMR 32.00”.



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The word “nor” in “points and/or fees nor, in any case, directly or indirectly” is deleted and replace with the word “or”.

The title “Packing High Cost Home Loans” is added to 209 CMR 40.07(2), and the words “high cost home loans; that is” are deleted.

Roman numerates are added to 209 CMR 40.07(2)(c) for clarity.

The subtitle “Recommending or Encouraging Default” in section 209 CMR 40.07(3) was amended to “Encouraging Default”, and the words “Recommending or encouraging default” were added to the beginning of the section.

209 CMR 40.07(7) is amended by adding subsections (a) and (b) and by adjusting the format to remain consistent with other subsections.

40.08 **Bona Fide Errors**

Section 209 CMR 40.09(2) is amended by deleting “notwithstanding the maintenance of procedures reasonably adopted to avoid the errors”.

Section 209 CMR 40.09(2) is also amended by replacing the word “and” in the clause “institution of any action under M.G.L. c. 183C and 209 CMR 40.00” with the word “or”.

Section 209 CMR 40.08 is further amended by deleting the examples of bona fide errors in 209 CMR 40.08(3). The examples were included in the definition added to the definitions section.

Public Hearing

A public hearing on these amendments was held pursuant to Massachusetts General Laws chapter 30A on November 6, 2014 and written comments were accepted through 5:00 p.m. on November 14, 2014. Oral and written comments generally in support of the proposed amendments were received from the credit union trade association. There was no opposition offered. No other comments were received before the end of the comment period. The Division also reviewed and considered comments from trade groups representing financial institutions, mortgage-related licensees, the legal industry, and consumers submitted in response to informal hearings held on July 30, 2013 and August 13, 2015, and a formal hearing held on November 6, 2014. The comments varied from repealing the regulation entirely because it is duplicative of federal law, to retaining the regulation because “it provides important and unique protections and the CFPB regulations could be repealed or diluted in the future.” Other comments suggested the approach taken by the Division, which is to amend 209 CMR 40.00 to align with federal regulations while retaining sections that are statutorily required.

Please contact me at (617) 956-1510 or Merrily S. Gerrish, Deputy Commissioner of Banks and General Counsel, at (617) 956-1520, if there are any questions regarding these proposed regulations.

Sincerely,



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