August 21, 2015
Mr. David Cotney
Commissioner of Banks
The Commonwealth of Massachusetts
1000 Washington Street, 10th Floor
Boston, Massachusetts 02118

RE: Informational Hearing on Executive Order 562 Review of Regulations

Dear Commissioner Cotney,

We appreciate the opportunity to participate in the public process for reviewing regulations pursuant to Executive Order 562. The informational session on Thursday, August 13th, 2015 was helpful and informative**,** and we look forward to continuing to work with the Division throughout the review.

We encourage the Division to look not only for opportunities to reduce regulations, but also for opportunities to fill important gaps left by the current regulations that endanger consumers and lead to unnecessary foreclosures. Some stakeholders have suggested that the Division repeal regulations where the Consumer Financial Protection Bureau has also overlapping regulations. We believe this would be misguided. Some members of Congress are trying to eliminate the CFPB or reduce its authority.[1] The CFPB could change its regulations or reduce their scope. Massachusetts consumers should be assured of basic protections, regardless of how federal policy may change.

We are well aware of the challenges of implementing the existing sunset provisions of M. G. L. Ch. 244, Section 35A, and we anticipate working with legislators, the Division, and other interested parties to extend these consumer protections that have assisted many homeowners. To the extent that the Division issues sub-regulatory guidance, such as bulletins or opinion letters, as part of the process of regulatory review, we hope that the Division will create opportunities for public comment prior to issuing any guidance. This letter lays out our thoughts and concerns on some of the regulations under review and responds to the suggestions from the Massachusetts Mortgage Bankers Association, as laid out in their August 13th letter to you. We understand that they will be submitting revised comments and others may be provide written testimony as well, so we would appreciate further opportunities to comment as the review process continues.

1. 209 C.M.R. 18.00: Conduct of the Business of Debt Collectors and Loan Servicers

Massachusetts regulation of debt collectors, codified in 209 CMR 18.00, is an essential set of regulations critical to protecting consumers. Abuses in debt collection are an urgent and ongoing problem; just this summer, Attorney General Maura Healey joined a nationwide settlement with Chase Bank for $136 million, of which $2.8 million will go to Massachusetts. The investigation revealed that Chase attempted to collect debts from the wrong people, sold debts that were discharged in bankruptcy, engaged in robo-signing, and reporting false information to credit agencies.[2] Now is not the

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[1] Vicki Needham, *Cruz Calls for Abolishing the Consumer Financial Protection Bureau*, The Hill (July 21, 2015), available at http://thehill.com/policy/finance/248647-cruz-calls-for-abolishing-the-consumer-bureau
[2] Office of the Attorney General of Massachusetts, “Chase Bank to Pay $136 Million in Nationwide Settlement Over Unlawful Credit Card Debt Collection Practices,” Press Release (July 8, 2015) available at

time to roll back consumer protection. The regulations under review support consumers in several ways. First, they prohibit fraud, harassment, and deception in debt collection practices. Second, they prevent illegal debt collection by requiring the licensure of debt collectors. Third, they regulate mortgage servicers, which prevents unnecessary foreclosures.

The regulations prohibit debt collectors from engaging in abusive practices such as harassing a consumer at her place of work, lying about the status of debt, or threatening to take unlawful actions to collect the debt.[3] As the recent Chase settlement demonstrates, these violations are a current and serious issue. The CFPB reports that for the past three years, debt collection complaints have been the largest source of complaints from consumers.[4] Consumers need the specific protections of the state regulations. These state regulations were carefully drafted to harmonize with federal requirements and compliment federal law. For example, while both the Federal Debt Collection Practices Act and state regulations prohibit a debt collector from attempting to collect a disputed debt without verification,[5] the state regulation also requires that debt collectors provide an account history upon request to consumers, so that consumers can better understand and challenge the debt.[6] Congress envisioned just this kind of complimentary state action when it decided not to preempt state laws on debt collection.[7]

Licensure of debt collectors is another critical part of the consumer protection infrastructure. Licensure prevents debt collection abuses by allowing the Departments of Banks to deny a license to debt collectors that have a track record of violating debt collection laws or committing fraud.[8] This is not an unusual or significant burden for debt collectors; over thirty other states have a similar licensure process. Indeed, applying for licensure only poses a significant burden to debt collectors who are not qualified to do business in Massachusetts – exactly those businesses that should face scrutiny.

The recent regulation of mortgage servicers prevents unnecessary foreclosures by requiring servicers to accurately apply loan payments, provide accurate loan information, and avoid illegal foreclosures.[9] These regulations were drafted with input from a wide range of stakeholders, including consumers and banks, and they have proven effective so far. They should not be rolled back at this time.

RESPONSES TO MMBA PROPOSALS:

- MMBA proposes modifying the reporting requirements for licensing and registration from covering all officers and directors to only covering employees. This defeats the purpose of the licensing standard. To the extent that part of the purpose of licensing is ensuring that unscrupulous players from other states do not continue their business in

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http://www.mass.gov/ago/news-and-updates/press-releases/2015/2015-07-08-chase-settlement.html or http://tinyurl.com/ChaseSettlement.

[3] 209 C.M.R. 18.14-17.

[4] Consumer Financial Protection Bureau, Monthly Complaint Report (July 2015), available at http://files.consumerfinance.gov/f/201507_cfpb_monthly-complaint-report-vol-1.pdf or http://tinyurl.com/CFPBMonthlyReports

[5] 15 U.S.C. § 1692(g); 209 C.M.R. 18.18(2).

[6] 209 C.M.R. 18.18(3).

[7] 15 U.S.C. §1692(n).

[8] 209 C.M.R. 18.04(2).

[9] 209 C.M.R. 18.21, 18.21A.

the Commonwealth, it is the officers and directors – not necessarily the employees – that will have been the subject of disciplinary actions elsewhere.

- MMBA suggests that the requirement that changes in the circumstances of the debt collector be reported within one business day to the Commissioner is overly burdensome, and recommends a thirty day reporting window. This similarly eviscerates the effectiveness of the regulation. The changes in circumstances outlined in 209 C.M.R. 18.08 include criminal indictments, revocation of licensure in other jurisdictions, and filing for bankruptcy. The Commissioner needs updates on this information immediately to determine whether to revoke a debt collector's license to operate in Massachusetts. Thirty days of an indicted debt collector operating in this state is far too long, especially from the perspectives of the consumers who may be mistreated in that time.
- MMBA proposes exempting returning a call from a consumer from the cap on calls per week to the consumer in 20 C.M.R. 18.14. This clarification is acceptable because we do not want to discourage collectors from responding to consumer phone calls. However, we would not support any effort to more generally relax the limits on the number of debt collection calls.
- MMBA advocates dropping the requirement that debt collectors provide consumers with the Notice of Important Rights every six months. However, this removes an important source of consumer protection and achieves little in savings for the debt collector. Most collection efforts should not last more than six months, and those that do are more likely to be disputed or otherwise problematic. Consumers with long-running collection efforts are most in need of important information about their rights.
- MMBA argues that 209 C.M.R. 18.16-17 should be stricken because they are duplicative with M. G. L. Ch. 93A. This is a highly misguided suggestion. Unlike 93A, these regulations outline unfair and deceptive practices specific to the debt collection industry, such as misrepresenting the consequences of nonpayment or threatening to report false credit information. Whereas under 93A, a consumer would have to prove that such a specific practice is unfair or deceptive, under these regulations such actions are definitively prohibited. This empowers consumers to both recognize the harms done to them and vindicate their rights more easily.
- MMBA criticizes 209 C.M.R. 18.18 for imposing the requirement that a debt collector must provide information about the account to the consumer within five days of initial contact on the grounds that the requirement mandates the collection of too much information in too short a period of time. This criticism is specious. The debt collector decides when the five day clock begins by deciding when to make an initial contact with a consumer. It is perfectly reasonable to expect debt collectors to refrain from commencing contact with consumers until they have received all of the information about the account. It is absolutely necessary that the disclosure to the consumer include the entire loan history because without that history, a consumer will not be able to detect improper charges or fees in the account. Consumers require this information to determine whether they have a valid dispute about the debt. Any debt collector that cannot provide this information in a timely manner should not be in the business of collecting debts in this state.

2. 209 C.M.R. 26.00: Loans Regulatory Board

The regulations promulgated by the Loans Regulatory Board place reasonable and necessary limits on the dangerous and potentially exploitative practice of payday lending. Payday lending generally involves providing small dollar, high interest loans to consumers; the lender's expectation is that many consumers will not pay off the loan on time, creating an ongoing cycle of debt, interest, and fees. The regulations impose several important constraints. First, lenders of amounts less than $6,000 must register with the Loans Regulatory Board to obtain a "small loan company license," which allows consumers to know who they are dealing with and the state to monitor loan providers. This is an important contrast to the state of affairs before these regulations, where payday loans were offered by fly-by-night, often internet-based providers that neither the state nor consumers could track down effectively. Second, lenders are limited to charging specific maximum interest rates and administrative fees, which can limit the classic debt spiral. Third, lenders are required to disclose the terms of these loans clearly, which may encourage consumers to seek alternative, more appropriate sources of financing.

There are currently no comprehensive federal regulations protecting consumers from abusive practices in payday lending. The Consumer Financial Protection Bureau is only in the very early stages of proposing regulations on the subject, and any such regulations are likely to be less protective of consumers than the current state regulations.[10]

It is of vital importance to consumers that these state regulations remain in place.

3. 209 C.M.R. 32.00: Truth in Lending

The Truth in Lending regulations, codified at 209 C.M.R. 32.00, ensure that creditors provide complete and accurate information to consumers when extending credit. For example, the regulations require creditors to disclose costs and fees of credit transactions and to provide regular account statements.[11] These regulations were recently amended to provide for "easier compliance by providing that compliance with . . . regulations of the CFPB constitutes compliance" with state regulations.[12]

Importantly, however, state regulations adequately manage the unique challenges of high cost home loans, but federal regulations do not.[13] The state regulations prohibit bundling high cost home loans with unrelated products, such as life insurance, without the fully informed consent of the consumer.[14] They also prohibit levying unconscionable rates or unconscionable charges.[15] As the recent financial crisis demonstrates, homeowners need protection against this type of predatory lending. Because these additional regulations only apply to loans with extremely high interest rates, the regulatory burden of complying with them only falls on the few players that choose to make these loans.

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[10] *See CFPB Considers Proposals to End Payday Debt Traps*, Consumer Finance Protection Bureau (Mar. 26, 2015), available at http://www.consumerfinance.gov/newsroom/cfpb-considers-proposal-to-end-payday-debt-traps/ or http://tinyurl.com/CFPBPayDayTraps.

[11] 209 C.M.R. 32.05; 209 C.M.R. 32.07.

[12] 2015 M.A. Reg. Text. 374367 (Jan. 2, 2015).

[13] CFPB regulations do regulate some higher cost mortgages, 12 C.F.R. 1026.35, but mostly in the context of regulating appraisals under such loans; they do not impose any real consumer protection regulations.

[14] 209 C.M.R. 32.34(2)(a).

[15] 209 C.M.R. 32.34(2)(c), (d).

RESPONSES TO MMBA PROPOSALS:

- MMBA proposes repealing this regulation based upon duplication with various federal regulations. However, because the regulation largely mandates that compliance with federal regulations constitutes compliance with state regulations, the regulations impose little additional costs on banks. Additionally, the CFPB could decide to change its regulations. Maintaining these regulations would allow state regulators to respond to those changes by amending the TILA regulations rather than starting over from scratch.
- MMBA suggests reducing the time period in which a consumer can exercise the right to rescission of a transaction that was not accompanied by the required disclosures from four years to three years, as in federal statute. However, this is one situation where deviating from federal guidelines does not impose additional costs on law-abiding financial institutions. This right of rescission only affects those banks that have failed to make the required disclosures; unless MMBA members plan to renege on their state and federal obligations, there is no additional cost. Additionally, the longer rescission window is simply an additional remedy for the consumer; it does not place additional record keeping or disclosure obligations on banks.
- MMBA suggests conforming 209 C.M.R. 32.20 to federal regulations by requiring that banks submit disclosures for variable-rate adjustments between 60 and 120 days of the change, instead of the current 30 to 60. Timely communication of these changes is important for consumers and this change is not necessary or acceptable. The industry has been able to comply with this regulation in the past and has not pointed to any specific burden as to why it can't provide these timely disclosures.
- MMBA suggests aligning the definition of high cost home loans in 209 C.M.R. 39.32 with the CFPB's definition. However, this would be a mistake. The CFPB definition, in 12 C.F.R. 1026.35, is pegged to the average prime offer rate, which reflects nationwide lending practices. The state definition is pegged to the interest rate of U.S. treasury bonds. The CFPB definition therefore fluctuates when lending practices nationally change, while the state definition fluctuates based on changes in the economy as a whole. The CFPB definition, therefore, relaxes the definition of a high cost home loan when the mortgage market generally shifts towards higher cost loans. However, times when many high-interest mortgages are being extended more frequently are exactly those times when regulation is necessary. If the CFPB definition had been used during the financial crisis, it likely would have excluded high-cost predatory home loans that the state definition would have included.
- MMBA requests a clarification that the amendment to 209 C.M.R. 32.04 renders previous Division Bulletins ineffective. This is acceptable because it does not reflect any change in policy by the Division but merely conforms sub-regulatory guidance with the previous regulatory change.

4. 209 C.M.R. 40.00: Unfair and Deceptive Practices in Consumer Transactions

The Unfair and Deceptive Practices in Consumer Transactions regulation imposes disclosure requirements on mortgages with nontraditional or risky terms, such as balloon payments or negative amortization. The notices ensure that consumers are informed about the basic terms of their mortgage,

including the total number of debt payments and the total amount to be paid over the period of the loan. These regulations also prohibit banks that are not regulated by the Truth in Lending regulations, 209 C.M.R. 32.00, from offering high cost home loans.

These regulations provide an important supplement to federal requirements. While the Consumer Financial Protection Bureau has released regulations on mortgage disclosure, those regulations are not yet effective.[16] Furthermore, federal regulations do not specifically limit the actors who can impose high risk mortgage terms, and they do not require disclosures specific to high risk mortgage loans.

The MMBA has proposed repealing this regulation because it duplicates federal regulations, but as discussed above, it provides important and unique protections and the CFPB regulations could be repealed or diluted in the future. It also proposes aligning the high cost loan definition with the CFPB definitions, but, as discussed in the comments to 209 C.M.R. 32.00, this would be imprudent.

5. 209 C.M.R. 41.00: The Licensing of Mortgage Loan Originators

The regulations governing the licensing of mortgage loan originators, laid out in 209 C.M.R. 41.00, protect consumers by ensuring that mortgage originators act responsibly. The regulations require mortgage originators to be licensed by the Commissioner of Banks. Only mortgage originators that demonstrate their financial stability, post a surety bond, undergo a background check, and pass a federally approved course and written exam shall be approved.[17] The Commissioner may also deny a license to applicants who have had their license revoked in another state or have a history of violating state and federal mortgage laws.[18] These regulations prevent fraud by denying licenses to organizations with poor track records and punish fraud by ensuring that mortgage originators have the ability to pay compensation to consumers they have wronged.

These regulations were also written to minimize the burden on originators. The regulations build in a link to the National Mortgage Licensing System (NMLS), which manages information related to mortgage licensing for 61 state and territorial governmental agencies. Applicants upload their information to the NMLS, which distributes information to each licensing agency – including the Massachusetts Commissioner of Banks.[19] The course and written exam must be approved by the NMLS, which means that originators do not have to do separate additional training for Massachusetts alone.[20] Because these regulations strongly benefit consumers, and do not present a significant additional burden on originators, they should not be revisited at this time.

RESPONSES TO MMBA PROPOSALS:

- The MMBA suggests that the Division reinterpret its regulations to allow banks to hire loan processors or underwriters as independent contractors without requiring them to

[16] 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and Amendments; Delay of Effective Date, 80 Fed. Reg. 43911 (July 24, 2015) (delaying effective date until October 2015).
[17] 209 C.M.R. 41.04.
[18] 209 C.M.R. 41.05.
[19] 209 C.M.R. 41.04.
[20] *Id*.

obtain a mortgage loan originator license. So long as loan processors or underwriters do not have any communication with consumers, this change is acceptable. If loan processors or underwriters do begin to communicate with consumers, it is essential that they be licensed; communication with consumers creates the possible for misrepresentations and fraud. The Division should ensure that only licensed and qualified individuals may interact with consumers.

- The MMBA suggests revisions to the pre-licensing coursework for mortgage loan originators. These changes are acceptable because they merely clarify that the current approved coursework meets this requirement.

6. 209 C.M.R. 42.00: The Licensing of Mortgage Lenders and Mortgage Brokers

The licensure of mortgage lenders and brokers, codified in regulation at 209 C.M.R. 42.00, provides important protections for consumers. These regulations set reasonable and appropriate standards for the mortgage lenders and brokers, including safety and soundness requirements, character and fitness evaluations, and the posting of a surety bond with the state.[21] As with originators, the Commissioner may deny a license to any applicant with a track record of violating state or federal mortgage laws or having its license revoked in other jurisdictions.[22] Importantly, these regulations also prohibit abusive practices that surfaced during the foreclosure crisis, including falsifying a consumer's income, signing a consumer's name, or having consumers sign blank documents.[23] The ongoing supervision of mortgage lenders and brokers through the licensing process gives the state a broader ability to ensure compliance with these and other regulations governing mortgages. It is critical for the state to maintain this regulatory regime, because there is no parallel federal system for licensing all mortgage brokers and lenders.

RESPONSES TO MMBA PROPOSALS:

- MMBA suggests additional specification of the requirements of the escrow account. We welcome the opportunity to participate in the discussion of any additional rulemaking on this issue.
- MMBA recommends the repeal of 209 C.M.R. 42.12A(5)'s requirements on disclosing the Loan Origination and Compensation Agreement, laid out in 209 C.M.R. 42.16. This would be extremely unwise. The Loan Origination and Compensation Agreement discloses essential information to the consumer – especially that the Mortgage Broker and Lender are *not* necessarily acting in the best interests of the consumer but may still be getting paid by the consumer. Federal regulations mandate the disclosure of fees, but not of the important conflicts of interest that may emerge.[24] MMBA points out that the disclosure may be difficult because at an early stage of the mortgage application, a given entity may not know if it is the lender or broker. We believe the disclosure could

[21] 209 C.M.R. 42.03.
[22] 209 C.M.R. 42.04.
[23] 209 C.M.R. 42.12A.
[24] Consumer Financial Protection Bureau, TILA-RESPA Integrated Disclosure Rule Small Entity Compliance Guide (Sept. 2014), available at http://files.consumerfinance.gov/f/201409_cfpb_tila-respa-integrated-disclosure-rule_compliance-guide.pdf or http://tinyurl.com/CFPBTILARESPA.

be amended to account for that possibility, and we look forward to working with the Division on this issue.

- MMBA requests additional clarity on the definition of a branch office for the purposes of 209 C.M.R. 42.13. This regulation is already clear and allows meetings at other locations on a periodic basis. No clarification is necessary, and we look forward to working with the Division if it believes that any change is necessary.
- MMBA points out that 209 C.M.R. 42.13(3) requires the posting of a physical license even though the Division no longer issues physical licenses, and requests additional clarity. We would support the issuance of physical licenses that consumers can look for to determine whether a loan originator is licensed.

7. 209 C.M.R. 46.00: Community Reinvestment

The Community Reinvestment Act regulations, codified at 209 C.M.R. 46.00, create a process to evaluate an institution's track record of supporting its community and to use those evaluations in making regulatory decisions about that institution. The regulations encourage financial institutional to practice fair lending, minimize losses of affordable housing, deliver services to individuals of different income levels, and innovatively respond to community needs. The regulations have supported many important developments in Massachusetts, including the creation of low-cost checking accounts, credit union branches in low-income neighborhoods, and community based mortgage financing for first time low income home buyers.[25] Because these regulations mirror the corresponding federal regulations, they present a minimal burden to businesses.[26] There is no compelling reason to re-examine the Community Reinvestment regulations at this point.

RESPONSES TO MMBA PROPOSALS:

- MMBA notes that the Community Reinvestment Act needs updating to reflect new technology, markets, and business models. We are open to this conversation and look forward to working with the Division on this issue.

8. 209 C.M.R. 53.00: Determination and Documentation of Borrower's Interest

The regulations on the determination and documentation of borrower's interest add significant value for consumers without imposing high costs on lenders. These regulations prohibit offering a refinancing to a homeowner within five years of the original loan unless the refinancing is in the borrower's interest.[27] Lenders can easily comply with this regulation by offering loans with a reasonable interest rate, loans that meet the federal standards of a Qualified Mortgage, or loans backed by the Federal Housing Authority.[28] Alternatively, lenders can perform their own analysis of whether the refinancing is in the borrower's best interest by considering several factors, including the change in

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[25] LaTanya Ramsey, *False Claims Link CRA to Subprime Mortgage Crisis*, Massachusetts Affordable Housing Alliance (Mar. 8, 2012), available at https://www.mahahome.org/content/ramsey-donohue-and-sheridan-team-defend-community-reinvestment-act. OR http://tinyurl.com/CRAMAHA

[26] The federal regulations are codified at 12 C.F.R. 25.21 – 25.44.

[27] 209 C.M.R. 55.03.

[28] 209 C.M.R. 55.04.

monthly payments, the change in the timeframe of the loan, and the costs of refinancing.[29] Any lender making reasonable loans in good faith would necessarily consider these same factors in determining whether the refinanced loan could be paid off by the homeowner. These regulations fill an important gap in the federal regulatory scheme; there is no such requirement in federal laws governing refinancing. However, by incorporating federal standards, these regulations reduce the cost of compliance.

RESPONSES TO MMBA PROPOSALS:

- MMBA recommends the repeal of these regulations because they overlap or conflict with federal standards. This is not true. The CFPB regulations only require a borrower's interest evaluation for refinancing of a high-cost mortgage into another high-cost mortgage within one year.[30] The state regulations, on the other hand, require a borrower's interest evaluation for refinancing within *five* years. The CFPB's incredibly limited window provides little protection for consumers; most refinancing happens well after the one year mark. The state regulation's extended time frame offers much-needed protection from consumers against improper refinancing transactions when they are more likely to occur. Additionally, the state regulation covers consumers who initially had a standard mortgage and are refinancing into a high-cost mortgage – an important group of consumers with potentially even more to lose from an inappropriate refinancing. The CFPB regulations have an exceedingly narrow definition of high-cost mortgage loans, limited to those mortgages with an interest rate of 6.5% above the average prime offer rate for first mortgages.[31] A repeal of this regulation would be extremely unwise; the federal regulations lack important safeguards and would allow many of the same unscrupulous refinancing transactions that led to the financial crisis. Further, as noted above, the federal regulations could be repealed such that the Massachusetts regulations would then be needed to provide adequate protection for consumers.

9. 209 C.M.R. 55.00: Reverse Mortgage Loans

The regulations on reverse mortgage loans, stated in 209 C.M.R. 55.00, require lenders to receive an affirmative opt-in, in writing, from consumers of reverse mortgages and to certify that consumers have gone through in-person counseling with an independent third party.[32] The regulations also prohibit false promises, coercion, or fraudulent omissions of information in connection with the provision of a reverse mortgage loan.[33] These regulations are incredibly necessary, because reverse mortgages can be very confusing, and consumers may not always understand the terms of their reverse

[29] *Id*.
[30] 12 C.F.R. 1026.34(a)(3)
[31] 12 C.F.R. 1026.32(a)
[32] 209 C.M.R. 55.03-55.04.
[33] 209 C.M.R. 55.05

mortgage.[34] Additionally, because consumers of reverse mortgages are generally elders, there is a unique risk of fraud and abuse.

These regulations do not impose significant additional burdens on lenders. Nearly all reverse mortgages are offered through the federal Home Equity Conversion Mortgage (HECM) program, which already has a counseling requirement.[35] This program supplements the counseling requirement with an opt-in disclosure form, and extends the counseling requirement to non-HECM reverse mortgages. The regulations play a crucial role in ensuring that consumers are informed and prepared when they take on reverse mortgages.

RESPONSES TO MMBA PROPOSALS:

- MMBA requests clarifications on the definitions of area median income and mortgagor assets. We look forward to working with the Division if it chooses to promulgate additional guidance on these issues.

10. 209 C.M.R. 56.00: Foreclosure Prevention Options

The foreclosure prevention regulations, codified at 209 C.M.R. 56.00, are vitally important to protect consumers from unnecessary and destructive foreclosures. It is well documented that mortgage servicers lack sufficient incentives to prevent foreclosures because, unlike the lender, they do not suffer the drop in value of the property due to the foreclosure process.[36] The costs are borne by the homeowner, the lender, and the community – not the servicer. The lenders are generally a disorganized group of investors that are incapable of properly managing the servicer to prevent these wasteful foreclosures. The regulations fill an important gap, forcing servicers to identify potential modifications to mortgages that present a win-win situation that improves value for investors and keeps homeowner in their homes. Specifically, the regulations require that servicers provide borrowers with the notice that they have a right to request a modification of their loan.[37] They also require that, if a borrower chooses to take advantage of that right, the servicer must evaluate the borrower to determine whether an affordable loan modification could be made.[38] Among other things, the servicer is required to look at a borrower's income and expenses, the likely costs of foreclosure, and the value of the loan to the investor.[39]

These regulations are a critical addition to the anemic federal programs that have been instituted to prevent foreclosure. The Home Affordable Mortgage Program (HAMP) is the most significant federal effort, but it only applies to a handful of servicers and does not cover all loans. Additionally, HAMP only covers specific types of modifications and does not include the full universe of potential win-win modifications. The foreclosure crisis continues in Massachusetts; foreclosure rates

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[34] Consumer Financial Protection Bureau, "Reverse Mortgages: Report to Congress," (June 28, 2012), available at http://files.consumerfinance.gov/a/assets/documents/201206_cfpb_Reverse_Mortgage_Report.pdf or http://tinyurl.com/CFPBReverseMortgages.
[35] *Id*. at 16.
[36] Adam J. Levitin & Tara Twomey, *Mortgage Servicing*, 28 YALE. J. REG. 1 (2010).
[37] 209 C.M.R. 56.05
[38] *Id*.
[39] *Id*.

have gone up again this summer.[40] These regulations that prevent needless foreclosures are more important than ever.

RESPONSES TO MMBA PROPOSALS:

- MMBA proposes modifying the 90 day right to cure notice into a 120 day right to cure notice, to maintain consistency with federal law. To the extent the legislature does not act to maintain the status quo of a 150 right to cure notice unless certain actions are taken, we support this change. A 120 day notice serves consumers better than a 90 day notice, and the CFPB right to cure notice deadline is reasonable.
- MMBA requests that the Division state that a new right to cure notice does not need to be sent if the consumer has not reinstated since the last right to cure notice. We do not agree that clarification is necessary. A right to cure notice must be sent every three years, *regardless* of whether the consumer has cured the default since the last right to cure notice. Such an outdated notice provides insufficient warning to the consumer that the bank is planning to foreclosure and insufficient information to the consumer about the amount of outstanding debt, which may have changed significantly over the three year period. We also suggest that the Division clarify that if a consumer has reinstated and cured the default at any point after the first right to cure notice was sent, the bank must send a new right to cure notice reflecting the most recent default. In other words, the bank must send a right to cure notice that is *specific to the default* that is the cause of the foreclosure. This information is crucial because consumers who have reinstated and fallen behind again may have a total arrearage small enough to cure, provided that the consumers are given accurate and timely information. This additional notice may be crucial in preventing foreclosures.
- MMBA suggests the division revise 209 C.M.R. 56.04 to require the mortgagee to send the right to cure notice to the address in the mortgagee's system for the mortgagor, not to the mortgagor's last known address. This would be unnecessary and harmful to consumers. When a mortgagee chooses to send notice via mail, instead of hand delivery, it should at least be expected to send the mail to the most accurate address it can use. It is vital that consumers actually receive these notices so that they can act to prevent needless foreclosures. The change proposed by the MMBA would prevent some consumers from receiving these important notices, since some homeowners choose to have their mail delivered to post office boxes for example as this is more reliable than their home address and thereby deprive them of their ability to proactively prevent the foreclosure. It is not a significant burden for a mortgagee to use the address provided by the homeowner as this should already be maintained in the servicer's files MMBA should be able to perform this minimal task to prevent unnecessary foreclosures.
- MMBA recommends that the Division mandate only substantial compliance, not strict compliance, with the state-created standard right to cure notice. Strict compliance is absolutely necessary to protect consumers. The Supreme Judicial; Court's rulings in

[40] Tim Logan, *Bump in Mass. Foreclosures Blamed on New Rules*, Boston Globe (June 30, 2015), available at https://www.bostonglobe.com/business/2015/06/30/massachusetts-foreclosures-rise-may/X5bKVmKX9cUfbpfYOg3Y5M/story.html or http://tinyurl.com/globeforeclosures.

Bailey, *Eaton* and *Pinti* (2015) held that substantial compliance is adequate since Massachusetts is a non-judicial foreclosure jurisdiction. The Division regulations should hold banks to actual strict compliance. Because foreclosing entities choose to utilize the statutory power of sale they should held to this strict standard. MMBA requests that the Division amend its regulations to require the right to request a modified mortgage loan notice to be sent to the address on file, not the last known address. See above for a discussion of why this is inappropriate for these essential notices.

- MMBA proposes that the Division amend 209 C.M.R. 56.03(4) to allow an authorized servicer to send the right to request a modified mortgage loan. This change is acceptable if accompanied by a requirement that such notice be accompanied by documentation of the authorization from the mortgagee that the servicer may act on its behalf.
- MMBA requests that the Division modify the regulation generally to delete the references to a 150 day notice to cure and replace them with a 120 day notice to cure. Given the current sunset provision in the legislation shifting the 150 day notice to a 90 day notice, this change is acceptable if the extended period is not extended by the legislature. However, we look forward to working with the Division and the legislature on extending these protections.
- MMBA suggests that a group or team may be listed as the single point of contact in lieu of one or two named individuals, to align with CFPB regulations. A single point of contact is always preferable and this change is not acceptable.
- MMBA recommends deleting the requirements of the borrower's good faith response to notice laid out in 209 C.M.R. 56.06(2) because it requires more documents than HAMP applications and applications for other federal programs. We believe 56.06(2) should be amending to reduce the list of documents required to establish a good faith response; however, we believe it is important for the state to maintain its good faith standard in light of pending demise of HAMP and other federal programs. We look forward to working with the Division on this issue.
- MMBA suggests that the 30-day clock for lenders responding to a borrower's loan modification request should be reset if borrowers submit additional information during the thirty day period to complete their application. We would agree with this revision if it mandated that lenders must not reject any documents provided during the initial thirty day period as outdated during the pendency of the application. We frequently see cases where homeowners provide a set of documents to the lender; the lender requests additional information; the homeowners provide additional information; and the lender refuses to process the application because the initial information provided is now outdated. This pattern puts homeowners in an endless cycle of providing documentation but never having a complete packet. It prevents actual resolution of the issue, while fees and interest accrue for the homeowner. Any modifications that allow an extension of the deadline should prevent this situation. Further, any extension provided to lenders should extend the overall period and not allow a lender to "run out the clock" with delays in responding.

We appreciate the opportunity to provide comments on this important regulatory review. We look forward to continuing to work with the Division going forward.

Sincerely,

On behalf of Greater Boston Legal Services Low Income and Elder Clients

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