

## Massachusetts DOB Subprime ARM Alert

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on behalf of

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### Regulatory Bulletin 1.3-104 Counseling And Opt-In Requirements For Subprime Adjustable Rate Mortgage Loans Made To First Time Home Loan Borrowers

#### **Background:**

It has come to the attention of the MMBA that our members may be struggling with adjustable rate mortgages to first time homebuyers. With the rising rate environment, several adjustable rate mortgages are now meeting the “subprime mortgage loan” definition in the Massachusetts’s Division of Bank’s Regulatory Bulletin 1.3-104.

M.G.L. Chapter 184, Section 17B ½. and the implementing regulatory bulletin were enacted **prior** to the passage of Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) which made significant changes to the federal consumer protection laws for residential mortgage loans including. In January 2013, the Consumer Financial Protection Bureau (CFPB) issued final rules to implement provisions of Title XIV including Ability-to-repay/qualified mortgage rule — Regulation Z (1/10/2014) and High-cost Mortgage and Homeownership Counseling Amendments — Regulations X and Z (1/10/2014).

- On October 17, 2022 the MMBA sent a letter to the MA Division of Banks requesting guidance, clarification and revisions to the above referenced bulletin which implemented M.G.L. Chapter 184, Section 17B ½.
- On October 21, 2022 the Cooperative Credit Union Association, the Massachusetts Mortgage Bankers Association, and the Massachusetts Bankers Association sent a joint letter to the MA Division of Banks requesting revisions and clarification to Regulatory Bulletin 1.3-104.
- On October 28, 2022 the Cooperative Credit Union Association, the Massachusetts Mortgage Bankers Association, and the Massachusetts Bankers Association met with the Division of Banks to discuss potential revisions revisions to Regulatory Bulletin 1.3-104 and to discuss additional feedback which was requested from the Division.

- On October 28, 2022 the Cooperative Credit Union Association, the Massachusetts Mortgage Bankers Association, and the Massachusetts Bankers Association provided feedback and documentation to the Division including a pipeline report showing data from 129 adjustable rate mortgages.

### What we recommended/requested:

- **Replacing the current CMT calculation and replace with the APR/APOR rate spread calculation used for Truth-in-Lending Act purposes.** This industry standard calculation is used for every major Federal rate/ fee pricing threshold (i.e. High-Cost, HPML, and QM) as well as for the vast majority of similar state-specific rules. Even if different numerical thresholds are established for different rules, the APR/APOR calculation from TILA includes the same timing, definitions, and methods of calculation.
- **Definition of First-time Home Loan Borrower clarification** If there is more than one occupant mortgagor, but only one meets the First-time Home Loan Borrower definition, does only the FTHLB need to complete counseling and the opt-in, or all mortgagors?
- **Regulatory Interpretation of Required Counseling:** The description used of “advisability of the loan transaction” indicates counseling specifically for this transaction. Based upon the language contained in the statute, this counseling is different from other required counseling that many first-time homebuyers attend. The CFPB provided interpreting guidance for the pre-loan counseling requirements for high-cost mortgages under Regulation Z § 1026.34(a)(5) and we asked for the same clarification from the Division.
- We are seeking relief from defining current and already-closed loans as Subprime, based on our contention that the loan terms are not only NOT Subprime, but rather, favorable to the consumer.

### Next steps:

In follow-up communication with the Division, their staff has reviewed the documentation and feedback provided by the associations and is undergoing a review of recommended changes to Bulletin 1.3 – 104. A response will be shared with the Trade associations and through our public announcement process.

The Division is aware that several members have reported the following:

- Discontinuance of offering ARM loan products to consumers
- Discontinuance of offering ARM products to First-time homebuyers
- Scrambling to change indexes to something other than the CMT

We will continue to keep you updated and will provide any resources to the Division with hope that there will be a prompt resolution to avoid any disparat impact to consumers not having the availability to access safe and affordable adjustable rate mortgages.

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### About the MMBA

Founded in 1976, the MMBA is the largest mortgage association in New England and is recognized as one of the most successful in the country. We offer programs and networking opportunities throughout the year and provide the most comprehensive member services to over 225 corporate members throughout Massachusetts. Our regular membership is divided equally among depository institutions, mortgage companies and wholesalers. Affiliate members comprise 30% of our membership and represent providers to the mortgage industry including title, credit, appraisal, insurance, technology, legal, accounting and consulting, among others. Learn more at [massmba.com](http://massmba.com).

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