Cooperative Credit Union Association
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MMBA
MASSACHUSETTS MORTGAGE BANKERS ASSOCIATION

MBA Massachusetts Bankers Association

November 8, 2022

Ms. Mary Gallagher
Commissioner of Banks
The Commonwealth of Massachusetts
1000 Washington Street, 10th Floor
Boston, Massachusetts 02118

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

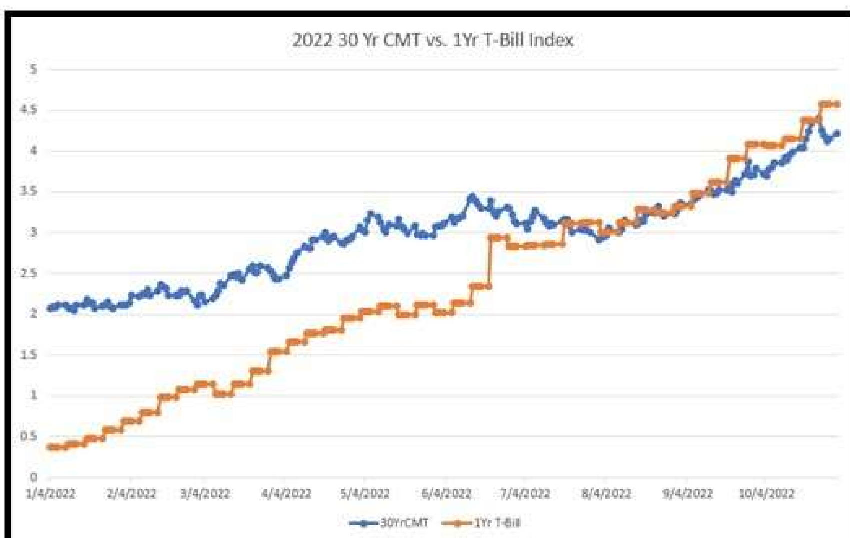
Dear Commissioner Gallagher,

On behalf of the Cooperative Credit Union Association, Massachusetts Mortgage Bankers Association and Massachusetts Bankers Association, we would like to thank you and your staff for the time, effort, and commitment for considering immediate revisions to the above referenced bulletin which implemented M.G.L. Chapter 184, Section 17B ½.

Since our meeting with Division staff on October 28th, we solicited feedback from several of our members requesting data and responses to questions requested from the Division.

It was of vital importance to our members that we convey through words and examples – that without exception, these adjustable-rate mortgages are in no manner subprime loans. Instead, several of these loans inadvertently reached the subprime level calculations specified in Regulatory Bulletin 1.3-104 because of **economic conditions** and not because of the loan product terms.

This is a chart showing both the **30 Year UST compared to the 1 Year T-Bill Index for 2022.** The chart illustrates where the 1-Yr T-Bill index began to exceed the 30 Yr UST. This unique circumstance resulted in the 1-year CMT-indexed ARM's exceeding the 3% threshold in Regulatory Bulletin 1.103-104.



An inverted yield curve is unusual and typically is an indicator of recession. **With an inverted yield curve, the regulation calculations specified in Regulatory Bulletin 1.3-104 is not a reliable indicator that the borrower is getting less than favorable terms.** Later in this document we are strongly recommending the use of calculations using APOR as a more reliable predictor for the mortgage rate provided to the consumer at the time the interest rate was set.

We would also like to respectfully remind the Commissioner of the timeframe (2012) in which M.G.L. Chapter 184, Section 17B ½ was enacted with the implementation through Regulatory Bulletin 1.3-104 which was **prior** to additional consumer protections at the federal level.

Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) made significant changes to the federal consumer protection laws for residential mortgage loans. 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**) Creditors must make a reasonable, good faith determination of a consumer's ability to repay (ATR) a mortgage based upon **s**pecified underwriting criteria. Creditors that offer "qualified mortgages" (QM) are presumed to comply with the ATR requirement.

- **High-cost Mortgage and Homeownership Counseling Amendments — Regulations X and Z (1/10/2014).** The rule expands the protections under the home ownership and equity protection act (HOEPA) to cover home-purchase loans and HELOCS including a homeownership counseling requirement and that all applicants for loans covered by the RESPA receive a list of local homeownership counselors.

- **Integrated RESPA/TILA Mortgage Disclosure Rule — Regulations X and Z (8/1/2015)** The rule combines the separate mortgage disclosures required by the RESPA and the TILA.

- **Loan Originator Compensation — Regulation Z (1/1/2014)**
  Adds restrictions on loan originator compensation and prohibits compensation from varying with loan products. Prohibits originators from steering a consumer to a loan because of higher compensation.

- **Mortgage Loan Servicing — Regulations X and Z (1/10/2014)**
  The rule revises and expands consumer protections for loan servicing, including new requirements for loss mitigation; servicer policies and procedures, early intervention, and continuity of contact rules for delinquent borrowers; restrictions on dual tracking; a periodic statement requirement for certain loans; a new initial interest-rate change and a revised interest-rate adjustment notices for adjustable-rate mortgages.

In Massachusetts, several of our regulations have incorporated these federal protections into our state regulations. A few examples are:

- Compliance with 12 CFR 1026.32(a)(2) constitutes compliance with 209 CMR 32.32(1)(b).
- Compliance with 12 CFR 1026.32(c) constitutes compliance with 209 CMR 32.32(3).
- Compliance with 12 CFR 1026.32(d) constitutes compliance with 209 CMR 32.32(4);
- A home loan shall be in compliance with 209 CMR 53.03 if it meets any of the following: (d) The new home loan is a Qualified Mortgage;

The Dodd-Frank Wall Street Reform and Consumer Protection Act specified a clear difference between the definitions of a "higher-priced mortgage" and a "high-cost mortgage."

A higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) by a given amount. In general, for a first-lien mortgage, a loan is "higher-priced" if its APR exceeds the APOR by 1.5 percent or more. For a subordinate mortgage, a loan is "higher-priced" if its APR exceeds the APOR by 3.5 percent.

Both the higher-priced mortgage and the high-cost mortgage are secured by the borrower's personal residence, but the higher-priced mortgage has only one major criterion in its definition: the previously mentioned APR and APOR conditions. On the other hand, a high-cost mortgage has the following three major criteria in its definition:

1. **The APR exceeds the APOR** by more than 6.5 percent.
2. **The total lender/broker points and fees** exceed 5 percent of the total loan amount. This 5 percent tolerance includes but is not limited to the following: origination fee, broker fee, processing fee, underwriting fee, document-preparation fee, wire fee and loan-servicing set-up fee.
3. **The loan has a prepayment penalty** beyond 36 months from closing or the prepayment penalty exceeds 2 percent of the amount prepaid.

In addition, high-cost mortgages also require:

- They must verify the consumer's ability to repay.
- No prepayment penalty is allowed.
- Taxes and insurance must be escrowed and paid along with the loan's principal and interest.
- The interest rate cannot increase after a default;
- No negative amortization is allowed;
- Acceleration is allowed only in cases when the consumer commits fraud or makes a material misrepresentation in connection with the loan, defaults on payment or commits some action or inaction that adversely affects the lender's security interest;
- Preloan counseling is required;
- No financing of any type of insurance is allowed in the loan;
- Arbitration or nonjudicial settlements cannot be required in the terms of the loan; and
- Loan provisions that bar a borrower from taking legal action against the lender are not allowed.

We believe that federal regulations have successfully limited products with unfavorable terms. We feel certain that a consumer must now fully qualify for the mortgage that he or she is obtaining and must prove the ability to repay that mortgage at time of consummation. We also feel strongly that the standards set by the CFPB can also provide us with guidance for satisfying the intentions of M.G.L. Chapter 184, Section 17B ½ and revisions to Regulatory Bulletin 1.3-104.

Responses to the questions asked by the Division of Banks:

Should we replace the CMT with APOR or should there be an additional calculation added to the Regulatory Bulletin?

There does not need to be an additional calculation. Instead, switching to the APR/APOR rate spread calculation used for Truth-in-Lending Act purposes makes a great deal of sense. This is an industry-standard calculation 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.

There would be considerable benefits to financial institutions from such a harmonization in technological systems and institutional practices. It would also improve customer understanding with no offsetting negative impact on consumers; the APR and APOR are well-defined terms used in numerous consumer disclosures, unlike the current calculation that is based off the CMT and fully indexed rate.

Regarding the CMT lookback – was the issue caused because of previous month lookback? If the date the interest rate for the transaction was set was used -would there have still been a problem? If the Division used the most recent CMT available – would that have made a difference?

Whether measured from 15th of the month prior to application, from application date, from last rate set date, or from closing date, the formula fails when 1yr CMT exceeds 30yr UST. This is an indication of yield curve inversion, and not of unfavorable loan terms.

While the look back compounded the problem because of the rising rate environment, the biggest issue came in the composition of the yield curve and the mismatch of the index (1yr CMT, based on the adjustment period) vs the test (such as the 30yr CMT). The inversion in the yield curve creates a mis-match in comparison.

If we have two separate calculations (both CMT index and APOR) – would we continue to use the same spreads of 3/5 for both index values or do they need to be different?

It depends. If using APOR (from Last rate Set Date) to Fully-indexed Rate at consummation/ origination, we recommend keeping the 3/4/5 spreads the same.

If using the APOR (from last rate set) and APR (from time of closing), as the Higher-Priced Mortgage Loan test does, we recommend being consistent with those spreads (1.50% for a First Lien mortgage), as we are already testing for that and believe that the Division's testing for unfavorable terms should align.

Using application date versus when the interest rate is set – please provide feedback on the impact of using one versus the other.

Use of a value from Last Rate Set date is more meaningful and accurate.

Using a measurement starting at the 15th of the month prior to application date in a briskly rising rate market is misrepresenting the favorability of loan terms. As an example, a new construction loan with an application date of December, 2021, using a UST yield from November 15, 2021 cannot pass the current test if closing in the current timeframe. The resulting classification as Subprime is unfounded.

Is there a preference to use 'application date' versus 'at the time the rate is set' as the benchmark for the assigned prime index rate and assigned margin? The federal regulation addressing HC and HP spread calculation standards use 'at the time the rate is set'.

As indicated above, being as close to federal calculations and definitions is important. Using the rate set date is consistent with current calculations.

Other Feedback/ Concerns and Questions:

In addition to providing the above feedback, additional guidance is being requested from the Division for compliance with MGL 184, Section 17B ½ and Regulatory Bulletin 1.3-104:

Definition of First-time Home Loan Borrower: If there is more than one occupant mortgagor, but only one meets the First-time Home Loan Borrower definition, is the transaction subject to Subprime consideration. If yes, 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. Typical first-time homebuyer counseling and education includes important information such as the importance of savings, credit, qualifications, the loan process, etc. 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):

201504_cfpb_housing-counselor-interpretive-rule.pdf (consumerfinance.gov)

The interpretation made clear that counseling from a HUD-approved counseling agency covers the matters described in comment 34(a)(5)(iv)-1, the counseling requirement of § 1026.34(a)(5)(i) is met.

We would recommend that Regulatory Bulletin 1.3-104 clarifies that pre-loan counseling obtained under Regulation Z § 1026.34(a)(5) satisfies the counseling requirement for M.G.L. 184, Section 17B ½

In Person Counseling Requirement - Legislative Change Needed

As we have learned through the pandemic with the in-person reverse mortgage counseling requirement, the need to offer consumers with options for how they obtain the required counseling benefits both consumers and counseling agencies. There should be no in-person requirement for counseling under M.G.L. 184, Section 17B ½. We would be willing to file any recommended legislative changes with the Division's support.

Data analysis (see attached spreadsheet):

Several lenders provided us with confidential loan data for their adjustable-rate loans. Many of these loans in recent months inadvertently exceeded the threshold in Regulatory Bulletin 1.3-104 **but in no instances did any of these loans exceed higher priced or high-cost thresholds.**

We respectfully ask the Division to apply any changes to Regulatory Bulletin 1.3-104 retroactively. As we have indicated throughout this letter, the products that our members have been offering consumers are not new. These products have never been subprime loans under the federal or state tests. It has only been recently because of current economic conditions that the calculations under Regulatory Bulletin 1.3-104 have inadvertently caused these loan products to meet the definition of a subprime loan when they are not.

Additional feedback:

We were asked to provide additional feedback which came directly from our community bank members. This represents feedback from a number of them whose lending practices are negatively affected by MGL 184, Section 17B ½.

We believe that the Regulation was intended to address predatory lending practices during the period leading up to the Great Recession, circa 2008-2009. Our Banks and Credit Unions did not originate Subprime mortgages, Negative-amortization ARM's, nor any of the products considered to be predatory during this time. These community lenders did not cause the problem addressed in the 2012 First-time Home Loan Borrower Subprime ARM regulation. The ARM's that we originate today, and that some of us have suspended in response to this Regulation, are at more favorable terms than prevailing Fixed Rate mortgages for first-time home buyers, typically more than 1% lower in rate for the introductory term of 5, 7 or 10 years than the Freddie Mac Primary Mortgage Market fixed rate posted weekly.

We believe that this Massachusetts 2012 Regulation should have been updated in the wake of the Dodd-Frank Act and the Ability-to-Repay rule as follows:

1. To exclude Qualified Mortgages from consideration as Sub-prime, and
2. To exclude mortgages that are not considered Higher Priced Mortgage Loans (HPML) as Sub-prime (APR – APOR greater than 1.5% for 1st lien mortgages)

The Commonwealth modified the Borrower Best Interest regulation (209 CMR 53.00) in 2014 to presume compliance if "the new home loan is a Qualified Mortgage."

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.

Recent Impacts from M.G.L. Chapter 184, Section 17B ½ and Regulatory Bulletin 1.3-104
As a result from the prior exemption of ARM's being saleable to Fannie and Freddie combined with the impact of rising interest rates with an inverted yield curve, 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

Our previous letter provided the Division with examples of the benefits between fixed rate mortgages and adjustable-rate mortgages in this high-rate environment. Not being able to offer consumers additional loan options which are safe and affordable creates consumer harm. One also could argue that Regulatory Bulletin 1.3-104 is forcing our members to make policy decisions that will have a disparate impact on our LMI borrowers and communities.

Thank you for this opportunity to provide you with feedback regarding revisions to Bulletin 1.3-104. Please let us know if you would like any additional information or if you have any additional questions. We appreciate your consideration of our feedback.

Sincerely,

Ronald McLean President/CEO Cooperative Credit Union Association, Inc.	Deborah J Sousa Executive Director Massachusetts Mortgage Bankers Association	Kathleen M. Murphy President & CEO Massachusetts Bankers Association