

STATE HIGH COST/PREDATORY LENDING REGULATIONS

State: Massachusetts

Law: MA Predatory Home Loan Practices Act 2004

Cite: General Laws of MA, Chapter 183C

Public Link: <http://www.mass.gov/legis/laws/mgl/gl-183c-toc.htm>

Loan Covered: Conventional FHA VA

Loan Amount Covered: No limit

Loan Purposes Covered:

<input checked="" type="checkbox"/> Purchase	<input checked="" type="checkbox"/> Construction/Perm (refinance of construction loan)
<input checked="" type="checkbox"/> Construction	<input checked="" type="checkbox"/> Refinance
<input checked="" type="checkbox"/> HELOC	<input checked="" type="checkbox"/> Home Equity/closed end
<input checked="" type="checkbox"/> Purchase Plus	<input checked="" type="checkbox"/> Bridge Loan (if over 1 year term) (Purchase or refinance)
<input checked="" type="checkbox"/> One time with modification	<input checked="" type="checkbox"/> One-time Closing
<input type="checkbox"/> Reverse Mtg	<input checked="" type="checkbox"/> Home Improvement

Borrower(s) Covered: Natural person

Property Covered: Consumer's principal dwelling

Total Loan Amount is: SAME AS HOEPA/SECTION 32

NOTE AMOUNT

APR Test: **1st Lien** >8% (APR for ARM loans must be calculated using the fully indexed rate)

Subordinate Lien >9% using fully indexed rate for ARM loans

See Regulatory Bulletin 1.3-104 below regarding 1st time home buyers.

Fee Test: Excluding either a conventional prepayment penalty or up to 2 bona fide discount points, high cost if the total points and fees exceed the greater of 5% of the total loan amount or \$400; the \$400 figure shall be adjusted annually by the commissioner of banks on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1.

Fees to include/exclude: (See link to law for more information)

Includes YSP paid to brokers and all fees paid directly or indirectly to broker. Bona fide points are not included in calculation if the note rate is less than the Benchmark rate. (See "Special Notes" below regarding "Benchmark rate" "Points and fees", (i) items required to be disclosed pursuant to sections 226.4 (a) and 226.4 (b) of Title 12 of the Code of Federal Regulations or 209 CMR 32.04(1) and 209 CMR 32.04(2) of the Code of Massachusetts Regulations, as amended from time to time, except interest or the time-price differential; (ii) charges for items listed under sections 226.4 (c) (7) of Title 12 of the Code of Federal Regulations or 209 CMR 32.04(3)(g) of the Code of

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Massachusetts Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge, otherwise, the charges are not included within the meaning of the term “points and fees”; (iii) the maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents; (iv) all prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same lender; (v) all compensation paid directly or indirectly to a mortgage broker, including a broker that originates a home loan in its own name in a table-funded transaction, not otherwise included in clauses (i) or (ii); (vi) the cost of all premiums financed by the creditor, directly or indirectly for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed by the creditor. Points and fees shall not include the following: (1) taxes, filing fees, recording and other charges and fees paid to or to be paid to a public official for determining the existence of or for perfecting, releasing or satisfying a security interest; and, (2) fees paid to a person other than a lender or to the mortgage broker for the following: fees for flood certification; fees for pest infestation; fees for flood determination; appraisal fees; fees for inspections performed before closing; credit reports; surveys; notary fees; escrow charges so long as not otherwise included under clause (i); title insurance premiums; and fire insurance and flood insurance premiums, if the conditions in sections 226.4 (d) (2) of Title 12 of the Code of Federal Regulations or 209 CMR 32.04(4)(b) of the Code of Massachusetts Regulations, as amended from time to time, are met. For open-end loans, the points and fees shall be calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties that may be charged or collected under the terms of the loan documents, plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.

Special Notes: “Benchmark rate”: the interest rate which the borrower can reduce by paying bona fide discount points; this rate shall not exceed the weekly average yield of United States Treasury securities having a maturity of 5 years, on the fifteenth day of the month immediately preceding the month in which the loan is made, plus 4 percentage points.

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

By the Division of Banks

Regulatory Bulletin 1.3-104

January 30, 2008

Counseling And Opt-In Requirements For Subprime Adjustable Rate Mortgage Loans Made To First Time Home Loan Borrowers

I. APPLICABILITY AND SCOPE

The purpose of this Regulatory Bulletin is to provide a standard for determining when an extension of credit with an adjustable or variable rate of interest made to a first time home loan borrower and secured by a mortgage lien on the borrower’s residential property qualifies as a subprime loan and triggers the counseling and opt-in requirements set forth in General Laws Chapter 184, section 17B ½. See: SECTION 7 of Chapter 206 of the Acts of 2007.

II. DEFINITIONS

As used in this Bulletin the following words shall, unless the context otherwise requires, have the following meanings:

Affirmatively opt-in writing: the borrower signs a separate statement after receiving counseling, but prior to loan closing which includes a statement in at least 16-point capitalized boldface font indicating that the borrower elects to opt into a subprime loan with an adjustable or variable rate.

Annual percentage rate: this term shall have the same meaning as found in General Laws chapter 140D and 209

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CMR 32.00 *et seq.*

First-time home loan borrower: a natural person obtaining a mortgage loan to purchase a residential property for the first time.

Mortgage loan: a loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property.

Residential property: real property located in the commonwealth having thereon a dwelling house with accommodations for four or less separate households and occupied, or to be occupied, in whole or in part by the obligor on the mortgage debt, but excluding mortgage liens on vacation and investment properties.

Simultaneous second lien: a loan secured by a second or subsequent mortgage lien originated and closed in conjunction with a first mortgage loan on the same residential property, the proceeds of which are used as part of the purchase price of the residential property.

III. POLICY

General Laws Chapter 184, section 17B ½ states in part that “no mortgagee shall make a subprime loan at a variable or adjustable rate of interest unless the mortgagor affirmatively opts in writing for the variable or adjustable rate subprime loan *and* receives certification from a counselor.” Accordingly, the Division hereby adopts the following standard for determining when a loan made to a first time home loan borrower qualifies as a subprime loan. In addition, the Division adopts the following guidelines to meet the counseling and opt-in requirements.

A. Determination of Subprime Mortgage Loans

For the purposes of General Laws chapter 184, section 17B ½ an extension of credit with an adjustable or variable rate of interest made to a first time home loan borrower will be deemed to be a subprime mortgage loan:

1. For a first-lien mortgage loan if

a. The loan amount falls within the loan amount limits set forth by the Federal National Mortgage Association (“FNMA”) or the Federal Home Loan Mortgage Corporation (“FHLMC”) but fails to meet the federal agencies’ underwriting guidelines; or

b. The loan amount exceeds the loan limits set forth by FNMA and FHLMC and the annual percentage rate (APR) is greater than two and one-half (2.5) percentage points above the yield on United States Treasury securities having comparable periods of maturity, as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.

2. For loans secured by a simultaneous second lien on residential property, if the APR for the simultaneous second lien is greater than five (5.0) percentage points above the yield on United States Treasury securities having comparable periods of maturity, as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.

B. Counseling and Opt-in requirements

1. Prior to the closing of the mortgage loan, the lender shall obtain, from a first-time home loan borrower seeking a subprime loan with an adjustable or variable interest rate, a written certification from a counseling agency approved by the Division, that the borrower received counseling in person on the advisability of the loan transaction. The lender must then obtain the borrower’s written statement to affirmatively opt in for the variable or adjustable rate subprime loan.

2. A list of approved counseling agencies may be found on the Division’s website at www.mass.gov/dob.

IV. HISTORICAL NOTES

This bulletin was issued on January 30, 2008.

V. AUTHORITY

G.L. c. 184 section 17B ½.

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