Massachusetts Bankers Association

April 29, 2004

Public Information Room Office of the Comptroller of the Currency 250 E. Street, SW, Mailstop 1-5 Washinton, DC 20219 Docket No. 004-05 regs.comments@occ.treas.gov	Attention: Comments Federal Deposit Insurance Corporation 550 17th Street, NW Washington, DC 20429 12 CRF Chap. III comment@fdic.gov
Ms. Jennifer J. Johnson, Secretary Board of Governors of the Federal Reserve System 20th Street & Constitution Avenue, NW Washington, DC 20551 Docket No. R-1180 regs.comments@federalreserve.gov Robert E. Feldman, Executive Secretary	Regulation Comments Chief Counsel's Office Office of Thrift Supervision 1700 G Street, NW Washington, DC 20552 Docket No. 2003-67 regs.comments@ots.treas.gov

SUBJECT: EGRPRA Burden Reduction Comments on Consumer Lending Regulations

Dear Sir/Madam:

On behalf of the 220 commercial, savings, co-operative bank and federal savings institution members of the Massachusetts Bankers Association ("MBA") located throughout Massachusetts and New England, the Massachusetts Bankers Association would like to offer comments on the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) burden reduction proposal. The Agencies are requesting comments on the ways in which the Consumer Protection Lending-Related Rules may be outdated, unnecessary, or unduly burdensome. The MBA offers its comments on the following consumer protection regulations relating to lending.

Equal Credit Opportunity (Regulation B)

Regulation B creates a number of compliance problems and burdens for banks. Knowing when an application has taken place is often difficult because the line between an inquiry and an application is not clearly defined. To answer customer questions about loan products, bankers must have sufficient information to respond correctly, and yet accepting to much information can lead to an "application" that triggers additional responsibilities on the part of the bank. While bankers want to provide customer service, the regulations make it difficult, and almost mandate a written application in all instances. This should be reviewed to reflect modern technologies and to prevent barriers to customer service.

Adverse action notices present another problem: one that promises to be aggravated by new requirements under the Fair and Accurate Credit Transactions (FACT) Act. It would be preferable if banks could work with customers and offer them alternative loan products if they do not qualify for the

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type of loan for which they originally applied. However, doing so may trigger requirements to supply adverse action notices. Knowing when to send an adverse action notice is not always readily determined. For example, it may be difficult to decide whether an application is truly incomplete or whether it can be considered "withdrawn."

Moreover, the requirements for adverse action notices under Regulation B are not always in sync with the requirements under the Fair Credit Reporting Act (FCRA). And, while there may be more than one reason that the loan was denied, determining what reason to provide on the adverse action notice form may not be simple. A straightforward rule on when an adverse action notice must be sent – that can easily be understood should be developed.

The MBA works closely with our members and nonprofit consumer counseling groups to help resolve discrepancies in loan denial rates between whites and minorities. Invariably the question arises relating to how much assistance can a lender give an applicant who does not meet the bank's underwriting criteria. The concern is that some banks believe they must deny an application instead of working with customers to find a suitable loan product. In such cases, these often low- and middle-income loan applicants turn to predatory lenders.

A recent issue with the March 2003 amendments to Regulation B and its commentary involving joint applications provides another example of how regulatory changes, which appear to be minor, can create confusion and compliance burdens. The Board modified the regulation to clarify the need for creditors to document that co-applicants have applied for a loan. The Board also added language to the model forms so that applicants could specifically indicate whether they were applying jointly or individually.

While the Board stated that written applications are not necessary (except where otherwise required), that creditors have flexibility in documenting the intent to apply jointly, and that model forms are optional, some institutions and examiners initially concluded that the changes required written applications and that the language added to the model forms is mandatory. They reasoned that the Board would not have altered the model forms unless the new language was mandatory. In fact, one representative from the regulatory agency stated that the model forms represented the intent of the Board. On this basis, some creditors altered their forms and have created separate disclosure forms. We have since learned that separate disclosures are not required.

To avoid unnecessary revisions to documents and procedures, the Board should keep in mind that changes to model forms may be viewed as mandatory or "preferred," as compliance officers see risks in not adopting officially sanctioned forms or language, notwithstanding the regulations' advisory that they are optional. Retaining current forms along side with new language would reinforce the concept of flexibility and choice. In addition, the Board should work with other bank regulators so that all agencies and their examiners are interpreting the regulations consistently.

Fair Housing

In 1997, as part of a regulatory burden review under Section 303 of Riegel Community Development and Regulatory Improvement Act, the FDIC amended its Fair Housing regulations to make them confirm to the requirements of the Federal Reserve Board's Regulations B and C. In doing so, the FDIC eliminated additional recordkeeping for small institutions not covered by HMDA. However, the OCC still has requirements for additional recordkeeping for institution not covered by HMDA, although the OCC exempts institutions from this recordkeeping if they have less than 50 reportable mortgage applications per year. Neither the OTS nor the Board appear to have any additional fair housing recordkeeping requirements above those required by Regulations B and C. The MBA recommends that the OCC eliminate its additional fair housing recordkeeping requirements and reduce its regulatory burden to confirm with the other agencies and the requirements of Regulations B and C.

Flood Insurance Requirements

Bankers repeatedly complain about flood insurance as a regulatory burden issue because not all lenders have equal responsibility and customers are often confused as to why they do not have a choice in whether or not they choose to carry flood insurance.

The mortgage market has changed appreciably since the advent of the National Flood Insurance Program through passage of the National Flood Insurance Act of 1968 and its subsequent revisions. The 1968 Act established the framework for addressing the financial, personal and community losses engendered by floods. Financial institutions became the key to such a system by requiring that banks not "make, increase, extend or renew" any loan unless commercial or residential buildings securing the loan are covered by flood insurance. Thus, the flood insurance program only applies to property used as security on loans and other real estate is effectively excluded from the program. Banks are the enforcers of a non-comprehensive nationally policy, and are subject to compliance risks not evenly distributed throughout the country.

A competitive issue that must be addressed is the difference in the requirements by banks versus non-banks. Federally insured financial institutions and their subsidiaries no longer originate the majority of mortgage loans in Massachusetts and around the country. Large mortgage companies and mortgage brokers who originate a substantial portion of the loans are not subject to the same requirements as banks. In addition, a considerable number of loans being serviced in today's environment are serviced by independent service operations or by services that are affiliated with bank holding companies. These institutions are not necessarily subject to supervision or regulation by the banking agencies. In addition to the changes in the mortgage market, a significant portion of properties in a special flood hazard area are not covered by flood insurance regulations, since they are either owned without a loan from a supervised financial institution or financed through institutions not covered by the regulations.

Additionally, it is often difficult for bankers to assess whether a particular property is located in a flood hazard zone since flood maps are not easily accessible and are not always current. Even once a property has been identified as subject to flood insurance requirements, the regulations make it difficult to determine the proper amount, and customers do not understand the relationship between property value, loan amount and flood insurance level. Once flood insurance is in place, it can be difficult and costly to ensure that the coverage is kept current and maintained at proper levels. As a result, many banks rely on third party vendors to assist in this process, but that adds costs to the loan. Flood insurance requirements should be streamlined and simplified to be understandable. Also, the Federal Emergency Management Agency should ensure that the process of updating flood maps is a priority project.

An additional issue is the amount of coverage, particularly when financial institutions must force-place insurance. Most consumers do not understand that flood insurance will only cover the mortgage amount, not the replacement value. If total loss occurs, the bank is made whole but the owner is left without anything with which to rebuild. Again, besides being confusing to most customers, this approach is not consistent with a public policy to provide insurance for a community to recover from a disastrous flood. Also, customers would better understand their flood insurance policies if the policies more closely tracked the replacement value format of their hazard insurance policies.

Home Mortgage Disclosure Act (Regulation C)

The Home Mortgage Disclosure Act currently exempts institutions not in an MSA from reporting, as well as very small institutions (Under $33 million for 2004 reporting). For nondepository mortgage lending institutions, one of the criteria for coverage is whether the institution originated 100 or more home mortgage loans. Due to the expense and effort necessary to implement a HMDA reporting system, particularly after the recent revisions greatly increased the reporting burden, MBA recommends that the statute be amended to provide an exemption from HMDA reporting for depository institutions that do not originate 100 or more home mortgage loans.

Separately, the industry is subjected annually to a number of outside "studies" of the HMDA data to "identify" lenders that are illegally discriminating, despite the fact that the HMDA does not contain sufficient data to make that determination. Additionally, hundreds of media articles appear suggesting that the disparities in denial or in applications are proof of illegal discrimination. MBA agrees with one trade association's comments that the Board should prepare a simple, plain English media guide to what the HMDA data means and how it can be used and misused.

Right or Rescission (Regulation Z)

The provisions of the Truth in Lending Act creating the right of rescission continue to be a problem that add compliance burdens and delay release of loan funds subject to the provisions. Bank customers have difficulty understanding why they must wait for the funds when refinancing a mortgage or obtaining a home equity loan. From the bank's perspective, the right of rescission is often an unnecessary requirement that creates unwanted forms and adds to the settlement paper pile at the closing. Until recently, consumers rarely ever invoked the right of rescission. Now it is being used frequently to rate shop for lower interest rates. This amounts to an abuse of the original intent of the law. The Board should recommend to Congress that it consider eliminating or drastically limiting this provision.

Thank you for considering our views.

Sincerely,

Tanya M. Duncan

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Director, Housing and Federal Policy

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