Massachusetts Alliance Against Predatory Lending

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Comments of Grace C Ross of the Mass Alliance Against Predatory Lending Related to The Division of Banks Proposed Regulations Required by *Chapter 194, An Act Preventing Unlawful and Unnecessary Foreclosures*.

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Good Morning,

My name is Grace Ross, I'm the Coordinator of the Mass Alliance Against Predatory Lending. We are a coalition of almost 70 organizations spanning from grassroots organizations working to bring together homeowners, former homeowners, and tenants all of whom have been affected by the foreclosure crisis all the way to supporting members such as the state AFLCIO, NAACP and numerous housing counseling and legal firms dealing with the foreclosure crisis.

I want to start by thanking the Division of Banks and the Commissioner for holding this hearing and taking our input into the creation of regulations. My remarks will try to follow along the outline of the questions that the Division of Banks has raised. Our concerns fall under the categories of (a) meeting often hard fought existing standards, (b) ensuring transparency and clarity for the borrower and the lender throughout the processes defined and (c) ensuring that some of the complications that were added into the foreclosure process with these new statutes do not muddy the already existing complicated foreclosure process in Mass by raising potential legal confusion where we certainly do not need it.

Broadly speaking we believe that the Division of Banks needs to create regulations to define what certain loans will be covered and how proof of whether a loan was covered or not will be properly documented. We have a great deal to say about: (1) the by-mail negotiation process that has been defined by the statute; (2) needed accountability standards we believe; (3) and means for homeowners to not only understand, but track and if necessary, enforce their rights. We believe regulations are needed to clarify some of the new sections under 35C. In both sections which create new affidavits, we believe the process of recording affidavits and what standards they need to meet needs clarification. We see the need for and the creation of standard form letters, tracking mechanisms through the Division of Banks and possibly the AG's office. There are specific sections of legislation that the Division of Banks does not seem to have specifically identified, but we believe needs some clarification.

First question, what regulations we believe need to be created. Question two seems to address the question what good faith provisions are needed for borrowers whose loans are covered by the commercially reasonable standard because they have loans with subprime characteristics.

In reading and helping to craft much of this legislation (or edit it after sections were crafted), it is out understanding that at the default point when the right to cure period begins and the 35A notice has to be sent out that the bank will now be responsible for a second notification. They will need to notify borrowers if they're covered by the new commercially reasonable standard that they will be eligible for a loan modification application. We believe that notification will need to explain that this application is provided under very specific circumstances in which they will receive new information and leverage in negotiating a loan modification on the one hand and on the other hand facing sanctions in terms of loss of time in their right to cure period.

We'd like the Division of Banks to clarify that the only part of the right to cure period that is potentially waivable or part of a penalty would be the last 60 days of the right to cure period. There's still a bit of unclarity in the language of the statute itself.

The bank will initiate the 35b process by sending a notification to borrowers whose loans are covered outlining options in terms of their participation in the described loan modification process and possibly of the length of their right to cure period; with that would have to be sent a loan modification application.

The existing process for loan modifications has been predominantly the Affordable Home Modificiation Program (HAMP) loan modification process and most of the proprietary loan modification processes has been modeled on HAMP at this point. HAMP, and the guidelines and regulations governing HAMP, have been developing over the last four years. We have a great deal of information about how by-mail loan application and loan modification proposal negotiations have gone from the last four or five years. Based on HAMP and based on that information, we believe that a great deal can be extrapolated about what we need to do if we're going to make a similar process in Massachusetts work better immediately than HAMP has.

As we all know, the initial HAMP procedures were simple compared to where they are now. HAMP has continuously had to update and make more and more and more specific their guidelines. Debate has gone back and forth between the lending industry and advocates to try to make those guidelines specific and most importantly increase their effectiveness. While you may have heard stories, we have plenty of members of some of the community efforts homeowners who can speak directly to the existing reality and inadequacies of the HAMP process and the yet unresolved challenges that homeowners face.

I want to underscore that it's not only the HAMP process itself that we can draw on, but the settlement between the largest lenders and the office of the Controller of the Currency as part of the U.S. Treasury Department the settlement coming out of their law suits and signed on to by the largest lenders; in these settlements, all parties have acknowledged that normally homeowners have had to submit loan application materials repeatedly. The national average has been 6 times. Also in the settlement language was a reaffirmation of the fact that the banks are supposed to respond in a timely fashion since historically they have overwhelmingly not done so.

They have taken 60-90 days to respond under HAMP. As well, many of the largest lenders have actually been sanctioned because of their failures to meet successful modification requirements to get the financial incentives attached to their HAMP performance.

Going back to the first step of this by-mail negotiation process. I , the homeowner, hit my 90 days delinquency point, receive my default letter, which in Mass has the additional requirements of the right to cure statute. At this point, I will also receive a letter if my loan is covered under the new commercially reasonable standard under 35B, telling me that I'm going to get a loan modification negotiation and that I have choices about whether to participate, how much to participate, and how much of my rights to the right to cure period I'm going to give away. Along with that I'll get a loan modification application which presumably will be modeled on the HAMP RMA.

We cannot strongly enough recommend use of the existing federal standards for foreclosure processes that have been fought over now for four years. Let's not reinvent the wheel; as we know, as I stated earlier, the tightening of those guidelines and regulations has been critical to the increased success of the HAMP process itself.

So assuming folks get the standard RMA application form and the IRS tax form required for homeowners to sign so that the lender has access to their tax filings, we need to create regulations to define the statutory language fought for and included that borrowers should have to meet a minimum show of good faith in their attempt to respond to the loan application offer.

In direct response to the minimum requirements question, we believe the borrower should be required to complete the initial RMA form and sign the tax form for access their tax records. If they return that within the 30 days meeting the 30 day deadline we believe that should be sufficient. Or if they're not going to return the form, then they must return the check off form with their options for participating. Obviously, they should return that form regardless, but some folks may be confused that submitting the application would be sufficient that they do not need to submit a form stating that they're going to submit the application as well.

We believe the wording of the form on their participation choices is critically important. It's clear to us from working with homeowners that the right to cure period is a legislative concept not publicly understood. Homeowners do not know that the right to cure period came along with certain increases in information in their default they were suppose to get nor understand that it extends for 150 days. Without that information, allowing homeowners in various ways to opt out of the loan modification negotiation process with implications for cutting short that period would be misleading to the homeowner/consumer, and inherently unfair without their understanding the process they are being offered to participate in. We do not have proposed language for that form today, but we would like to be included in the process of the creation of that form.

We have gone back and forth about whether it should be something really simple for folks to check off like a postcard. In that discussion it became absolutely clear to us: the primary and

possibly only protection homeowners have to prove that they've submitted materials is showing both that they properly submitted it through receipts of the submission but also that they have copies of what they submitted. Therefore, we would recommend that this form actually go the homeowner in duplicate or triplicate so that as homeowners check off what they choose they will have a copy for themselves in their own records of what they sent to the lender. If it can be done in triplicate, we would recommend a copy also be sent by the homeowner either to the Division of Banks or the Attorney General. Then, there's another party that also gets proof that the homeowner filled it out timely and in a particular way.

The next two questions have to do with good faith efforts by the creditor or safe harbor for the lender. I'll address late, I want to jump to question five about model form under 35B.

We believe absolutely that there have to be several model communication pieces created. We very much appreciate the initial advisory from the Division of Banks including notification in the five most common languages of the seriousness of this mailing.

Because borrowers will likely receive several loan modification applications during their attempts to avoid forelcosure, we think it is critically important that borrowers are told that this is a special loan modification application. The explanation should include that there is a new law so that when they talk to their friends they'll understand why they have something different than what their friends got.

Homeowners should be told that their loan was identified by the bank as having predatory characteristics. We think it would be good that there be a pre-designed and supplied format for a checklist for lenders to check off any characteristics that exist with a particular loan and a place to identify the basis for identifying the inclusion or exclusion of that characteristic for that loan. Since the decision of whether a loan has any of these characteristics has to be made before the bank sends the 35b notification, this form will have been completed by the time of the mailing of the default letter. We have not yet identified any reason not to have the lender share that with the homeowner when they send out their 35b letter.

We believe that the homeowner needs to be told that one of the different aspects about this loan modification process is that if they meet the timelines, the bank will be comparing potential loss from an affordable loan modification with them with the bank's loss from foreclosure. The homeowner needs to be told when in the process they will receive that information and that they must then be offered a loan modification. We believe the timeline needs to be laid out and explained. They need to be told what timelines they need to meet and any good faith provisions attached to those. They need to be toldhow to protect themselves by retaining not only proof of the mailing, but we believe being told to keep copies properly identified of what was mailed. They need to know that there is a penalty for not responding. They need to be warned about what they could give away in a penalty or by checking off any of the other options besides fully participating in this process.

We believe that there should also be clarification in the notice that the homeowner receives about how they would enforce the proofs that they mailed the basic materials required timely. They need to know how to enforce that and we believe that the Division of Banks needs to create that enforcement process. The best arrangement we believe for borrowers, and it would help underscore how different this mailing will be from other loan modifications applications they may get, would be for the Division of Banks to require included in the mailing, for instance, a form that outlines the required proofs of compliance, that they can actually check off that they kept these proofs and with that the timeline of when they should expect the responses from the bank in each step. There should be an explanation of where to call if they believe that they have fulfilled their part of the required process and in some way the bank did not.

We believe the form that provides options potentially for homeowners to sign away some of their existing rights not only needs to be outlined what those are, explained in plain language what the right to cure period is and any other legal concepts therein. We also believe it needs to be written using clear and least educated consumer language provided by the Division of Banks. We also believe that since the law now requires only two points of contact at the lender that that should be told to the homeowner as well.

We believe that the regulations need to require an immediate response that the lender has received the materials even if the lender has not assessed whether all of the materials they consider complete are included or not yet. We believe that the homeowner needs to know that they were received, what was received and that that receipt needs to come back to the homeowner. Otherwise one of the possible outcomes of the statute is that the mail goes astray, the bank does not receive it and the homeowner never finds out that there's going to be no further communication on this special loan modification application process and that they have lost a chunk of the right to cure period. They will not ever know it until they receive their active military service notice and realize that it is 60 days earlier than normal – hopefully, their 35b letter has explained to them that it should have been 150 days. Now, it will be much too late for them to enforce any rights and functionally, they will lose access to the opportunity to benefit from the commercially reasonably calculation.

Instead, we recommend a clear letter explaining all of the above. We would work like to with you on the language of explanatory notice to the homeowner if you would allow us to. We bring, we believe, invaluable experience on the ground. We even have the capacity for focus groups with homeowners to review sample materials.

We recommend that initial letter also list the point of contact person's phone number as well as where they will send the materials so that if they do not get a receipt back, they will have someone to call and ask if their materials were received or not received and within the deadline or not.

When the receipt comes back, it should identify on what date would be 30 days from that receipt within which the bank is to respond to them. The homeowner then knows when they should expect the loan modification proposal to come to them with the net present value and loss from the foreclosure calculation included.

We believe that the Division of Banks needs to create the form that would come back to homeowners and the general information included. I am including with my materials the format that Florida has used which actually defines those calculations. We believe the actual formula should be included for the homeowner so they can see how the calculation was made.

Again, when that comes back to homeowner, the legislation stipulates they are going to get another one of these forms where they can potentially opt out. Again, the same criteria raised for the previous form we believe needs to be met. It should again tell homeowners they need to translate this in five languages and tell them the date by which they now have to respond. The form for opting out needs to be in least educated borrower language and we believe should be in duplicate or triplicate form (see above). They need the deadline for response to the bank with their counter proposal or with acceptance of the proposed loan modification.

It would then get sent back to the bank again. If it is a counter proposal and the bank again has 30 days within which to respond. Again, we believe a receipt needs to be sent back to the homeowner to say that it was received and on what date it was received and on what date they will now expect their next communication from the bank about their counter proposed loan modification.

Now, we believe there are two steps to helping the homeowner be able to grieve if there are problems and thereby enforce their rights.

While the incentive for the homeowner is to stay on top of this to get their loan modification, it is well documented that lenders have not provided timely loan modification proposals. We believe that the sanction on the homeowner is clear because if they do not meet their deadline they're going to lose their access to this special loan modification process with its additional incentives for a loan modification and information to the homeowner, and lose part of their right to cure period.

While we do not understand the logic of these decisions, experience and studies show that banks prefer to foreclose even when a loan modification will lead to less loss over time. Because of this propensity, the banks in general have prioritized shortening the right to cure period instead of using the time for intensive loan modification activities. And the legislation is written to use the shortening of the Right to Cure to penalize homeowners who do not meet statutory deadlines – there is no statutory penalty for banks who do not meet their time deadlines in this process. The Division of Banks will have to promulgate regulations then, that are different for homeowners and banks, since the process as created by the legislature is not even handed in regards to the penalties.

Similarly we are seeking so much clarification for borrowers through this process because while the Division works directly with the banks whose associations participate extensively with the Division and are working with their members to inform them about the law and what they need to comply, borrowers as a whole have no such advocacy nor direct channel for compliance information.

Given that simply the incentive of getting a successful loan modification negotiation has not been sufficient at the national level nor has the settlements nor the changes in the HAMP regulations to incentivize the banks consistently shortening their assessment processes to be within 30 days each step of the way. Given any lack of timeliness and given the incredible dependence this process has on every step of the way meeting the 30-day deadlines, we recommend that there be a tolling process.

Since the banks are supposed to respond within 30 days and if they do not, the homeowner has no leverage to address that failing in their particular situation, that the Division of Banks recognize that every day past those 30-day periods that the bank does not meet its obligation that the clock on the 150 days stop. So if for instance the materials get to the bank, they say they send their receipt back to the homeowner identifying the 30th day for their response if it ends up being 45 days before they respond or 60 days before they respond, that those additional days 15 or 30 more days beyond the statutory 30 days be added on to the 150 days right to cure period.

This is not for punishment. This is because the process depends on 150 days. If the bank takes an extra 30 days somewhere in this process there will literally no longer be sufficient turnaround time within the 150 days for the process to complete. Given that that's true, it would not have been the homeowner's fault in this case that the process could not be completed, we believe that an extension of the right to cure period for whatever number of days that is, is merely to protect the integrity of this process as defined by the legislature so that it can be fairly completed to the benefit of both sides.

Now I've referred a few times to grievance process. We believe that the homeowner should be given a place to call if any of these steps are not working properly and provide whatever evidence has been required on their end. Again, so that the state can ensure that a process with tighter timelines and requiring, for instance, successful completion of the initial application and acceptance of that completion by the lender at a efficiency level that to date has been completely unmet in all national studies. So to protect the integrity and ensure that this works for both parties, we need a grievance process. We do not know whether the Division of Banks wants the grievance to come to them and copy it to the AG or how we might track if these problems are endemic – as they would be if the lenders are trying to meet this process run into the same problems with efficiency that they have at the national level.

This leads to the question of good faith efforts by banks or safe harbor for banks as we know the tightening of standards and regulations has been a consistent theme to improve the success of

HAMP and underlying all of the major settlements and to date even those major settlements have not guaranteed some of the basic legal standards that were traditional. Given that. we would strongly recommend that there should not be additional good faith effort leeway nor safe harbor leeway created. If the Division of Banks has not seen it themselves, we will submit the sample settlement agreements from the settlement with OCC and the Treasury Department and the Office of the Thrift as well as the AG's settlements. You will see these requirements about points of contact, numbers of applications that need to be submitted, time period for timely response, the need for transparency from the banks to homeowner, clarifications of the process and fundamental requirements (things like making sure that affidavits are based on personal knowledge, etc) have had to be re-clarified and re-clarified. We recommend the Division of Banks not create additional leniency to the 35b process right now that's pretty much directed and controlled by the banks and their assessment of the process. We seek this given the afore mentioned track record over at least the last four years with clear evidence of the failings.

We do recommend that the Division of Banks define the process for determining if a loan is a certain mortgage. As suggested above, we recommend a checklist. If the lenders find that a mortgage is not covered by the predatory lending characteristics, we would like them to have to provide the basis for that decision in their materials so that that can be tracked properly and identified. For instance, the requirement of the loan to value ratio we believe would require review of the origination documents. To date, the review of origination documents in the simplest sense has been required by the right to cure regulations, 244-35A. The examples of defaults we have seen have not met those requirements when they required review of origination documents. Therefore, we think that needs to be clarified and as we said we recommend a checklist providing the basis of any claim that a particular characteristic is not present in the loan or the origination documents that were specifically reviewed and why therefore any particular loan not be considered a certain mortgage loan under the new 244-35B.

Additionally, and equally critical, we believe the Division of Banks needs to create some uniformity and reporting system, for the calculation by lenders of the loss from foreclosure that they are using as a comparison to the Net Present Value calculation. Since the Commercially Reasonable test is a balancing test if there is no uniformity nor transparency for how that figure is calculated, the test itself could end up being a capricious exercise. Diligent lenders would find themselves with necessary guidance and we learn nothing as a civic process of trying to fairly address this crisis.

Therefore, we strongly recommend a form like a Net Present Value calculation that is uniform in presentation and understandable by the homeowner who is supposed to receive this calculation. It must minimally include, we believe, the following expenses:

- Standard legal fess
- Advertising costs
- Filing fees (such as land court)

• Recording fees
• Other fees
• Postage and other fees associated with required notifications
• Percentage loss from a foreclosure sale as opposed to value from a regular sale (national studies estimate a 22% loss) – calculated for the final sale to a private party if that does not occur at the auction itself (studies of these losses are available for a reasonable basis)
• Number of additional months of loss form non-payment until foreclosure
• Costs incurred in holding a foreclosure such as auctioneer, presence of a bank representative, etc.
• Projected loss from the decreasing market value of properties in this time period
• Expenses incurred post-foreclosure, including a percentage calculated for the eviction process pro-rated for the likelihood of having to legally evict occupants post-foreclosure.
And like the certain loan assessment, we believe the bases for these figures should be identified – study references, industry standard, even proprietary to the bank if that is the only basis.

As promised I attach the Miami-Dade form as the only reference I know from around the country.

In addition, it is critically important that the Division of Banks and the Attorney General, receive data and perhaps at least sample copies of these calculations so that required review of the implementation of the standard can be completed for the legislature and thereby, the public. Such information will also be critical for revisions in these regulations if needed to improve implementation and effectiveness of the new statute.

Are there any sections of Ch. 244 that, as a result of this legislation, create ambiguity in the foreclosure process?

We believe absolutely, yes. We recommend the following:

Where standards have been clarified in federal requirements, use them question. For instance, we think it's critically important that the net present value calculation has to follow federal standards. Even if the Division of Banks chose to further define net present value calculations which we think might be useful, we want to ensure that – as the last question about not creating ambiguity in the foreclosure process raises – creating new definitions of net present value would certainly create such ambiguity.

Another ambiguity that was created that we were trying to avoid is the income that homeowners are going to be required to provide in their loan modification application is apparently now supposed to be "verifiable". This is not a term that we believe has been litigated. As such, we think this could muddy the process. We would strongly recommend that the Division of Banks in

its regulations define “verifiable” income to be the kinds of income forms that HAMP has already identified as acceptable basis as proof of income.

Similarly the statue said that when a homeowner offers a counter proposal that they should provide substantiating documentation. We had tried to make sure that it was defined as “relevant” substantiating documentation. The reason is because if, let’s say, the lender offers me a loan modification at $2,000 per month; it’s clear from their calculation that they could have offered me $1800 per month and still save more money than they would lose if they foreclosed. I send back a negotiation that I want to pay $1800 per month. It is unclear to us what substantiating documentation is required by that. As long as I’m using less percentage of my income than the top amount allowed under HAMP and it’s still less loss to the bank than their cost to foreclose then that’s a completely valid offer from me; it does not seem to require additional substantiating documentation. This is a terminology again that to our knowledge has never been used in this context and has not been litigated; we’re just opening a can of worms. We would recommend that the Division of Banks clarify that that’s only if there is some relevant additional documentation to substantiate something – perhaps with examples since we have not been able to conceive of any. Otherwise, this is wiggle room for whoever receives this at the lender institution to define what substantiating documentation is and we do not know what it means.

In terms of questions 9, 10, and 11, we do believe that the Division of Banks has to put out regulations under 35C. It’s not clear to us why combining the regulations from 35B with 35A or 35C with 35B would be useful. Our instinct is that not combining them is fine and should clarify the differences between them.

Similarly, question 11 should the 35A notice be changed? We do not see anything in this legislation that requires that it be changed for any reason. There may be other reasons that would make sense to change something about the 35A regulations but that seems tangential to this process of regulation creation.

That said, under number nine we do believe there needs to be regulations issued under 35C – actually for the affidavits for both 35B and 35C. We would recommend that they be done on personal knowledge as all affidavits in our regular court rules of Civil Procedure require. We believe that they should be in sufficient detail to be verifiable again as generally required in Civil Procedure and we believe as those required by 244-15.

Most importantly, we would strongly recommend that they have to be recorded early enough at the Registry of Deeds so that that information is actually usable to litigate if the homeowner or the Attorney General or any other relevant party believes there is a problem with the affidavit. Since the assessing of whether the loan had commercially reasonably characteristics or not has to be done before the initial right to cure letter and new 35B notice has to be sent there’s no reason why that cannot be recorded by the end of the right to cure period at the Registry of Deeds. It

certainly should not be allowed to be recorded less than 45 days before the scheduled initial auction date.

Why? Because most of the protections of consumers in our state are done under MGL Chap. 93A and as such a 30-day demand letter is required. The homeowner needs to have opportunity to not catch the recording the very first day that the affidavit was recorded. It's not reasonable that somebody would be checking everyday for 210 days to catch the date on which it was recorded. And then it must still provide them with at least over 33 days in which to send a 93A demand letter and still file prior to the auction in court if they so choose.

The same should be true of the affidavit required for the note under 35C. Again the homeowner still needs time to act under consumer law and file a lawsuit prior to the auction date. We believe these should be filed shortly after the active military service filing at Land Court to really give homeowners a proper amount of time to even find out that these affidavits are being filed and they might have an opportunity to investigate those filings and sue if they have reason to believe that those recordings are inaccurate.

Otherwise these recordings can be done in accordance with the letter of the law, but the homeowner will have no opportunity to adjudicate them if they believe they are not accurate or not based on personal knowledge or not specific enough to be verifiable. Otherwise they will be too late to exercise their right – assuming the property's bought by an arm's length third party – to get the proper award of their property back should these affidavits be found to be unfair.

In fact, we thought that this timing requirement for the affidavit would be of interest to our friends in the lending institutions. Otherwise, if the affidavits are filed so late, a private third party arms-length purchaser can use the affidavit to protect the possibility of the foreclosure being reversed. The actual consequence for awarded damages in case of a foreclosure suit,the banks would have to pay as the affiant because the right to damages has been protected under these affidavit statutes, they'll actually end up paying not only for whatever the punitive cost is to the homeowner of the inaccurate affidavit, they're going to end up paying for the entire value of the homeowner not being able to recoup the home through a lawsuit. They will end up paying essentially for the entire value of the home. If the settlement falls under consumer law ,they might end up paying two or three times the value of the home because the home itself cannot be recouped. As our Supreme Judicial Court has pointed out, a home is not fungible. We would expect lenders would want to file these affidavits earlier. A more specific earliest filing date for the affidavit would be protective for their financial interests as well and, we hope they will join us in this request, be fair to all parties instead of the homeowner having their rights precluded in a way that we believe would be unfair and the banks getting to pay for the protection of the new buyer at auction.

We thank you very much for your consideration and please contact us for any further clarification. We have access to wide bodies of experience of borrowers, housing counselors, and

our large extensive legal team. I and the resources of the Mass Alliance Against Predatory Lending are at your service through this process. We noted specific areas where we would welcome working with you directly. Please do not hesitate to contact me.

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Addendum: additional commentary in relation to commentary presented by various parties at the Hearing on Regulations by the Div of Banks.

The Mass Mortgage Bankers Association commented on a concern for the meaning of affordable monthly payments. This comment identifies additional language where the use of a new term could muddy the waters and led to new litigation for clarification of a term that is actually referring to standard calculation. Again, we would recommend simply defining this in accordance with existing definitions for procedures: in this case following along the affordability assessments for borrowers seeking a loan modification as outlined in the various existing net present value calculations. I refer you here to our colleague Attorney Jeff Wall for the National Consumer Law Center.

In addition, the Bankers Associations, and in accordance with our testimony, raised concerns about the borrower sending in documents, but that the documents the bank might want might include additional documentation. Like us, they are concerned that even if the homeowner replies within the 30 days with basic documents that they will then only have 30 days to do an assessment even if they believe they need additional documentation. As we expressed, this timeline cannot be extended without endangering the possibility of the completion of the many steps in the back and forth by-mail negotiation process within 150 days. While we appreciate that the CEO from Cape Cod Five suggested an additional ten days be added to the time period so the lender can get time to request more documents, obviously, the legislation with an absolute cut off of 150 days does not allow for the addition of more time for documents to be sent back and forth.

We reiterate, therefore, our concern about this. If the homeowner has met their good faith expectation we do not believe they should be penalized obviously by a shortening of the right to cure period as if they had not met the obligation, but in addition, if additional time is needed for the sending of documents back and forth it would be just as unfair to the homeowner to thereby cut off the negotiation process at the end when it's close to completion because the 150 days deadline has been reached.

We underscore our recommendation that given that both sides are aware that there may be problems with getting enough documents to the lender, either because the lender will not acknowledge the receipt of documents as has been well documented in studies of the problems of

the by-mail negotiation process under HAMP, but more importantly, that if there are reasonable requests for documents, there should be a tolling of the clock for any additional time that's needed by the bank to get the additional documents they need to do their assessment. By statute that assessment is only permitted 30 days from the receipt of the initial documents from the borrower. We believe our proposed solution to a situation would address what both sides have agreed could be really problematic.

We do not agree that the lender should be deemed in compliance if they have met federal program standards since the whole point in the state creating new standards is to create a procedure that includes the borrower finding out what the costs of foreclosure would be and being able to have that information as key element of their negotiation process in an attempt to get a loan modification. Obviously meeting federal program standards that do not include the new commercially reasonably standard calculation nor the communication of that information to the borrower would defeat the purpose of creating a new procedure connected to that calculation by the state.

We would like to have an opportunity to review whatever model form 35B communication was drafted as referred to I believe by the Mass Mortgage Bankers Association, if not, it was by the Mass Bankers Association.

In addition, we strongly disagree that affidavits under 35 and 35A should be combined. They cover two quite different things and obviously 35B will only apply to the new standard nor would we recommend the combining of 35B and 35C for the same reason.

We will be replying about the question of Land Court guidelines needing to be revised and we appreciate that that was brought to our attention at the hearing.

I'll underscore Attorney Cohen's comments that bankruptcy filings obviously need to be allowed in accordance with federal law anywhere during the foreclosure process. Frequently homeowners assume based on notifications they get regarding loan modifications that the lender is scrambling as they are to get a loan modification negotiated prior to foreclosure; therefore, they rarely seek other resolution to the foreclosure situation or exert their rights to postponements or other elements of addressing the foreclosure situation such as filing bankruptcy (to lower their other debt so that they can afford the mortgage or filing bankruptcy to hold off the mortgage) until the very last minute. We'd like that to change, but so long as the average borrowers are unaware of the failure rate of loan modification negotiations and that to date, again, for reasons we don't understand, the banks have not been as eager to find a loan modification solution prior to foreclosure, they will continue to not find try to exercise other rights until later in the process.

We strongly disagree that previous modifications should impact homeowner's right to one under the new standard. Early modifications have been well documented to have often provided homeowners with worse payment arrangements. There is nothing in the law that provides for lenders to not provide borrows another opportunity to modify based on the new commercially

reasonably alternative calculation It hasn't existed before this would not be a repeat of a prior process. It's a new process with additional information that hopefully will increase the effectiveness of loan modification negotiation.

Mass Bankers Association asked for clarification that good faith on the part of the lenders would require an analysis of the loan at the time of origination. There is no question that some of the certain loan characteristics do require for instance we believe a loan to value ratio will require analysis of the documents from the origination and obviously that must be done.

We do not recommend combining as requested by the Mass Bankers Association of borrowers who qualified previously for loan modifications with the new requirements. We believe each of these need to be analyzed separately.

Finally, just as a clarification, Attorney Cohen included in her commentary a version of a possible 35B, a notification letter to the borrower that we had written as part of our work in the legislature and it references a 60 days initial period, obviously it's a 30 days initial period for the borrower.