



**Statement of the Massachusetts Bankers Association  
Proposed Regulations 940 C.M.R. 38.00: Unfair and Deceptive Fees  
Office of the Attorney General  
December 20, 2023**

On behalf of our more than 120 commercial, savings and cooperative banks and federal savings institution members with more than 72,000 employees located throughout the Commonwealth and New England, the Massachusetts Bankers Association (MBA) appreciates the opportunity to provide our comments regarding **the Proposed Regulations 940 C.M.R. 38.00: Unfair and Deceptive Fees** as proposed by Massachusetts Attorney General Andrea Campbell.

While we believe that the intent of the proposed regulations is not to create additional regulatory requirements for the banking and financial services industries, we would like to raise a few concerns with the draft proposal as currently written as it may unintentionally expand the scope of violations that may be considered as unfair and deceptive acts or practices (UDAP).

We understand the scope of the proposed regulation is drafted with the intention to be broad; however, we have concerns that “product” and “sale” are defined so broadly that they may include financial services, which would have several negative impacts on our members and the Massachusetts residents they serve.

As you know, the banking industry is among the most regulated industries across the Commonwealth and the United States and is mandated to follow stringent protocols as stipulated by state and federal laws and regulations. Unlike other industries, FDIC-insured banks are subject to regulators such as the Division of Banks, the FDIC, the Federal Reserve, the Office of the Comptroller of Currency and the Consumer Financial Protection Bureau, depending on their charter, and must consider and strictly adhere to a host of rules and directives in regard to protecting their customers’ personal and confidential information, financial health, as well as fully disclosing information on certain fees charged for various services to customers, to only name a few. For such reasons and more, we respectfully request an exemption from 940 C.M.R. 38.00, including the definitions of “product” and “sale” for financial products and/or services offered by Massachusetts state or federally chartered banks.

For your convenience and consideration, we believe that the language below, or language like it, would allow for such an exemption for Massachusetts state or federally chartered banks:

*“940 C.M.R. 38.00 shall not apply to a party doing business as allowed by law of any commonwealth or state, or of the United States relating to national banks, trust companies, savings banks, co-operative banks, federal savings banks or federal savings and loan associations.”*

For further context and unlike the proposed regulations offered by Attorney General Campbell, certain federal agencies appear to be deliberately targeting the financial services industry by going after the so-called “junk fees” and misrepresenting what those fees do, how they are applied, and the manner in which they are disclosed to customers. As mentioned above, the banking industry is obligated to abide by state and federal laws and regulations that mandate that such fees are conspicuously posted so that customers understand the services for which they pay. The same cannot be said for other organizations in industries outside of financial services, which the proposed regulations appear to target. We believe that the financial services industry is a model for other industries to follow with regard to consumer protection, and we support efforts that raise such standards while ensuring no unintended consequences negatively impact and additionally burden our already highly-regulated industry.

We appreciate the opportunity to provide our comments regarding **the Proposed Regulations 940 C.M.R. 38.00: Unfair and Deceptive Fees**. We look forward to working with Attorney General Campbell and her team. Please do not hesitate to contact us if we can be of any assistance to you.