

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

IRRC Number: #2620

(1) Agency

Department of Banking

(2) I.D. Number (Governor's Office Use)

3-43

(3) Short Title

Proper Conduct of Lending and Brokering in the Mortgage Loan Business

(4) PA Code Cite

10 Pa. Code Chapter 46

(5) Agency Contacts & Telephone Numbers

Primary Contact: Robert C. Lopez, Assistant Counsel,
717-787-1471

Secondary Contact: Carter D. Frantz, Acting Chief Counsel,
717-787-1471

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The proposed regulation defines the proper conduct of lending and brokering in the mortgage loan business in Pennsylvania for licensees under the Mortgage Bankers and Brokers and Consumer Equity Protection Act (the "MBBCEPA"), the Secondary Mortgage Loan Act (the "SMLA"), and the Consumer Discount Company Act (the "CDCA")(collectively the "Acts"). The regulation sets forth for licensees under the Acts ("Licensees") a standard for lending and brokering mortgage loans in Pennsylvania and prohibits certain improper conduct during the mortgage loan process. In particular, the regulation requires Licensees to perform an analysis of a borrower's ability to repay an offered mortgage loan and provide additional disclosures concerning important loan terms that affect a borrower's short and long term payments.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

1. Section 310(a) of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P.S. § 456.310(a));
2. Section 16(1) of the Secondary Mortgage Loan Act (7 P.S. § 6616(1)); and
3. Section 12 of the Consumer Discount Company Act (7 P.S. § 6212).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The proposed regulation addresses improper brokering and lending practices occurring in the mortgage loan business as a result of the proliferation of complex mortgage loan products and a decline in underwriting standards for mortgage lending. Such practices include: not properly considering and analyzing whether or not borrowers can reasonably repay an offered mortgage loan, failing to appropriately inform borrowers of important loan terms that could affect their ability to satisfy payment obligations and various other practices that taint the process of originating, processing and closing mortgage loans. The improper practices addressed by the regulation have the potential to harm not only borrowers, but all parties to the mortgage loan process, including, lenders, brokers, appraisers and real estate agents.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

The primary general welfare risk associated with nonregulation is the continued practice of offering and providing mortgage loan products to borrowers without conducting a reasonable analysis of whether or not the potential borrower has the ability to repay the offered mortgage loan. Borrowers who are not able to repay their mortgage loans face the ultimate risk of foreclosure on their residence. Failure to promulgate the regulation will also allow Licensees to operate without clear guidance from the Department as to what improper mortgage lending and brokering practices are in Pennsylvania.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The primary beneficiaries of the regulation are borrowers seeking mortgage loans from Licensees. Licensees will be required to perform a reasonable analysis as to whether or not a borrower can afford to repay an offered mortgage loan. Borrowers will also benefit from the distribution of additional information regarding specific loan terms that have a direct bearing on the short and long term payment obligations under the offered mortgage loan. Furthermore, borrowers will benefit from the clear prohibition of practices that place them at a disadvantage in the loan process and increase the risk of unknowingly entering into excessively onerous financial loan obligations.

Licensees will also benefit from the clear and explicit prohibitions and requirements regarding the proper conduct of brokering and lending in the mortgage loan business. The regulation should also benefit Licensees by leading to fewer secondary market "buy-backs" of sold loans and in increased confidence of Pennsylvania borrowers in Licensees as a result of borrowers knowing that the Licensees are required to make a reasonable determination of their ability to repay any offered loan.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The Department anticipates that certain licensees will initially be adversely affected by the regulation to the extent they are required to change current business practices that would no longer be appropriate under the regulation, *i.e.* cost of compliance. These costs would primarily result from changing business practices to include a reasonable analysis of a borrower's ability to repay an offered mortgage loan and providing borrowers with an additional one-page disclosure form prescribed by the Department during the mortgage loan process. The remaining provisions of the regulation are prohibitions and requirements that are not expected to significantly affect Licensees adversely. The Department believes that any adverse effects will be experienced primarily in the initial effective period of the regulation. All licensees under the MBBCEPA, SMLA and CDCA will be covered by the regulation and will potentially be adversely affected (currently, 6,383 licensees).

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All licensees under the MBBCEPA, SMLA and CDCA. Currently, this amounts to:

- 3,652 licensees under the MBBCEPA
- 2,683 licensees under the SMLA
- 48 licensees under the CDCA

Branch licensees are required for each separate branch location of Licensees. Currently, total branch licenses issued by the Department are as follows:

- 1,917 branch licenses under the MBBCEPA
- 2,717 branch licenses under the SMLA
- 432 branch licenses under the CDCA

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The proposed regulation was extensively vetted over the past two years with industry associations and representatives as well as consumer organizations and representatives. The vetting culminated in a public hearing and request for written comment that was noticed in the *Pennsylvania Bulletin* as an Advanced Notice of Proposed Rulemaking on July 29, 2006. After the public hearing in September of 2006, the Department continued to discuss the regulations and receive input from the public and interested parties up until the time of the submission of the regulation for promulgation.

The following is a list of entities that either testified and/or submitted comments during the advanced notice period:

- Armstrong Financial Services Company
- Association of Community Organizations for Reform Now (ACORN)
- Fairway Consumer Discount Company
- K. Tucker Landon, Attorney
- Mortgage Bankers Association of Pennsylvania
- Pennsylvania Association of Mortgage Brokers
- Pennsylvania Bankers Association
- Pennsylvania Credit Union Administration
- Pennsylvania Financial Services Association
- Pennsylvania Retailers' Association

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- Pittsburgh Community Reinvestment Group
- Responsible Mortgage Bankers Coalition
- State Board of Certified Real Estate Appraisers
- TBI Mortgage Company
- United Neighborhood Centers
- Kenneth J. Noll, Noll Farms
- Housing Alliance of Pennsylvania
- Mary A. Schmidt, Lost Acres Farm.
- Community Action Committee of Lehigh Valley
- Community Legal Services
- Unemployment Information Center
- Darnell Tanksley, Consumer
- Unemployment Project and Unemployment Information Center
- John Ivey, Consumer

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The Department acknowledges that licensees under the MBBCEPA, SMLA and CDCA will likely incur costs associated with compliance with the regulation during an initial compliance period; however, the extent of such costs cannot be reasonably be determined. The costs associated with compliance will necessarily vary among Licensees depending on numerous factors, including the following:

(1) The extent that current business practices deviate from what is required under the regulation. Licensees currently operating with strong internal controls and underwriting programs would not likely need to significantly alter their current business practices. However, licensees that have weak or nonexistent internal controls or underwriting programs will need to significantly alter current business practices and, in some instances, may need to retain consultants.

(2) The ability of Licensees to incorporate an additional disclosure form in their loan process. Depending upon the size of the licensee and the method in which disclosures are already provided, costs associated with modifying automated electronic disclosure systems or programs may be incurred.

To mitigate compliance costs and assist Licensees, the Department intends to work with Pennsylvania continuing education suppliers to develop and implement specific courses to address compliance under the regulation (Licensees under the MBBCEPA are required to attend continuing education courses as a condition of licensure). The Department also intends to provide compliance and examination workshops, informational packets and additional materials to its licensees. Furthermore, in April of 2007, the Department sent to all Licensees Guidance on Nontraditional Mortgage Products which will greatly assist Licensees by providing a framework for revising their business practices in a manner that is consistent with the purpose of the regulation. Lastly, it is anticipated that professional associations for mortgage brokers and lenders will assist its members in any required transition.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

While the Department believes that there will be long term savings to local governments in the form of decreased housing foreclosures and the associated costs, such savings are unquantifiable at this time. There are no anticipated costs to local governments.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

While the Department believes that there will be long term savings to state governments in the form of decreased housing foreclosures and the associated costs, such savings are unquantifiable at this time. There are no anticipated costs to state government.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	None.					
Local Government	Unable to be determined.					
State Government	Unable to be determined.					
Total Savings						
COSTS:						
Regulated Community	Unable to be determined.					
Local Government	None.					
State Government	None.					
Total Costs						
REVENUE LOSSES:						
Regulated Community	Unable to be determined.*					
Local Government	None.					
State Government	None.					
Total Revenue Losses						

*Compliance with the regulation will appropriately lead to decreased gross revenue for those Licensees who currently provide loans to borrowers without due regard to the borrowers' ability to repay. These Licensees will no longer be permitted to provide mortgage loans to borrowers without reasonably considering whether or not the borrower has the ability to repay the offered loan as required by the regulation. These losses are not able to be quantified by the Department.

(20a) Explain how the cost estimates listed above were derived.

The Department is unable to determine or estimate the costs of compliance with the regulation. Please refer to the Department's answer to Question No. 17.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Not applicable.				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Although the Department is not able to determine the costs to Licensees, the Department believes that any initial costs incurred as a result of compliance are greatly outweighed by the benefits of the regulation. The overall design of the regulation is intended to prevent borrowers from being placed into loans that mortgage lenders and brokers know, or reasonably should know, borrowers will not be able to repay. The regulation also explicitly prohibits practices that put borrowers at a higher risk of extreme financial difficulty and foreclosure upon their residence.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There were no nonregulatory alternatives considered because the Department seeks to put into place requirements regarding the proper conduct of lending and brokering under the MBBCEPA, SMLA and CDCA that have the force and effect of law.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The Department initially considered issuing a statement of policy regarding proper brokering and lending in the mortgage loan business. The statement of policy was dismissed because the Department determined that in order to achieve its policy goal of protecting consumers and providing clear guidance to Licensees, it is necessary to put into place prohibitions and requirements that have the force and effect of law.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

The federal government does not directly regulate or license non-depository mortgage lenders and mortgage brokers, so there is no corresponding licensing law or regulation to directly compare with the regulation. Regarding the ability to repay analysis requirement, the federal Home Ownership and Equity Protection Act ("HOEPA") does require an ability to repay analysis for certain loans that meet its threshold requirements. The ability to repay analysis required by HOEPA is comparable to the analysis required by the regulation; however, the regulation explicitly requires verification of income and fixed expenses. The Department believes that only a small percentage of Licensees originate loans covered by HOEPA because of the high thresholds and additional requirements of the act. Regarding disclosures, the Truth in Lending Act and Real Estate Settlement Procedures Act require certain disclosures be given to borrowers by Licensees. The Department believes that the one-page disclosure form for key terms affecting payments under the offered loan serves to complement the disclosures required under federal law.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulation is more rigorous than the laws governing non-depository mortgage lenders and mortgage brokers in other states primarily due to the ability to repay analysis requirement. Locally, of the six states contiguous to Pennsylvania, three have laws with ability to repay provisions. Maryland and New York have requirements for an ability to repay analysis for a specific type of loan, commonly referred to as "high-cost home loans" or "covered loans" (Pennsylvania also has an ability to repay analysis for "covered loans," which are exempted from coverage under the regulation). New York's high-cost home loan ability to repay analysis is similar to the regulation in that it requires verification of income. Ohio requires an ability to repay analysis comparable to the regulation and is not limited to a specified set of loans. Delaware, New Jersey and West Virginia have no ability to repay analysis requirement. Nationally, approximately 25 states have some form of an ability to repay analysis for high-cost or covered home loans. The regulation generally is broader in scope by covering prime loans and explicitly requiring verification of income/fixed expenses.

The remaining provisions of the regulation are not believed by the Department to be appreciably more onerous or stricter than those of other states.

The Department does not believe that Pennsylvania would be put at a competitive disadvantage with other states as a result of the regulation. Due to recent collapse of several large non-depository mortgage lenders and the turmoil currently being experienced by the mortgage sector, an ability to repay analysis has nationally come to the forefront of discussions on how to prevent future instability for borrowers and the industry. For example, other states within the nation are moving toward similar requirements in their respective regulatory schemes. As of this date, 32 states (including Pennsylvania) have adopted the Conference of State Banking Supervisors ("CSBS") and American Association Residential Mortgage Regulators ("AARMR") Guidance on Non-Traditional Mortgage Products (the "CSBS/AARMR Guidance"). The CSBS/AARMR Guidance contains within it an ability to repay analysis comparable to the analysis within the Department's regulation. Additionally, the CSBS/AARMR Guidance parallels the guidance issued by the federal banking regulators to federal and state depository institutions across the nation. The regulation primarily differs from the guidance in its application to prime loans.

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(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

On September 12th and 13th of 2006, the Department held a public hearing regarding the regulation and a proposed statement of policy in order to receive written and oral comments. There are no further public hearings or informational meetings scheduled.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes. Section 46.2(e)(5) of the regulation requires Licensees to maintain in borrower loan files the documentation and information supporting the Licensees' ability to repay analysis. Section 46.2(d) requires the retention of executed disclosure forms prescribed by the Department under Section 42.2(b).

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The regulation does not have any such special provisions; however, the disclosure form prescribed by the Department in subsection (b) will also be made available by the Department in Spanish.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The anticipated effective date of Subsections (b) through (e) of the regulation will be 90 days from publication of the final approved regulation in the *Pennsylvania Bulletin*. All remaining provisions of the regulation will be effective immediately upon publication.

(31) Provide the schedule for continual review of the regulation.

The regulation will be continually reviewed by the Department staff.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

2620.

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REVIEW COMMISSION

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Copy below is hereby approved as to
form and legality. Attorney General

[Signature]

BY: _____

(Deputy Attorney General)

JUN 28 2007

Copy below is hereby certified to be a true
and correct copy of a document issued,

prescribed or promulgated by:

Department of Banking

(Agency)

DOCUMENT/FISCAL NOTE NO. 3-43

DATE OF ADOPTION: _____

BY: *[Signature]*

TITLE: Acting Secretary of Banking
(Exec. Officer, Chairman or Secretary)

Check if applicable.
Copy not approved. Objections
attached.

Copy below is hereby approved as
to form and legality.

Executive
or Independent Agencies:

[Signature]

BY: _____

Andrew C. Clark

JUN 5 2007

DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independent Agency)

(Strike inapplicable title)

Check if applicable. No
Attorney General approval or
objection within 30 days
after submission.

PROPOSED RULEMAKING
DEPARTMENT OF BANKING
BUREAU OF CONSUMER CREDIT AGENCIES
PROPER CONDUCT OF LENDING AND BROKERING IN THE MORTGAGE LOAN BUSINESS
[10 PA. CODE CH. 46]

PROPOSED RULEMAKING

DEPARTMENT OF BANKING

TITLE 10 – BANKS AND BANKING

DEPARTMENT OF BANKING

[10 PA. CODE CH. 46]

Notice of Proposed Rulemaking; Regulations Regarding the Proper Conduct of Lending and Brokering in the Mortgage Loan Business

The Commonwealth of Pennsylvania Department of Banking (the "Department"), is publishing this notice to solicit input regarding the Department's proposed rulemaking regarding the proper conduct of lending and brokering in the mortgage loan business for licensees under the Mortgage Bankers and Brokers and Consumer Equity Protection Act, 63 P.S. § 456.101 *et seq.*, the Secondary Mortgage Loan Act, 7 P.S. § 6601 *et seq.* and the Consumer Discount Company Act, 7 P.S. § 6201 *et seq.* (collectively referenced hereafter as the "Acts").

Purpose of Proposed Rulemaking

The Department is promulgating this regulation because in the past decade the mortgage loan business has significantly increased in complexity and competitiveness, resulting in a drastically changed borrowing landscape. Unfortunately, because of this complexity and competitiveness, borrowers may not understand the loan products offered to them or the process of obtaining a loan. The Department also believes that there are individuals and entities in the mortgage loan business who take advantage of borrowers by placing them in loan products they are not reasonably capable of repaying. Therefore, the Department is proposing this regulation governing the proper conduct of lending and brokering to persons and entities operating in the mortgage loan business under the Acts.

Explanation of Proposed Regulatory Requirements

This proposed rulemaking provides rules for the proper conduct of lending and brokering in the mortgage loan business for licensees under the Acts. The regulation sets forth requirements for additional disclosures regarding the terms of offered loans and for licensees to perform an ability to repay analysis when offering loans to consumers. The regulation also prohibits certain practices in the mortgage loan process that harm consumers and businesses alike.

Entities Affected

Existing and future licensees under the Acts will be affected by the proposed rulemaking.

Costs and Paperwork Requirements

The proposed rulemaking will have no fiscal impact on the Department, the Commonwealth and its political subdivisions. The proposed rulemaking will fiscally impact licensees under the Acts to the extent licensees may need to incur costs in order to alter or revise current business practices to comply with the regulation.

Effectiveness / Sunset Date

Subsections (b) through (e) of the proposed rulemaking will be effective 90 days from publication of the final approved regulation in the *Pennsylvania Bulletin*. All remaining provisions of the proposed rulemaking will be effective immediately upon publication.

Regulatory Review

Pursuant to section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 5, 2007, the Department submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission ("IRRC") and the Chairmen of the House Committee on Commerce and the Senate Committee on Banking and Insurance. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days after the close of the public comment period, specifying the regulatory review criteria that have not been met. The Regulatory Review Act sets forth procedures that permit the General Assembly and the Governor to review IRRC's comments, recommendations or objections prior to final adoption of the proposed rulemaking.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking within 30 days after publication in the *Pennsylvania Bulletin* to the Office of Chief Counsel, Department of Banking, Attention: Public Comment on Regulation 4-43, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101-2290, Telephone No.: (717) 787-1471.

VICTORIA A. REIDER,
Acting Secretary

Annex A

TITLE 10. BANKS AND BANKING

PART IV. BUREAU OF CONSUMER CREDIT AGENCIES

**CHAPTER 46. PROPER CONDUCT OF LENDING AND BROKERING IN THE
MORTGAGE LOAN BUSINESS**

Sec.

- 46.1. Definitions.
- 46.2. Proper conduct of lending and brokering in the mortgage loan business.
- 46.3. Enforcement.

Authority

The provisions of this Chapter 46 are issued under section 310(a) of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P.S. § 456.310(a)), section 16(1) of the Secondary Mortgage Loan Act (7 P.S. § 6616(1)) and section 12 of the Consumer Discount Company Act (7 P.S. § 6212), unless otherwise noted.

Source

The provisions of this Chapter 46 adopted _____, effective _____, Pa.B. ____, unless otherwise noted.

§ 46.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Advertising – As defined in 12 CFR 226.2(a)(2) (relating to definitions and rules of construction).

Applicant – A person who submits an application for a loan.

Application – As defined in 24 U.S.C. § 3500.2(b) (relating to definitions).

CDCA – The Consumer Discount Company Act (7 P. S. §§ 6201-6219).

Consummation – As defined in 12 CFR 226.2(a)(13) (relating to definitions and rules of construction).

Covered loan – A covered loan as defined in section 503 of the MBBCEPA (63 P.S. § 456.503).

First mortgage loan – A mortgage loan as defined in section 302 of the MBBCEPA (63 P.S. § 456.302).

Income – As defined in 26 U.S.C. § 61 (relating to definitions).

Licensee – A licensee under the MBBCEPA, SMLA, CDCA or a partially exempt entity under the MBBCEPA.

Loan – A first mortgage loan or secondary mortgage loan, or both, as the context may require. The term does not include a covered loan.

MBBCEPA – The Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. §§ 456.101 - 456.3101).

Mortgage loan business – The first mortgage loan business as defined in section 302 of the MBBCEPA, the secondary mortgage loan business as defined in the section 3(a)(5) of the SMLA (7 P.S. § 6603(a)(5)), and any kind of mortgage lending or brokering activity conducted by a licensee under the CDCA.

Person – A person as defined in section 302 of the MBBCEPA, section 2 of the SMLA (7 P.S. § 6602) and section 2 of the CDCA (7 P.S. § 6202), as applicable.

Secondary mortgage loan- A secondary mortgage loan as defined in section 2 of the SMLA.

SMLA – The Secondary Mortgage Loan Act (7 P.S. §§ 6601-6627).

§ 46.2. Proper conduct of lending or brokering in the mortgage loan business.

(a) *Advertising.* A licensee may not engage in false or misleading advertising.

(b) *Disclosures to applicant.* On a form prescribed by the Department and signed and dated by the applicant and the licensee, a licensee who has contact with the applicant shall disclose the following to the applicant no later than three business days after the application is received or prepared by the licensee:

- (1) If the lender providing the loan will escrow the applicable taxes and insurance.
- (2) If the licensee is a lender with the ability to directly lock-in a loan interest rate.
- (3) Whether the loan contains a variable interest rate or balloon payment feature.
- (4) Whether the loan includes a prepayment penalty.
- (5) Whether the loan has a negative amortization feature.

(c) *Required redisclosures.* A licensee who has issued the disclosure form required by subsection (b) shall issue an updated disclosure form at the time the licensee knows or reasonably should know that the initial disclosure form is inaccurate.

(d) *Required retention of disclosure form.* A licensee shall retain the disclosure form required by subsections (b) and (c) in the applicant's loan file.

(e) *Evaluation of applicant ability to repay.*

(1) A licensee shall not offer a loan without having reasonably determined, based on the documents and information provided under this subsection, that the applicant will have the ability to repay the loan in accordance with the loan terms and conditions by final maturity at the fully indexed rate, assuming a fully amortized repayment schedule.

(2) In performing an analysis to determine whether an applicant will have the ability to repay a loan, a licensee shall consider, verify and document the:

- (i) income of the applicant.
- (ii) fixed expenses of the applicant.

(3) A licensee may consider and document information in addition to verified income and fixed expenses as required in subsection (e)(2) in determining an applicant's ability to repay an offered loan, provided that the additional factors are reasonably related to an applicant's ability to repay.

(4) A licensee shall not primarily rely upon the sale or refinancing of an applicant's collateral in determining an applicant's ability to repay an offered loan.

(5) All records, worksheets, and supporting documentation used in the licensee's ability to repay analysis shall be maintained in the applicant's loan file.

(6) In determining an applicant's ability to repay a loan offered under this subsection, a licensee shall not ignore facts or circumstances that it knows or reasonably should know which would indicate that an applicant does not have the ability to repay the offered loan.

(7) In addition to the analysis required by this subsection, great weight and due consideration shall be given to the Guidance on Nontraditional Mortgage Product Risks, as amended, issued by the Department in establishing a licensee's internal procedures and guidelines when implementing the ability to repay analysis required by this subsection.

(f) *Loan transaction prohibitions.* A licensee may not:

(1) Advise or imply to an applicant that the applicant's income is not relevant to the loan transaction.

- (2) Recommend or imply that an applicant default on any existing contract or financial obligation.
- (3) Advise or induce an applicant to refinance an existing loan or otherwise enter into a new financial obligation without performing the ability to repay analysis required by subsection (e).
- (4) If an applicant qualifies for a loan offered by the licensee, offer to the applicant a covered loan without advising the applicant that the applicant qualifies for a loan other than a covered loan.
- (5) Advise or imply that an applicant should ignore any required disclosures or suggest that a document or the execution of any document is unimportant or of no consequence.
- (6) Direct, encourage, permit or otherwise be involved with the improper execution of any document, including:
 - (i) Requesting or allowing an applicant to sign documents that contain blank spaces where material information regarding the loan transaction is required.
 - (ii) Permitting the execution of documents where signatures are required to be witnessed without the witnesses being physically present.
 - (iii) Permitting someone other than the required signatory to execute a document unless otherwise authorized by law.
- (7) Knowingly submit or permit or encourage an applicant or third party to submit, false or misleading information, or information that the licensee reasonably should know is false or misleading, to any party to a loan transaction.
- (8) Improperly influence, or attempt to improperly influence:
 - (i) An appraiser by committing any act or omission that is intended to:
 - (A) Compromise the independent judgment of an appraiser.
 - (B) Ensure that an appraisal matches a requested or target value.
 - (ii) Any other entity related to the mortgage loan business, such as notaries, title companies, real estate agents, builders and sellers of properties.
- (9) Obtain insurance required for a loan for an applicant at loan consummation without providing the applicant with the opportunity to secure or provide evidence of their own insurance.

(10) Charge an applicant a fee for any legally required notices or disclosures unless otherwise authorized by law.

(11) Pay compensation to or receive compensation from, contract with, or employ any person engaged in the mortgage loan business who is not licensed or otherwise exempt from licensure.

(12) Render legal advice to an applicant.

(g) *Loan funding.*

(1) A licensee lender may not refuse or fail to fund a consummated loan, other than when an applicant rescinds the loan in accordance with 12 CFR 226.15 or 226.23 (relating to the right of rescission), as applicable.

(2) A licensee lender shall fund a consummated loan in a reasonable time period after consummation of the loan or in accordance with any commitment or agreement with the applicant; provided that, if an applicant has a right of rescission under 12 CFR 226.15 or 226.23 (relating to the right of rescission), a licensee lender is not required to fund a consummated loan in accordance with this subsection until after the applicable recession period has ended.

(3) Any post-closing underwriting or quality control review conducted by a licensee lender after the consummation of a loan shall not delay the funding of a loan or result in a failure or refusal to fund the loan in accordance with the provisions of this subsection.

(4) A licensee shall disburse loan funds in accordance with any commitment or agreement with the applicant.

(h) *Licensee responsibility to provide documents.* A licensee shall provide to an applicant or authorized representative of an applicant, unless prohibited by federal or state law, copies or originals of the documents associated with a loan that an applicant has paid for or signed, such as loan applications, appraisals, surveys, loan documents, disclosures and any fee agreement executed by the applicant and the licensee.

(i) *Payoff statement or statement of mortgage reinstatement.* A licensee lender shall provide a borrower with payoff statements or statements of mortgage reinstatement, as applicable, for the borrower's loan within 7 business days of receipt of a written request by a borrower or a person authorized by the borrower.

§ 46.3. Enforcement.

Violations of the provisions of this chapter shall be violations of the MBBCEPA, SMLA and CDCA, as applicable.

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER: 3-43
SUBJECT: PROPER CONDUCT OF LENDING AND BROKERING IN THE MORTGAGE
LOAN BUSINESS
AGENCY: DEPARTMENT OF BANKING

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7/5/07	<i>Jamie Macan</i>	HOUSE COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT <i>COMMERCE COMMITTEE PHM</i>
	<i>Noel M. Burch</i>	<i>7-5-07 PHM</i> SENATE COMMITTEE ON BANKING & INSURANCE
7/5/07	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL (for Final Omitted only)
7/5/07	<i>Marya Geras</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

July 2, 2007