



PENNSYLVANIA ASSOCIATION OF COMMUNITY BANKERS

THE VOICE FOR COMMUNITY BANKING IN PENNSYLVANIA SINCE 1876

October 29, 2008

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Mr. Arthur Coccodrilli, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Re: Comments on Notice of Final Rulemaking/Pennsylvania Department of Banking/Bureau of
Consumer Credit Agencies/Proper Conduct of Lending and Brokering in the Mortgage Loan
Business/10 Pa Code Chapter 46/ Regulation 3-43 ("Proposed Regulation")
Our File No. 07-510

Dear Mr. Coccodrilli:

By this letter, the Pennsylvania Association of Community Bankers ("PACB") is writing on behalf of its more than 150 community bank members to provide comments on the Proposed Regulation to require mortgage companies and professionals to evaluate an applicant's ability to repay a loan and to provide for clear disclosure of key loan terms.

BACKGROUND ON COMMUNITY BANKING INSTITUTIONS

Pennsylvania community banking institutions are local depository institutions that provide mortgage and other loans to consumers and small businesses. Community banks engage in recurring lending business in their communities, and as a general matter hold many of their loans instead of selling the vast majority of them to Fannie Mae and Freddie Mac. It follows that the combined assets of over \$90 billion held by our community banks are almost entirely invested in the Commonwealth of Pennsylvania and its citizens.

Pennsylvania community banks are already heavily regulated by federal and state banking regulatory agencies, including the Pennsylvania Department of Banking, Federal Deposit Insurance Corporation, the federal Office of Comptroller of the Currency, federal Office of Thrift Supervision, and the Board of Governors of the Federal Reserve.

Our community banks did not participate in subprime lending and have very few mortgage foreclosures as confirmed by a recent PACB survey. In March 2005, the Department of Banking presented to the Pennsylvania House of Representatives its study titled "Losing the American Dream: A Report on Residential Mortgage Foreclosures and Abusive Lending Practices." The study confirmed that abusive lending practices, particularly in the subprime mortgage industry, were a significant factor contributing to Pennsylvania's higher than usual foreclosure rate. In August 2004, the Department released its study on mortgage foreclosures in Monroe County,

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Pennsylvania, where alleged fraudulent practices by builders, appraisers and mortgage companies resulted in a rash of home foreclosures. As a general matter, it remains our understanding that these Department studies indicated in effect that Pennsylvania community banks were not involved in subprime lending and did not commit inappropriate actions to cause or contribute to the increase in residential mortgage foreclosures in the Commonwealth.

Pennsylvania community banks can also be distinguished from the regional and nationally present large banks by the fact that the federal government is seeking to assist such banks with their subprime mortgage portfolio problems by investing on a mandatory basis approximately \$250 billion in preferred stock capital into the nine largest banks in the United States. No such investment is required of Pennsylvania's community banks because they were not part of the subprime mortgage crisis since they did not originate or acquire such high risk mortgage loans.

Based on the foregoing, PACB asserts that community banks, as well as their subsidiaries and affiliates, are unique and should not be made subject to additional residential mortgage rules in Pennsylvania.

COMMENTS ON PROPOSED REGULATION

The PACB provided multiple comments to the Department of Banking regarding the draft regulation. We appreciate that the Department took action to amend the draft regulations based on our comments. There do remain some items requiring PACB's additional comments which are provided below.

Comment 1: Add Exemption for Nonsubsidiary Affiliates of Community Banks in Definition of "Licensee" at Section 46.1.

In response to our recent comments, the Department indicated that it would add to the exemption for banks that the subsidiaries of banks also are exempt from the Proposed Regulation. We appreciate this amendment although we note that it is not specifically stated in the Proposed Regulations. Instead, in the Department's Response 1 explaining changes made by the Department to the Proposed Regulation, the Department indicated that "Subsidiaries of federal and state-chartered banks are statutorily exempted from coverage under the Mortgage Act and, accordingly, from the regulation [meaning the Proposed Regulation] also." However, the Department indicated that it did not extend the exemption from compliance with the Proposed Regulation to allow exemption of nonsubsidiary affiliates of federal and state-chartered banks because "the Mortgage Act and the CDCA [Consumer Discount Company Act] do not provide exemptions for such entities and the Department is not aware of any assertion or ruling of preemption regarding these entities. Therefore the regulation [meaning the Proposed Regulation] will apply to such affiliates."

The Department's response to comments on the Proposed Regulation also indicated that the Department recognizes federal preemption as a result of cases such as *Watters v. Wachovia*, ___ U.S. ___, 127 S.Ct. 1559, 167 L.Ed.2d 389, 75 USLW 4167 (2007) (*Michigan state mortgage license law requirements are not applicable to a subsidiary of a national bank*). This may explain why the Mortgage Act does not specifically state an exemption for mortgage subsidiaries

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of banks, yet the Department's response to comments indicates Department recognition that mortgage subsidiaries of banks are completely exempt from the Mortgage Act.

If community banks are not part of the problem – in this case abusive lending practices and predatory lending – which we definitely are not, then we believe that the complete exemption for community banks and their subsidiary affiliates should be extended to the other nonsubsidiary affiliates of community banks.

We remain very concerned that the Proposed Regulation in its present form continues to be applicable to affiliates of banking institutions other than mortgage subsidiaries of the banks. We believe that our community banking institutions are subject to compliance examinations at the respective state and federal levels and that, therefore, the addition of new compliance requirements is unnecessary, overly burdensome, and duplicative. *Accordingly, we recommend the following regarding amending the definition of "licensee" at section 46.1: (i) For purposes of clarification, add that a subsidiary of a financial institution is exempt from the definition of licensee; (ii) Add that any other affiliate of a financial institution is exempt from the Proposed Regulation.*

Regarding our present comment (i) in the above paragraph, we believe that the present language definition of "licensee" can be interpreted as already exempting or not being applicable to a subsidiary affiliate of a bank from the Proposed Regulation. We understand that is how the Department is interpreting it, based on the Department's response to comments as stated with the Proposed Regulation. Nevertheless, we suggest the language change for clarification purposes.

Regarding our present comment (ii) in the two paragraphs above, we find that there is nothing to prohibit the Department from exempting the nonsubsidiary affiliates of banks from the Proposed Regulation and that there are compelling reasons to provide such exemption. As indicated above, community banks and their affiliates are not part of the subprime mortgage loan and mortgage foreclosure problem in Pennsylvania. Banks and their affiliates already are heavily regulated and examined on a safety and soundness basis by the Pennsylvania Department of Banking, Federal Deposit Insurance Corporation, the federal Office of Comptroller of the Currency, federal Office of Thrift Supervision, and the Board of Governors of the Federal Reserve. The Mortgage Act listed specific sections to which nonsubsidiary affiliates of banks are subject, such as the sections requiring certain recordkeeping, annual reporting, and stating mortgage loan business restrictions and requirements. Already, the Mortgage Act provides substantial regulatory requirements on nonsubsidiary affiliates of banks and the Mortgage Act does not require a regulation applicable to licensees to be applicable to partially exempt entities such as nonsubsidiary affiliates of banks. Therefore, we believe that nonsubsidiary affiliates of banks should be fully exempt from the Proposed Regulation.

Comment 2: Add Safe Harbor for Acting in Conformity with Administrative Adjudicator's Interpretation at Section 46.3

Consistent with our most recent comments, the Department drafted a new section 46.3 to provide a good faith safe harbor for lenders acting in conformity with a Department of Banking or a court interpretation of the Proposed Regulation. We appreciate this amendment by the Department of Banking. *We recommend that acting in conformity with an administrative adjudicator's*

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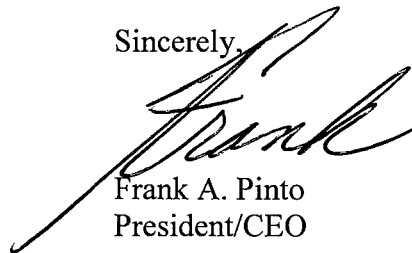
interpretation of the Proposed Regulation be added to section 46.3 as a permissible safe harbor for lenders, along with the Department or court interpretation safe harbor.

Comment 3: Clarify the “Supplemental Information” at Section 46.2(g)(4) that May Be Used to Evaluate the Ability of a Loan Applicant to Repay.

Consistent with our previous comment, the Department revised the list of factors that lenders may consider in determining the ability of a prospective borrower to repay a loan. Among those revisions, the Department added that a licensee may consider and document supplemental information provided by the applicant in addition to income that demonstrates that the loan applicant has the ability to repay the offered loan, provided that the supplemental information is reasonably related to an applicant’s ability to repay. *We recommend adding to Section 46.2(g) that the “supplemental information” that the applicant may provide and the licensee may consider to determine the applicant’s ability to repay may include information regarding the availability of nontraditional, identifiable resources which may be used to supplement the applicant’s income.*

Thank you for this opportunity to provide comments. Please contact me our counsel Reginald Evans at 717.763.1121 if you have any questions regarding our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank', written over a horizontal line.

Frank A. Pinto
President/CEO

cc: Honorable Steven Kaplan
Secretary of Banking
PENNSYLVANIA DEPARTMENT OF BANKING