



Housing Alliance
of Pennsylvania

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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DEPARTMENT OF BANKING
LEGAL SECTION

August 17, 2007

Office of Chief Counsel
Department of Banking
Attn.: Public Comment on Regulation 3-43
17 N. Second Street
Suite 1300
Harrisburg, PA 17101-2290

Dear Chief Counsel:

The Housing Alliance is a statewide organization with over 400 individual and organizational members that advocates for homes within reach of all Pennsylvanians, especially those with low incomes. We thank you for this opportunity to comment on the proposed rulemaking related to mortgage lending.

Last September, the Housing Alliance testified in support of the proposed rules the Department issued in July of 2006, while asking that the rules be strengthened. Today we are again writing to support the proposals of the Department to ensure a more level playing field between borrower and lender, but again we ask for certain provisions that would better equip borrowers to be more knowledgeable players.

The current proposed rules differ from last year's in several ways. First, the current rules exclude loans covered by the Mortgage Bankers and Brokers Consumer Equity Protection Act. We urge the Department to reconsider this exclusion and apply the protections of these proposed rules to borrowers of all loans under the jurisdiction of the Department of Banking. (New §46.1, definition of "loan".)

The current rules also omit an earlier proposed requirement that licensees orally explain the loan process and loan terms to applicants. We urge you to again include the oral explanation requirement in the regulations. We believe this provision is of the utmost importance, not only to consumers with limited reading skills, but also for more educated consumers who often find mortgage documents difficult to comprehend. Consumers rely on brokers and mortgage originators to give them the information they need. It is important that the information provided is full and complete, and required by law. (Old §46.2(b).)

The earlier proposed regulations had a long list of items to be considered in determining an applicant's ability to repay the loan. (Old §46.2(e)(2)(i) - (xi); New § 46.2(e)(2)(i) and (ii).) While the purpose of the loan or the value of the house are, arguably, not related to a borrower's ability to pay, we feel that two items in particular must be added back to the list: property taxes and insurance costs, and prepayment penalties.

It is essential that the lender include taxes and insurance in the assessment of

ability to repay, particularly when those items are not being escrowed. Even if there will be an escrow, the regulations should make clear that the lender must look beyond the principle and interest payments. In fact, nowhere do the regulations specify what is meant by "repay the loan". Does the term only refer to principle and interest, or does it include other fees and escrows that are part of the monthly payment? If those fees are not part of the repayment side of the equation, they must be explicitly included in "fixed expenses of the applicant" - which should be better defined.

While the proposed regulations do require the lender to calculate the ability to repay based on the terms and conditions to be in effect at loan maturity, it is important to include prepayment penalties in any calculation of a borrower's ability to pay prior to maturity. (Old §46.2.(e)(2)(viii).) We urge you to reinstate that requirement.

Under §46.2(f), Loan transaction prohibitions, the earlier proposed rules stated that lenders and brokers could not advise or induce an applicant to refinance when the transaction would not be appropriate after considering the financial resources of the applicant. The current proposed rules only require an ability to repay analysis. Under the current proposal a lender could encourage a refinance that would strip away the borrower's home equity as long as a borrower could repay the loan. We urge you to use the 2006 language.

Two items that are absent from the proposed regulations would, we believe, be worthwhile including. First, mortgage brokers should be required to establish the dollar amount of their fees in a written agreement before making any loan applications for the borrower. In practice, many brokers now disclose only estimates of their fees, charging higher fees at closing.

Second, we ask the Department to include a statement in the regulations making clear that the licensee is acting in a fiduciary capacity toward the borrower, as determined by Pennsylvania courts. When venturing into this highly specialized and esoteric field, borrowers depend on licensees to provide them with full and accurate information, including recommendations on loan products. In order to prevent abuse by those few licensees who would put their own interests above those of the borrower, the licensee's role should be made clear.

Again, we applaud the Department of Banking for addressing many of the problems that plague the mortgage lending industry. With the few modifications discussed above, the proposed regulations will do a great deal to support Pennsylvania's homeowners and communities, while promoting strong lending business practices.

Thank you.

Sincerely,


Cynthia Wiltman Daley