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DEPARTMENT OF BANKING
LEGAL SECTION

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LEGAL SECTION

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

Via: Facsimile and Regular Mail

Dear Rulemakers:

The Community Action Committee of the Lehigh Valley appreciates the opportunity to submit comments in response to the Department of Banking's Proposed Rulemaking on the proper conduct of lending and brokering in the mortgage loan business.

CACLV has spent the past six or more years working to expose predatory lenders, educate consumers about them and find ways to protect consumers from the devastating effects of their business practices. We discovered a major fraud conspiracy and pressed government, regulators and law enforcement to prosecute. While three of the co-conspirators have gone to jail, almost 200 unsuspecting homebuyers eventually lost their homes in the scheme. We continue to encounter victims of predatory practices almost every day. Frankly, CACLV does not have the resources to adequately confront this challenge and the time has long since passed that the Commonwealth take action.

Predatory lending by mortgage bankers and brokers is devastating to families, devalues properties, destroys neighborhoods and has now jeopardized the entire American credit system. The Department's proposed regulations are the very least the Commonwealth ought to do to end the abuses. As revealed by the Banking Department's 2005 study, *Losing the American Dream: A Report on the Residential Mortgage Foreclosures and Abusive Lending Practices*, the crisis has been fueled in large part by the subprime mortgage market which provides loans to borrowers with impaired or limited credit histories. That was more than two full years ago. Advocates like us have been sounding the alarm for years leading up to that report. It is shocking that nothing has been done. Today, we have that inaction to blame for the fact that the Lehigh Valley has among the highest rate of delinquency in subprime mortgage loans in the nation.

The Department's proposed regulations are an important move in the right direction. We support the Department's action to establish the proper conduct of lending and brokering in the mortgage business to ensure that (1) borrowers understand the loan products offered to them, and (2) mortgage lenders and brokers document and verify a borrower's ability to repay the loan, considering the loan features such as possible rate increases, balloon payments, and prepayment penalties. To ensure the effectiveness of the proposed rules, we agree with the recommendations offered by Community Legal Services in Philadelphia in suggesting the following amendments and additions:

Community Action Committee of the Lehigh Valley

Page 2

1. Mortgage lenders and brokers should assess the borrower's ability to repay the loan.

The Banking Department must restore prudent underwriting practices by requiring lenders and brokers to analyze whether the borrower can actually afford the loan, including any increases allowed by an adjustable rate clause, balloon payments or prepayment penalties. Far too often, however, brokers and lenders are making loans that a borrower simply cannot afford to repay.

To address this problem, the Banking Department should require licensees to ensure that borrower has the ability to repay the loan, considering the effect of all the loan features. We support the proposed §46.2 (e), but recommend the following amendments:

- *All loans should be covered by the regulation, including high-cost mortgage loans.*
- *Lenders should include in the repayment analysis the cost of hazard insurance and property tax costs.*
- *For hybrid ARMs, lenders should ensure that the borrower has the capacity to repay the loan based on the maximum possible rate and payment which could apply under the terms of the loan.*
- *For loans with prepayment penalties, to the extent such loans are permitted, lenders and brokers should consider the applicant's ability to refinance the loan or sell the subject property within the prepayment penalty period.*
- *For loans with balloon payments, lenders and brokers should consider the applicant's ability to make the balloon payment when due.*

2. Establish a fiduciary duty on mortgage brokers.

Mortgage brokers originate over 60% of loans in the United States, including two-thirds of subprime loans. As most loans are immediately sold to investors on the secondary market, a broker has not long-term interest in the performance of the loan and has incentive to close the loan with the highest combination of fees and interest rates he think he can get away with.

Pennsylvania courts have found in several recent cases that mortgage brokers have a fiduciary duty to the customer, the homeowner. A fiduciary duty requires the broker to act in the best interest of the consumer. The proposed regulations seem to recognize some of the duties to avoid fraud and negligence, but they should state explicitly that brokers have a fiduciary duty to the mortgage borrower.

3. Impose an affirmative duty on mortgage brokers and lenders to provide suitable loans to their customers.

Page 3

4. Require payment escrows for taxes and insurance for subprime loans.

Our experience in the Allentown fraud case was that the brokers were hiding the true cost of a loan by failing to factor the costs of taxes and insurance. When those bills arrived, overburdened subprime borrowers inevitably got stuck in the downward spiral of an inability to pay, resulting in the eventual foreclosure.

In conclusion, please do not accept the argument by those who have profited by this type of lending that the new regulations will be onerous or will cut off credit to communities. These regulations, in fact, do not go far enough. But they are, at long last, an important step in the right direction.

Sincerely,



Alan L. Jennings
Executive Director