

PROPOSED RULEMAKING

DEPARTMENT OF BANKING

[10 PA. CODE CHS. 46 AND 48]

Advanced Notice of Proposed Rulemaking; Proposed Regulations and Statement of Policy Regarding the Conduct of Licensees in the Mortgage Loan Business

The Department of Banking (Department) is publishing this advanced notice of proposed rulemaking to solicit input regarding the Department's intent to propose regulations to govern 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—456.3101), the Secondary Mortgage Loan Act (7 P. S. §§ 6601—6627) and the Consumer Discount Company Act (7 P. S. §§ 6201—6219). The Department is also soliciting input on its intent to propose a statement of policy to provide guidance as to what are dishonest, fraudulent or illegal practices or conduct in the first mortgage loan business, unfair or unethical practices or conduct in connection with the first mortgage loan business and negligence or incompetence in performing any act for which the licensee is required to hold a license under the Mortgage Bankers and Brokers and Consumer Equity Protection Act.

This is an advanced notice of proposed rulemaking and will be followed by the formal rulemaking procedures for publication and comment established under the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1205).

The Department is proposing to promulgate regulations and a statement of policy 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 believes that this lack of information and understanding all too often results in borrowers making poor financial decisions, many times resulting in the loss of their homes. 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 incapable of repaying from loan inception. Therefore, the Department is proposing regulations and a statement of policy with the goals of ensuring that borrowers are provided with the necessary information to make informed borrowing decisions and providing guidance to persons and entities operating in the mortgage loan business under the Mortgage Bankers and Brokers and Consumer Equity Protection Act, the Secondary Mortgage Loan Act and the Consumer Discount Company Act.

Comment Period

A public hearing will be held on September 12, 2006, at 10 a.m. and, if necessary, continued on September 13, 2006, at 10 a.m. The hearing will be held at Hearing Room No. 1, Keystone Building, 400 North Street, Harrisburg, PA 17120. Interested parties are invited to attend and provide comments to the Department's administrative proposals. Individuals who wish to attend and testify at the hearing must submit, by 5 p.m. on September 8, 2006, their name, address and organization represented,

if any, in writing to the Department of Banking, Office of Chief Counsel, 17 N. Second Street, Suite 1300, Harrisburg PA, 17101.

The Department is also inviting written comments to its proposed administrative actions. Written comments must be submitted by 5 p.m. on September 13, 2006, to the Department of Banking, Office of Chief Counsel, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

A. WILLIAM SCHENCK, III,
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.

§ 46.1. Definitions.

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

Acts—The Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. §§ 456.101—456.3101), the Secondary Mortgage Loan Act (7 P. S. §§ 6601—6627) and the Consumer Discount Company Act (7 P. S. §§ 6201—6221).

Applicant—A person who submits an application.

Application—As defined in 12 U.S.C.A. § 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).

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.

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.

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

Secondary mortgage loan—A secondary mortgage loan as defined in section 2 of the SMLA (7 P. S. § 6602).

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

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

(b) *Communication with applicant.* Licensees shall orally explain to an applicant the loan process and the terms and conditions of any offered loan and may not solely rely upon documents related to the loan transaction to inform an applicant of the terms and conditions of the offered loan.

(c) *Disclosures to applicant.* On a form prescribed by the Department, licensees shall disclose the following to an applicant at the time an 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 loan rates.

(3) Whether the loan includes a prepayment penalty.

(4) Whether the loan contains a variable interest rate, demand payment provision or balloon payment feature.

(d) *Required redisclosures.* Licensees shall reissue the disclosure form required under subsection (c) whenever the licensee becomes aware or reasonably believes that the initial disclosure form may be inaccurate and within a reasonable time period prior to loan consummation.

(e) *Offering a loan.*

(1) Licensees may not offer a loan to an applicant without reasonable information and belief that the applicant will have the ability to repay the loan.

(2) To determine whether an applicant will have the ability to repay a loan, a licensee shall consider and document those factors from the following list that are appropriate to the applicant and the offered loan:

(i) The purpose of the loan.

(ii) The income of the applicant.

(iii) The value of the property.

(iv) Applicable property taxes and insurance based upon the full value of the property and any improvements.

(v) Whether or not the applicant's taxes and insurance are escrowed and the effect on the applicant's scheduled loan payments.

(vi) The applicant's credit score.

(vii) The fixed expenses of the applicant.

(viii) The effect of any prepayment penalty on the applicant's ability to refinance the loan or sell the subject property within the prepayment penalty period.

(ix) For loans where the interest rate, scheduled loan payment or loan balance may vary, the ability of the applicant to make the scheduled loan payments if the interest rate, scheduled loan payment or loan balance increase.

(x) For loans with a balloon payment feature, the ability of the applicant to make the balloon payment when due.

(xi) For loan refinances and home equity loans, the interest rate and current scheduled loan payments of the applicant on the loan to be refinanced and the cumulative effects of refinancing or home equity loans on the applicant's equity, including the current loan.

(f) *Loan transaction prohibitions.* Licensees may not:

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

(2) Recommend that an applicant default on any existing contract or loan obligation.

(3) Advise or induce an applicant to refinance an existing loan or otherwise enter into a new loan obligation repeatedly when not appropriate in view of the financial resources of an applicant.

(4) If an applicant qualifies for a loan offered by the licensee that is not a covered loan, offer to the applicant a covered loan without advising the applicant that the applicant may qualify for a loan that is not a covered loan.

(5) Minimize the importance of or advise an applicant to ignore any required disclosures or suggest that 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 requesting or allowing an applicant to sign documents that contain blank spaces where material information regarding the loan transaction is required, permitting the execution of documents where signatures are required to be witnessed without the witnesses being physically present or permitting someone other than the required signatory to execute a document unless otherwise authorized by law.

(7) Submit, or encourage or knowingly permit an applicant or third party to submit, false or misleading information to any party to a loan transaction.

(8) Improperly influence, or attempt to improperly influence one or more of the following:

(i) The outcome of an appraisal, including by attempting to ensure that an appraisal matches the contemplated sales price of a home or falls within the required loan-to-value ratio for a particular loan, or commit any act or omission that is intended to compromise the independent judgment of an appraiser.

(ii) Any other entity related to the mortgage loan business, such as notaries, title companies, real estate agents and builders.

(9) Obtain insurance required for a loan for an applicant without providing the applicant with the opportunity to secure or provide evidence of their own insurance.

(10) Charge an applicant a fee for any 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 properly licensed or otherwise exempt from licensure.

(12) Render legal advice to an applicant.

(g) *Loan funding.*

(1) A licensee may not refuse 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 right of rescission), as applicable.

(2) If an applicant does not rescind a consummated loan in accordance with 12 CFR 226.15 or 226.23, as applicable, a licensee shall fund the loan no later than after the applicable rescission period.

(3) Licensees shall disburse loan funds in accordance with any commitment or agreement with the applicant.

(h) *Services paid for by applicant.* Licensees shall provide, when applicable, copies or originals of the documents associated with a loan that an applicant has paid for, such as appraisals, surveys, loan documents, disclosures and fee agreements.

(i) *Payoff statement or statement of mortgage reinstatement.* Licensee lenders shall provide a borrower with payoff statements or statements of mortgage reinstatement, as applicable, for their loans within 5 business days of receipt of a written request by a borrower or a person authorized by the borrower.

Proposed Statement of Policy

CHAPTER 48. FIRST MORTGAGE LOAN BUSINESS PRACTICES—STATEMENT OF POLICY

Sec.	
48.1.	Definitions.
48.2.	Purpose.
48.3.	Dishonest, fraudulent, illegal, unfair or unethical, or negligent or incompetent practices or conduct in the first mortgage loan business.

§ 48.1. Definitions.

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

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

First mortgage loan business—The first mortgage loan business as defined in section 302 of the act (63 P.S. § 456.302).

Licensee—A licensee or partially-exempt entity under the act.

Truth in Lending Act—15 U.S.C.A. §§ 1681—1667f.

§ 48.2. Purpose.

The purpose of this chapter is to provide guidance to licensees under the act regarding what constitutes dishonest, fraudulent or illegal practices or conduct in the first mortgage loan business, unfair or unethical practices or conduct in connection with the first mortgage loan business and negligence or incompetence in performing any act for which a licensee is required to hold a license under the act, as contemplated by sections 313(a)(5) and (14) of the act (63 P.S. §§ 456.313(a)(5) and (14)). Conduct or practices that the Department determines to be dishonest, fraudulent, illegal, unfair, unethical, negligent or incompetent under the act may result in an administrative action against the licensee by the Department under section 313(a)(5) and (14) of the act, as applicable. In reviewing licensee conduct and practices, the Department will consider all relevant factors in addition to those actions of licensees that are inconsistent with the guidance set forth in this chapter.

§ 48.3. Dishonest, fraudulent, illegal, unfair or unethical, or negligent or incompetent practices or conduct in the first mortgage loan business.

(a) Licensees under the act should not engage in any dishonest, fraudulent or illegal practices or conduct or

unfair or unethical practices or conduct in connection with the first mortgage loan business or be negligent or incompetent in performing any act for which a license is required under the act.

(b) The following paragraphs provide guidance as to what these terms mean and examples of conduct that would be illustrative of these terms:

(1) A dishonest practice or conduct is characterized by a lack of truth, honesty or trustworthiness, or is unfair or deceptive or implies a willful perversion of the truth in order to deceive, cheat, or defraud.

Example: A mortgage broker arranges a loan with a lender on behalf of an applicant. The mortgage broker tells the applicant that his broker fee will be \$600 and indicates that fee on the good faith estimate knowing the fee will be far greater. When the applicant gets to the mortgage loan closing, the broker fee is \$3,000.

(2) A fraudulent practice or conduct is characterized by deceit or trickery, an intentional perversion of the truth in order to induce another to part with something of value or to surrender a legal right, or an act of deceiving or misrepresenting. Fraud also includes any other definition of fraud under applicable law.

Example: A mortgage broker has promised a certain low-rate mortgage loan to an applicant. However, the applicant does not have the minimum debt-to-income ratio set by the licensee's preferred lender to qualify for the lowest-rate mortgage loan offered. Therefore, the mortgage broker changes the W-2 statement of the applicant to reflect a higher income for the applicant, forges the applicant's signature on the mortgage loan application, and then submits the application to the lender.

(3) An illegal practice or conduct is characterized as not according to or authorized by law.

Example: A mortgage banker fails to provide before or at consummation a revised Truth-in-Lending-Act disclosure to an applicant after the annual percentage rate on his applied-for fixed-rate mortgage loan increases more than 1/8 of one percentage point.

(4) An unfair practice or conduct is characterized as being marked by injustice, partiality or deception or being inequitable in business dealings. An unethical practice or conduct is characterized as not conforming with the moral norms or standards followed in the first mortgage loan business or profession.

Example: A mortgage banker routinely makes mortgage loans to borrowers knowing that the borrowers do not understand the terms of the mortgage loans.

(5) Negligence in performing any act for which the licensee is required to hold a license under the act is characterized by the definition of negligence as used by the courts of this Commonwealth. Incompetence in performing any act for which the licensee is required to hold a license under the act is characterized as inadequate or unsuitable for a particular purpose, or lacking the qualities needed for effective action.

Example: A mortgage broker or banker mishandles mortgage loan applications and documentation causing the applicants to not obtain the loans for which they applied.

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