

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING

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COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF BANKING, BUREAU :  
OF COMPLIANCE, INVESTIGATION :  
AND LICENSING, :  
v. :  
IDEAL MORTGAGE BANKERS, LTD. :  
D/B/A LEND AMERICA. :

Docket No. : 09 0118 PA DEPT. OF BANKING (ENF-CO)

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**CONSENT AGREEMENT AND ORDER**

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Examinations, has conducted an examination ("Examination") of Ideal Mortgage Bankers, Ltd. d/b/a Lend America ("Lend America") and its officers, employees and directors. Based on the results of the Examination, the Bureau of Compliance, Investigation and Licensing (the "Bureau") believes that Lend America operated in violation of 7 Pa. C. S. § 6101 et seq. (the "Mortgage Act"). The parties to the above captioned matter, in lieu of litigation, hereby stipulate that the following statements are true and correct in the settlement of the above-captioned matter and, intending to be legally bound, hereby agree to the terms of this Consent Agreement and Order (the "Order").

**BACKGROUND**

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Mortgage Act.
2. The Bureau is primarily responsible for administering and enforcing the Mortgage Act for the Department.

3. The Mortgage Act is the successor statute to Chapter 3 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (the "MBBCEPA"), 63 P.S. § 456.301 et seq., and the Secondary Mortgage Loan Act (the "SMLA"), 7 P.S. § 6601 et seq. On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by the Mortgage Act.

4. Lend America was licensed as First Mortgage Banker, license no. 16391, pursuant to the MBBCEPA and as a Secondary Mortgage Lender, license no. 16392, pursuant to the SMLA.

5. Lend America was granted a conditional license pursuant to the Mortgage Act on November 5, 2008.

6. Lend America is currently licensed as a Mortgage Lender pursuant to the Mortgage Act.

7. Lend America currently maintains its principal place of business in Pennsylvania at 324 Main Ave, Hawley, PA 18428-1330 (the "Principal Place").

8. Lend America currently maintains a branch license at the corporate headquarters located at 520 Broad Hollow Road, Melville, NY 11747 (the "Corporate Office").

9. ~~On January 25, 2008, an examiner from the Department initiated the Examination of Lend America at the Principal Place.~~

10. At the time of the Examination, the Principal Place and the Corporate Office were the only licensed locations of Lend America.

11. This Order shall constitute the full and final resolution of all matters related to or arising out of the Examination. The execution of this Order by Lend America shall not constitute an admission of any of the allegations set forth below.

### Unlicensed Locations

12. The Examination revealed that Lend America allegedly originated seven (7) Pennsylvania first mortgage loans from two unlicensed locations in New York (the "Unlicensed Locations").

13. The loan applications for five (5) of the loans reflected an address of 101-05 Lefferts Blvd, Richmond Hill, NY 11418 and the loan applications for two (2) of the loans reflected an address of 8911 Glenwood Road, Brooklyn, NY 11236.

14. Lend America contends that the remainder of the loan documents, including all required disclosures reflected the Corporate Office address.

15. Specifically, Lend America provided the examiner with a spreadsheet (the "Spreadsheet") that listed loan officer names and the specific offices to which they were assigned.

16. In discussions with the Bureau, Lend America clarified that the Spreadsheet reflected locations to which loan officers are assigned for general ledger purposes, rather than a listing of locations where loan officers are located or from which they conduct business.

17. The Mortgage Act defines a "branch" as "[a]n office or other place of business, ~~other than the principal place of business, located in this Commonwealth or any other state,~~ where a person engages in the mortgage loan business subject to this chapter." 7 Pa.C.S. § 6102 (corresponding to 63 P.S. § 456.302).

18. Section 6131(a)(1)(ii) of the Mortgage Act (corresponding to Section 304(a) of the MBBCEPA and Section 4(a)(5) of the SMLA) provides, in relevant part, that an application for licensure shall include ". . . the address *or addresses* where the applicant's mortgage loan

business is to be conducted.” 7 Pa.C.S. § 6131(a)(1)(ii) (emphasis added) (corresponding to 63 P.S. § 456.304(a) and 7 P.S. § 6604(a)(5)).

19. Section 6132(b)(2) of the Mortgage Act (corresponding to Section 305(a) of the MBBCEPA and Section 5 of the SMLA) provides that a licensee must pay a renewal fee for each branch office. 7 Pa.C.S. § 6132(b)(2) (corresponding to 63 P.S. § 456.305(a) and 7 P.S. § 6605).

20. Thus, based on the foregoing, any office of a licensee where mortgage loan business is conducted under the Mortgage Act must be licensed as a branch pursuant to the Mortgage Act.

21. Lend America contends that the loan originations were due to a processing error whereby the individual located at the Corporate Office who was taking the loan application incorrectly selected the Unlicensed Locations as the source of origination. Lend America has advised the Department that neither of the Unlicensed Locations are staffed with employees or are equipped to originate loans as there is no access to Lend America’s loan origination system. Further, applications for each of the seven (7) loans at issue were taken over the telephone and did not involve any face-to-face interaction between the loan officers and borrowers.

#### Unlicensed Activity

~~22. The Examination revealed that Lend America originated seventy-three (73) Pennsylvania mortgage loan applications for Federal Housing Administration (“FHA”) mortgages from non-FHA approved mortgage brokers.~~

23. Lend America contends that the non-FHA approved mortgage brokers only provided counseling services to consumers.

24. The Examination revealed that in instances where the loans closed and funded the consumer paid a fee to the non-FHA approved brokers that ranged from 1% - 4% of the loan

amount. The fee, since it was paid to a mortgage broker, was listed on the HUD-1 Settlement Statements as a "Broker Fee."

25. The HUD-1 Settlement Statements reflected fees payable to Lend America that varied in amount.

26. According to the Mortgagee Letter 2008-17 issued by the United States Department of Housing and Urban Development (HUD) on June 20, 2008; "FHA loan origination services *must be performed by a FHA-approved lender or FHA-approved mortgage broker* (loan correspondent). A FHA-approved loan correspondent may be compensated for the actual loan origination services it performs either directly by the consumer or indirectly by the FHA-approved lender without being in violation of either the Real Estate Settlement Procedures Act (RESPA) statute and regulations or FHA regulations." See Exhibit A. Emphasis added.

27. Mortgagee Letter 2008-17 goes on to state that "While FHA regulations permit a borrower to engage a broker who is not FHA-approved to assist him/her in obtaining mortgage financing (24 CFR 203.27(e)), the loan origination services *may not be performed by that broker and the FHA approved mortgagee shall not compensate the broker for such services.*" See Exhibit A. Emphasis added.

28. ~~The Mortgagee Letter 2008-17 also states that the payment to the non-FHA broker may "act as a *disguised referral fee* for steering the borrower to the FHA-approved lender or loan correspondent, *which is a violation of section 8(a) of RESPA.*"~~ See Exhibit A. Emphasis added.

29. Section 8(a) of RESPA provides, in relevant part, that "[n]o person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement

service involving a federally related mortgage loan shall be referred to any person. 12 USCS § 2607(a).

30. The Bureau contends that since the consumers paid a Broker Fee to the non-FHA brokers at settlement, Lend America was having the non-FHA brokers compensated for referring the consumers to Lend America.

31. Lend America contends that the payment of a fee, however denominated, by a consumer to a mortgage broker for providing counseling services does not constitute a referral fee.

32. Section 6139(a)(3) of the Mortgage Act (corresponding to Section 313(a)(5) of the MBBCEPA) allows the Department to suspend, revoke or refuse to renew a license if a licensee has “[e]ngaged in dishonest, fraudulent or illegal practices or conduct in a business or unfair or unethical practices or conduct in connection with the mortgage loan business. 7 Pa. C.S. § 6139(a)(3) (corresponding to 63 P.S. § 456.313(a)(5).

33. The Mortgage Act provides the Department with the authority to assess a fine to a licensee for engaging in “. . . any action which would subject the licensee to suspension, revocation or nonrenewal under section 6139 . . .” 7 Pa C.S. § 6140(b).

34. ~~Compensating non-FHA approved brokers for origination services in violation of~~  
FHA Regulations would be considered an illegal practice or conduct in the mortgage business.

35. The Bureau has been informed that as of May 2008, Lend America shut down its wholesale lending channel and, therefore, no longer conducts business with mortgage brokers.

#### Record Keeping

36. The Examination revealed that Lend America had been maintaining its Pennsylvania records at the Corporate Office without approval from the Department.

37. Section 6135(a)(2) of the Mortgage Act (corresponding to Sections 308(a)(2) of the MBBCEPA and 10(a)(2) of the SMLA) requires a licensee to maintain its Pennsylvania mortgage records at its principal place of business in Pennsylvania unless the licensee has authorization from the Department to maintain those records elsewhere. 7 Pa. C.S. § 6135(a)(2) (corresponding to 63 P.S. § 456.308(a)(2) and 7 P.S. § 6610(a)(2)).

38. Lend America did not have authorization from the Department to maintain its Pennsylvania records at any location other than its principal place of business in Pennsylvania.

39. Prior to the conclusion of the Examination, Lend America returned all records involving Pennsylvania transactions to the Principal Place and applied for, and was granted, approval to maintain records at the Corporate Office.

#### Misleading Advertisements

40. The Bureau believes that Lend America was engaging in advertising that could be considered misleading to consumers.

41. Lend America disagrees with the Bureau's contention.

42. The Bureau believes that MLN 2008 is a Lend America television advertisement made to appear as a special report from a newscast with a clip of President Bush announcing an economic stimulus plan that will help out the mortgage industry.

43. Section 46.2(a) of the Department's Proper Conduct of Lending and Brokering in the Mortgage Loan Business, 10 Pa. Code § 46.1 *et seq.* (the "Proper Conduct Reg"), states "[a] licensee may not engage in false or misleading advertising." 10 Pa. Code § 46.2(a).

44. Section 46.3(a) of the Proper Conduct Reg provides that a violation of the Proper Conduct Reg is a violation of the Mortgage Act. 10 Pa. Code § 46.3(a).

### Authority of the Department

45. Section 6138(a)(4) of the Mortgage Act (based upon Section 310(a) of the MBBCEPA and Section 16(1) of the SMLA) provides the Department with authority to issue orders as may be necessary for the proper conduct of the mortgage loan business and the enforcement of the Mortgage Act. 7 Pa. C.S. § 6138(a)(4) (based upon 63 P.S. § 456.310(a) and 7 P.S. § 6616(1)).

46. Section 6140(b) of the Mortgage Act (corresponding to Section 314(c) of the MBBCEPA and Section 22(b) of the SMLA) provides, in relevant part, that “[a] person licensed under this chapter or director, officer, owner, partner, employee or agent of a licensee who violates a provision of this chapter or who commits any action which would subject the licensee to suspension, revocation or nonrenewal under section 6139 may be fined by the department up to \$10,000 for each offense.” 7 Pa C.S. § 6140(b) (corresponding to 63 P.S. § 456.314(c) and 7 P.S. § 6622(b)).

### **ALLEGATIONS**

47. By conducting mortgage loan business from unlicensed locations, Lend America was in violation of Sections 6131(a)(1)(ii) and 6132(b)(2) of the Mortgage Act.

48. ~~Lend America engaged in dishonest, fraudulent or illegal practices by closing and funding loans where non-FHA approved mortgage brokers provided counseling services to consumers and were compensated by the consumers for such services.~~

49. Lend America violated Section 6135(a)(2) of the Mortgage Act (formally Section 308(a)(2) of the MBBCEPA and Section 10(a)(2) of the SMLA) by not maintaining records at its principal place of business in Pennsylvania when Lend America did not have authorization from the Department to maintain the records elsewhere.

50. Lend America violated Section 46.2(a) of the Proper Conduct Reg by engaging in misleading advertising.

### RELIEF

51. Fine. Lend America agrees to pay a fine of \$25,000 thousand dollars (\$25,000) which shall be due and payable to the Department within thirty (30) days of the Effective Date of this Order. The fine payment shall be remitted by a certified check or money order made payable to the Pennsylvania Department of Banking and sent to the attention of Compliance Division, Bureau of Compliance, Investigation and Licensing, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

52. Corrective Measures. Upon the Effective Date of this Order, Lend America agrees to comply with the applicable Pennsylvania and federal law, including those related to:

- a. originating Pennsylvania mortgage loans from locations licensed to conduct mortgage loan business subject to the Mortgage Act;
- b. originating FHA loans;
- c. advertising; and
- d. record keeping.

### FURTHER PROVISIONS

53. Consent. Lend America hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the Mortgage Act and agrees that it understands all of the terms and conditions contained therein. Lend America, by voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

54. Publication. The Department will publish this Order pursuant to its authority in Section 302.A.(5) of the Department of Banking Code. 71 P.S. § 733-302.A.(5).

55. Entire Agreement. This Order contains the whole agreement between the parties. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the Bureau and Lend America.

56. Binding Nature. The Department and Lend America intend to be and are legally bound by the terms of this Order.

57. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

58. Effectiveness. Lend America hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

59. Other Enforcement Action.

a. The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against Lend America in the future regarding all matters not resolved by this Order.

~~b. Lend America acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.~~

60. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

61. Counterparts. This Order may be executed in separate counterparts and by facsimile.

62. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

**WHEREFORE**, in consideration of the foregoing, including the recital paragraphs, the Department and Lend America intending to be legally bound, do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING, BUREAU OF COMPLIANCE,  
INVESTIGATION AND LICENSING**

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Ryan M. Walsh, Administrator  
Bureau of Compliance,  
Investigation and Licensing  
Department of Banking

Date: June 29, 2009

**FOR IDEAL MORTGAGE BANKER, LTD. D/B/A LEND AMERICA**

\_\_\_\_\_  
(Officer Signature)

(Print Officer Name)

COO  
\_\_\_\_\_  
(Title)

Date: 6/24/09

**EXHIBIT A**



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

June 20, 2008

MORTGAGEE LETTER 2008-17

TO: ALL APPROVED MORTGAGEES

SUBJECT: Non FHA-approved Mortgage Brokers – Forward Mortgages

This Mortgagee Letter reminds lenders of existing FHA policy regarding the use of non FHA-approved mortgage brokers when originating FHA-insured forward mortgages. FHA loan origination services must be performed by a FHA-approved lender or FHA-approved mortgage broker (loan correspondent). A FHA-approved loan correspondent may be compensated for the actual loan origination services it performs either directly by the consumer or indirectly by the FHA-approved lender without being in violation of either the Real Estate Settlement Procedures Act (RESPA) statute and regulations or FHA regulations.

While FHA regulations permit a borrower to engage a broker who is not FHA-approved to assist him/her in obtaining mortgage financing (24 CFR 203.27(e)), the loan origination services *may not* be performed by that broker and the FHA approved mortgagee shall not compensate the broker for such services. FHA requires that these services be performed by either an FHA-approved lender or loan correspondent<sup>1</sup>. RESPA prohibits the payment of duplicative fees. The payment to the unapproved broker for duplicated services amounts to an unearned fee in violation of section 8(b) of RESPA. Further, this payment may also act as a disguised referral fee for steering the borrower to the FHA-approved lender or loan correspondent, which is in violation of section 8(a) of RESPA.

In RESPA Policy Statement 1999-1 (FR-4450-N-01), the Department identified the services normally performed in the origination of a loan. It has been FHA's experience that when non FHA-approved entities perform origination functions and services on FHA-insured loans, the instances of serious compliance problems increase as do the associated risks. As a result, there are particular origination functions and services that FHA requires to be performed by an FHA-approved lender or loan correspondent:

- taking information from the borrower and filling out the loan application;
- collecting financial information (tax returns, bank statements) and other related documents that are part of the application process;
- initiating/ordering Verifications of Employment and Deposit;
- initiating/ordering request for mortgage and other loan verifications;

<sup>1</sup> HUD Handbook 4060.1 REV-2, FHA Title II Mortgagee Approval Handbook

- initiating/ordering appraisals;
- initiating/ordering inspections or engineering reports;
- providing disclosures (truth in lending, good faith estimate and others) to the borrower(s);
- maintaining regular contact with the borrower, real estate professional, and lender between loan application and closing to apprise them of the status of the application and gather any additional information needed;
- ordering legal documents; and
- determining whether the property is in a flood zone or ordering such service.

Other services that are considered counseling in nature (e.g., educating prospective borrowers in the home buying and financing process, advising the borrower about different types of loan products available, and demonstrating how closing costs and monthly payment could vary under each product), may be performed by a non FHA-approved broker so long as the services provided constitute meaningful counseling, and not steering. Under RESPA Policy Statement 1999-1, when "counseling type" services are performed, HUD also looks at whether, (1) counseling gave the borrower the opportunity to consider products from at least three different lenders; (2) the entity performing the counseling would receive the same compensation regardless of which lender's product were ultimately selected; and (3) any payment made for the "counseling type" services is reasonably related to the services performed. In these instances, the fee charged must be paid from the mortgagor's *own available assets*, must be disclosed on the HUD-1 at closing and a copy of the contract for these services must be included in the loan file submitted for insurance endorsement.

Under no circumstances may a borrower be charged a fee that is *not* commensurate with the amount normally charged for similar services. If the payment bears no reasonable relationship to the market value of the services provided, the excess over the market rate may be used as evidence of a compensated referral or unearned fee in violation of section 8(a) or (b) of RESPA and 24 CFR 3500.14(g).

RESPA provided further guidance to industry regarding payments by lenders to mortgage brokers in Policy Statement 1999-1. While the policy statement specifically speaks of lender payments to mortgage brokers, those payments are indirectly paid by the consumer and the policy statement would apply equally to payments made directly by the consumer.

If you have any questions regarding this Mortgagee Letter, please contact the FHA Resource Center at 1-800-CALLFHA (1-800-225-5342).

Sincerely,

Brian D. Montgomery  
Assistant Secretary for Housing-  
Federal Housing Commissioner