

Notice to those Engaging or Considering Engaging in Nonmortgage Consumer Lending to Pennsylvania Residents

**[38 Pa.B. 3986]
[Saturday, July 26, 2008]**

This notice is to advise interested persons that it is the position of the Department of Banking (Department) that engaging in nonmortgage consumer lending¹ to Pennsylvania residents by any means, including by means of the internet or by mail, constitutes engaging in such business "in this Commonwealth" as contemplated by section 3.A of the Consumer Discount Company Act (CDCA) (7 P. S. § 6203.A). As such, any person² engaged in the business of negotiating or making nonmortgage loans or advances of money or credit of \$25,000 or less as principal, employee, agent or broker to consumers in this Commonwealth in which the aggregate interest, discount, bonus, fees, fines, commissions, charges or other considerations (together, the "Charges") exceed 6% simple interest per annum³ is required to obtain a license from the Department under the CDCA. A person licensed under the CDCA is authorized to negotiate or make loans to Pennsylvania residents under the rates, terms and conditions contained in the CDCA.

Nondepository entities engaged in nonmortgage consumer lending to Pennsylvania residents in which the Charges exceed 6% simple interest per annum that are not already licensed under the CDCA must be licensed under the CDCA by February 1, 2009, or cease the lending to Pennsylvania residents. This allowance of time to become licensed under the CDCA or to cease the lending practices is in consideration of existing customer relationships and to provide the consumer lending industry with sufficient time to adjust to the Department's expectations.

Nondepository entities that are not engaged in nonmortgage consumer lending to Pennsylvania residents as of the date of this letter, and who are not currently licensed by the Department under the CDCA, but who wish to become eligible to engage in nonmortgage consumer lending to Pennsylvania residents in which the Charges will exceed 6% simple interest per annum, must immediately apply to the Department for a license under the CDCA and must refrain from making any consumer loans to Pennsylvania residents that include Charges which will exceed 6% simple interest per annum unless and until such application is approved and a license is granted.

As a matter of background, the Department previously took the position that a nondepository entity that did not have any offices of any kind in Pennsylvania or people physically present in this Commonwealth acting as principal, employee, agent or broker was not "in this Commonwealth" as that term is used in section 3.A of the CDCA. Thus, under the prior position, such an entity would not be required to obtain a license under the CDCA to originate nonmortgage consumer loans by means of the Internet or mail to residents of this Commonwealth in which the charges exceeded 6% simple interest per annum, provided that the entity was licensed or otherwise authorized under the entity's home state law to engage in this type of lending activity. However, with the prevalence of Internet-based lending activity, it has become clear to the Department that the prior position has resulted in Pennsylvania consumers being exposed to the very lending practices that the CDCA was enacted to protect them from.

Based upon the foregoing, the Department is convinced that a change in policy is warranted, and licensing under the CDCA should be required for all nondepository entities engaging in nonmortgage

consumer lending to Pennsylvania residents in which the charges exceed 6% simple interest per annum. This will provide Pennsylvania consumers with the protections available under the CDCA regardless of whether lenders are located in Pennsylvania or other states. Therefore, the Department's prior position regarding the licensing requirements for out-of-State consumer lenders under the CDCA is discontinued and any supportive Department precedent regarding the prior position will no longer be followed. The licensing under the CDCA for nondepository entities is now required to engage in nonmortgage lending to Pennsylvania residents in which the charges exceed 6% simple interest per annum by any means, including by mail or by means of the Internet.

As noted previously, a transition period is provided for any nondepository entity currently engaging in the practice of nonmortgage consumer lending to Pennsylvania residents in which the charges exceed 6% simple interest per annum, although those entities interested in beginning to engage in nonmortgage consumer lending to Pennsylvania residents in which the Charges exceed 6% simple interest per annum must immediately apply for a CDCA license and be approved by the Department before beginning the practice. Be advised that any nondepository entity that engages in consumer lending to Pennsylvania residents in violation of the CDCA may be subject to enforcement action under the CDCA and section 201 of the Loan Interest and Protection Law (41 P. S. § 201).

Any questions regarding this Notice may be addressed to the Compliance Division of the Bureau of Compliance, Investigation and Licensing at (717) 772-3889 or you may send inquiries by means of the Department's web site at www.banking.state.pa.us.

STEVEN KAPLAN,
Secretary

¹ Mortgage lending activity involving Pennsylvania residents is governed generally by the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. §§ 456.101--456.524), and the Secondary Mortgage Loan Act (7 P. S. §§ 6601--6626), unless the lender is a depository institution. Certain kinds of secured nonmortgage consumer loans are governed by the Pawnbrokers License Act (63 P. S. §§ 281-1--281-32).

² A "person" is defined in the CDCA as including "an individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any other group of individuals however organized." 7 P. S. § 6202. The term, for purposes of the coverage of the CDCA, does not include depository institutions. See 7 P. S. § 6217.

³ Unless licensed under the CDCA, a lender that is not a depository institution is restricted to charging the general usury rate of 6/usr/local/fry/wwwfiles/docheadimple interest per annum on nonmortgage loans of \$50,000 or less found in Section 201 of the Loan Interest and Protection Law (LIPL) (41 P. S. § 201).