



January 8, 2014

To all Persons Engaged in the Mortgage Loan Business in Pennsylvania or With Pennsylvania Residents

On behalf of the Commonwealth of Pennsylvania Department of Banking and Securities (the "Department"), I am writing to alert you to changes in federal law that will affect the applicability of Chapter 5 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (the "CEPA"), 63 P.S. § 456.501 *et seq.*, to certain mortgage loans.

The CEPA was enacted in 2001 to provide protections for consumers in regard to certain high-cost mortgage loans. The CEPA's applicability to a mortgage loan depends upon whether the loan in question is a "covered loan," which is defined as:

[a] consumer credit mortgage loan transaction involving property located within this Commonwealth, that is considered a mortgage under section 103(aa) of the Truth in Lending Act (Public Law 90-321 15 U.S.C. § 1602(aa)) and regulations adopted pursuant thereto by the Federal Reserve Board, including 12 CFR § 226.32 (relating to requirements for certain closed-end home mortgages), for which the original principal balance of the loan is less than \$100,000.

63 P.S. § 456.503. Based upon this definition and its references to federal law, when the CEPA was enacted, a "covered loan" included any closed-end non-purchase home equity mortgage loan of any lien position of less than \$100,000 where the real property was located in Pennsylvania. **However, recent changes to federal law have caused the definition of "covered loan" to expand to now cover any mortgage loan of less than \$100,000 secured by a consumer's principal dwelling located in Pennsylvania, except a reverse mortgage.**

First, the definition of "mortgage" in Section 103(aa) of the Truth in Lending Act ("TILA") was moved to Section 103(bb) of TILA, and renamed "high-cost mortgage" as part of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), which was effective July 21, 2011. *See* 15 U.S.C. § 1602(bb). This revised and renamed definition now includes any mortgage secured by a consumer's principal dwelling, except a reverse mortgage.

Second, regulation authority under TILA was transferred by Dodd-Frank to the federal Consumer Financial Protection Bureau ("CFPB"), which has promulgated regulations to replace the regulations that were formerly at 12 CFR § 226.32. These regulations now appear at 12 CFR § 1026.32 and will be amended effective January 10, 2014 (the "CFPB Regulations"). On that date, the CFPB Regulations will apply to:

[(a)(1)] . . . a high-cost mortgage, which is any consumer credit transaction that is secured by the consumer's principal dwelling, other than as provided in paragraph (a)(2) of this section, and in which:

(i) The annual percentage rate applicable to the transaction, as determined in accordance with paragraph (a)(3) of this section, will exceed the average prime offer rate, as defined in § 1026.35(a)(2), for a comparable transaction by more than:

(A) 6.5 percentage points for a first-lien transaction, other than as described in paragraph (a)(1)(i)(B) of this section;

(B) 8.5 percentage points for a first-lien transaction if the dwelling is personal property and the loan amount is less than \$ 50,000; or

(C) 8.5 percentage points for a subordinate-lien transaction; or

(ii) The transaction's total points and fees, as defined in paragraphs (b)(1) and (2) of this section, will exceed:

(A) 5 percent of the total loan amount for a transaction with a loan amount of \$ 20,000 or more; the \$ 20,000 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1; or

(B) The lesser of 8 percent of the total loan amount or \$ 1,000 for a transaction with a loan amount of less than \$ 20,000; the \$ 1,000 and \$ 20,000 figures shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1; or

(iii) Under the terms of the loan contract or open-end credit agreement, the creditor can charge a prepayment penalty, as defined in paragraph (b)(6) of this section, more than 36 months after consummation or account opening, or prepayment penalties that can exceed, in total, more than 2 percent of the amount prepaid.

(2) Exemptions. This section does not apply to the following:

(i) A reverse mortgage transaction subject to § 1026.33;

(ii) A transaction to finance the initial construction of a dwelling;

(iii) A transaction originated by a Housing Finance Agency, where the Housing Finance Agency is the creditor for the transaction; or

(iv) A transaction originated pursuant to the United States Department of Agriculture's Rural Development Section 502 Direct Loan Program.

12 CFR § 1026.32(a).

Section 504(d) of the CEPA provides that “[t]he provisions of this chapter shall be interpreted and applied to the fullest extent practical in a manner consistent with applicable Federal laws and regulations, policies and orders of Federal regulatory agencies and shall not be deemed to constitute an attempt to override Federal law.” 63 P.S. § 456.504(d). Consistent with the mandate of Section 504(d) of the CEPA, **beginning on January 10, 2014**, the Department will interpret the definition of “covered loan” to include the changes in federal law referenced above. This means that the pricing thresholds for a “high cost mortgage” contained in the CFPB Regulations (the “Points and Fees Thresholds”) will be the triggers for determining what is a “covered loan” under the CEPA, and **the definition of “covered loan” will include purchase money mortgage loans and home equity loans and lines of credit of any lien secured by a consumer’s principal dwelling located in Pennsylvania which meet the Points and Fees Thresholds, are in an amount less than \$100,000** and are not otherwise excepted from the coverage of the CFPB Regulations.

This letter is not intended as and does not constitute legal advice. Please keep in mind that this letter contains generalizations regarding the federal laws discussed herein and is therefore not inclusive of all of their provisions, conditions, exceptions, and details. It is critically important for you to read the federal laws and seek guidance from your legal counsel and trade association regarding the effects of the federal laws on your business operations.

Questions regarding this letter should be addressed to the Compliance Division of the Bureau of Compliance, Licensing and Consumer Services at (717) 772-3889 or by submitting an inquiry via the Department’s website at www.dobs.state.pa.us. We at the Department look forward to working with you in order to seamlessly implement these changes to the applicability of the CEPA in the coming months.

Sincerely,

/s/ Timothy Siwy
Deputy Secretary,
Non-Depository Institutions