Module 1

Learning Objectives

In Module 1, students will:

- Understand the role of the Pennsylvania Department of Banking
- Take a look at “Proper Conduct of Lending and Brokering in the Mortgage Loan Business,” including provisions related to false or misleading advertising, required disclosures, ensuring a loan applicant’s ability to repay, and funding and disbursement
- Review the Department’s Statement of Policy relating to “First Mortgage Loan Business Practices”
- Explore definitions under the Mortgage Licensing Act

Introduction

On July 8, 2008, Governor Edward Rendell signed five bills to reform mortgage lending practices in Pennsylvania. The new law reflected many of the concerns addressed in a 2005 study by The Pennsylvania Department of Banking. This study, entitled *Losing the American Dream: A Report on Residential Mortgage Foreclosures and Abusive Lending Practices in Pennsylvania*, finds that the rising foreclosure rate in Pennsylvania is linked, in part, to abusive mortgage lending practices. The study states:

> Foreclosures in Pennsylvania have skyrocketed, and subprime loans represent the majority of loans that result in the filing of a foreclosure action. As reported by the Mortgage Bankers Association, Pennsylvania’s prime loan foreclosure rate of 0.85 percent ranks it as ninth highest in the nation. The subprime foreclosure rate in Pennsylvania is 11.9 percent, making it the fourth highest rate in the nation. In 2002, subprime lenders made 9.9 percent of all loans originated in Pennsylvania, and 60 percent of foreclosure filings were for subprime loans. Many factors led to these foreclosures, including abusive lending practices...A number of administrative and legislative actions, when enacted, could impact abusive lending practices in Pennsylvania.¹

The Pennsylvania General Assembly responded to the recommendation for legislative action. The legislature’s most dramatic response was the repeal of Chapter 3 of the “Mortgage Bankers and Brokers and Consumer Equity Protection Act” and the repeal of the entire “Secondary Mortgage Loan Act.” The legislature adopted “The Mortgage Licensing Act” to replace these

former laws that addressed the licensing of mortgage professionals and the making of second mortgages.


If Pennsylvania failed to enact the legislation, the United States Department of Housing and Urban Development (HUD) would regulate and control Pennsylvania mortgage loan originators. Pennsylvania law previously contained some of the requirements of the SAFE Act. However, the SAFE Act expanded the number and type of individuals who are required to obtain a loan originator license.

This course will focus primarily on a review of the licensing requirements created for mortgage professionals under the Mortgage Licensing Act.

**History of the Regulation of Mortgage Lending in Pennsylvania**

The most recent Amendments to the Mortgage Licensing Act expanded on the third effort by the Pennsylvania General Assembly to address the origination of loans by nontraditional lenders. Prior to 1980, depository institutions such as banks and savings and loans were the originators of most mortgage loans. In the 1980s, changes in tax laws, banking laws, and the secondary market allowed mortgage bankers, mortgage brokers, and other nontraditional loan originators to emerge as regular players in the mortgage lending business.

The growth and success of this new sector in the mortgage lending market lured some unscrupulous participants, and state legislatures were under pressure to regulate nontraditional lenders and loan originators. The Pennsylvania General Assembly delivered its first response to this demand for regulatory controls in 1989 with the enactment of the “Mortgage Bankers and Brokers Act.” The law created regulatory controls for businesses engaged in mortgage lending, but did not regulate their employees.

In 2001, growing concern about predatory lending in the subprime market led the General Assembly to amend the Mortgage Bankers and Brokers Act to create a new chapter of the law, Chapter 5, which discourages mortgage bankers and brokers from offering consumers high-cost mortgages that are likely to rob the equity from their homes. The statute, known as the “Consumer Equity Protection Act,” is similar to the federal law known as the Home Ownership and Equity Protection Act (HOEPA).

Like the federal law, Pennsylvania’s law uses interest rate and fee triggers to identify high-cost home loans and subjects these loans to additional disclosures and restrictions. Pennsylvania’s licensing law and anti-predatory lending laws were known as the Mortgage Bankers and Brokers and Consumer Equity Protection Act (MBBCEPA).
The 2008 legislation addressed mortgage lending practices, leaving Chapter 5 intact and repealing Chapter 3, which addresses the licensing of mortgage professionals. The result was a much broader law, extending licensing and education requirements to all individuals involved in mortgage lending, with the exception of those who work in a clerical capacity. The new law also extends its scope to a broader range of loans, covering second lien mortgages that were formerly regulated under the repealed “Secondary Mortgage Loan Act.” The 2008 legislation expanded the authority of the Department, granting it legislative authority to publish information regarding enforcement actions against licensees and perform background checks of licensees.

The most recent round of legislation (Act 31 of 2009) has broadened definitions that affect who must be licensed and what type of transactions are now covered by the Act. For example, the definition of residential real estate was expanded so that the Mortgage Licensing Act now covers construction loans and loans that are secured by manufactured or mobile homes. The newest version of the Act also reduces the number of persons who qualify for a license exemption.

**The Pennsylvania Department of Banking**

The Pennsylvania Department of Banking (the Department) was established in 1891. The Department ensures the soundness of financial institutions located in Pennsylvania, assists the public with financial questions and concerns and combats financial abuse. The Department oversees a large number of financial institutions, including mortgage lenders and brokers. The Department regulates these persons and entities through licensing, examination, and enforcement. The Department head, the Secretary of Banking, obtains the position through gubernatorial appointment.

**Powers of the Department of Banking (§6138)**

As a result of the new Mortgage Licensing Act and the 2008 amendments to the Department of Banking Code, the Department has greater investigative and enforcement powers. Powers of the Department include the following:

- **Accessing Records:** The Department has access to the records of licensees at all times, whether they are kept at the principal place of business in Pennsylvania, or at a location in another state. Licensees must pay the costs, including any travel cost that the Department incurs when examining the records.

- **Making Requests for Information:** The Department may request and receive information including records of criminal history from any federal, state, local, or foreign government entity in order to investigate an applicant for a license.

- **Conducting Administrative Hearings:** The Department may conduct administrative hearings, and has the authority to issue subpoenas for the attendance of witnesses and production of documents at the hearing. The Department can also obtain a court order if failure to comply with a subpoena occurs.

- **Issue Cease and Desist Orders:** The Department can issue cease and desist orders that are effective immediately as long as it schedules a hearing within 14 days of issuing the order.
Issue Orders for Restitution: In a hearing initiated by an aggrieved loan applicant or borrower, the Department can order licensees to pay damages for any harm resulting from violations of the law.

Issuing Regulations: One of the most important responsibilities of administrative agencies is to create regulations that will guide the regulated community into compliance with the law. The Mortgage Licensing Act has authorized the Department to write regulations. Some of the specific areas that the law leaves for the Department to address are outlined in the following section on “Future Regulations.” The mortgage lending community will have the opportunity to comment on proposed regulations during a period for public comment.

Title 10: Chapter 46 - Proper Conduct of Lending and Brokering in the Mortgage Loan Business

In 2006, the Department of Banking issued an advanced notice of proposed rulemaking for “Proposed Regulations and Statement of Policy Regarding the Conduct of Licensees in the Mortgage Loan Business.” In its Rulemaking Notice, the Department noted that it was proposing new regulations for the following reasons:

- As a result of the complexity and competitiveness of the mortgage loan business, borrowers do not understand the lending process or the products offered to them
- Their lack of understanding causes borrowers to make poor loan choices that may lead to the loss of their homes
- Some mortgage businesses and originators pair borrowers with loans that they are not able to repay

The Department stated that the goals of the new regulations and policy statement are “...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....” 2 These regulations were undoubtedly proposed as a result in the rising rate of defaults on subprime loans and nontraditional mortgages.

The proposed regulations were adopted in their final form on December 19, 2008 and incorporated into Title 10 Chapter 46 of the Pennsylvania Code. These regulations on “Proper Conduct of Lending and Brokering in the Mortgage Loan Business” include provisions that:

- Prohibit false or misleading advertising
- Require additional disclosures to loan applicants
- Require the performance of a loan applicant’s ability to repay
- Address the funding of loans and the proper disbursement of funds to third parties

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Definitions (§46.1)

Title 10, Chapter 46 includes a number of definitions. Some of these are discussed in the following sections. However, in order to understand the types of loans and mortgage professionals that are subject to the regulation on “Proper Conduct of Lending and Brokering in the Mortgage Loan Business” it is necessary to understand the meanings that the regulations give to the following terms:

- **Licensees**: The term “licensees” refers to lenders and brokers that are licensed under Pennsylvania’s Mortgage Act (7 Pa. C.S. Chapter 61) and the Consumer Discount Company Act (7 P. S. §§ 6201--6219)

- **Mortgage Loan**: The regulation adopts the definition of “mortgage loan” that is included in the Pennsylvania Mortgage Licensing Act, which defines the term as “A first or secondary mortgage loan, or both…” (7 Pa.C.S. Section 6102)

- **Loan**: The term “loan” includes mortgage loans, as defined above, and loans involving a mortgage made pursuant to the provisions of the Consumer Discount Company Act

- **Covered Loan**: The regulation adopts the definition of “covered loan” that is included in the Consumer Equity Protection Act. (See the definition provided in the foregoing section on the Consumer Equity Protection Act)

Advertising Prohibition (§46.2(a))

Title 10 Chapter 46 incorporates the definition of advertising that is included in Regulation Z of the Truth-in-Lending Act. Regulation Z defines an “advertisement” as “…a commercial message in any medium that promotes, directly or indirectly, a credit transaction” (12 C.F.R. Section 226.2(a)(2)). Title 10 Chapter 46 does not include any specific regulations regarding advertising, and licensees should review advertising requirements under the Truth-in-Lending Act to ensure compliance with the law. However, Title 10 Chapter 46 does include a prohibition against false or misleading advertising.

Discussion Scenario: Problematic Advertising

Marvelous Mortgage Company, a licensed mortgage broker in Pennsylvania, mailed thousands of solicitations to Pennsylvania residents as part of its advertising campaign. The mailers were sent to consumers who have federally-insured loans and to consumers with adjustable rate mortgages. The mailers offered the possibility of hundreds or thousands of dollars in refunds, and many appeared to be from the federal government. Only in the small print footnote did the Marvelous Mortgage Company disclose that the true purpose of the mailer was to solicit the recipient for a home loan.

It also featured first mortgages at 1% with no points and no fees. Regulators said that during one period where 91 loans were reviewed, only ten borrowers actually received the 1% rate. However, each of those ten borrowers ended up paying $10,000 in points and fees and ended up paying 7.89% APR.
Finally, in big bold letters the mailer advertised “Immediate Loan Approval!”

Title 10, Chapter 46 requires mortgage professionals to comply with the Truth-in-Lending Act and prohibits misleading advertising. When the Pennsylvania Department of Banking saw this ad, it provided notice that it intended to revoke the Marvelous Mortgage Company’s license to do business in Pennsylvania.

Discussion Questions

- What specifically could be changed in this mailing to align it with state and federal mortgage laws?
- From a consumer’s perspective, how would this mailing be misleading?
- Discuss effective, legal means of advertising for mortgage products. Provide an example or two.

Discussion Feedback

Advertisements and promotional materials are a valuable method of increasing business and providing name recognition for a business. While advertisements are meant to entice and attract consumers, it is critical that they do not give misleading information or result in deceptive trade practices such as “bait-and-switch.” Language such as “immediate approval,” when no such perk exists, and promotion of loan rates/terms that are not actually available are classic examples of deceptive and misleading advertising. Additionally, giving the impression that a marketing piece is actually communication from a federal agency is outright fraud.

Mortgage professionals can ensure their advertisements meet state and federal guidelines by only including truthful statements and offering rates/terms which are available to qualified applicants. Additionally advertisements should meet disclosure requirements; for instance the federal Truth-in-Lending Act requires that APR and other terms are disclosed when certain trigger terms are included. Additionally, instead of just focusing on advertisement of loan products, mortgage professionals can attract consumers and differentiate themselves by highlighting things like service, experience and customer care.

Disclosure Requirement (§46.2(b) and (c))

Within three business days after a loan application is received or prepared by a licensee, the licensee must sign and date a disclosure and deliver or mail it to the loan applicant. The disclosure must provide the following information:

- Whether the lender will escrow funds to cover property taxes and insurance
- Whether the licensee is a lender with the ability to lock in an interest rate
- Whether the loan has a variable rate
- Whether the loan has a balloon payment, which is defined under the regulation as a payment that is more than twice as much as the average of earlier scheduled monthly payments
- Whether the loan includes a prepayment penalty
• Whether the loan has terms that permit negative amortization

Within **ten business days** after delivering or mailing the disclosure, the applicant must return the signed and dated disclosure form to the licensee. The licensee is responsible for requiring loan applicants to return the form, and he/she must retain the original signed form in the applicant’s loan file. If the loan originator is a mortgage broker, he/she is not required to make the disclosure if the lender involved in the transaction is providing this disclosure to the loan applicant.

Licensees must make a **redisclosure** “…at the time the licensee knows or reasonably should know that the initial disclosure form is inaccurate” (10 Pa. Code Section 46.2 (d)). The disclosure and redisclosure requirements do **not** apply to transactions that involve the offering or the making of a reverse mortgage.

The Department of Banking has created a disclosure form that licensees can use to satisfy the disclosure requirement. A copy of the form is included in the Appendix to this course. Also included in the Appendix are the Department’s “Instructions for Consumer Mortgage Disclosure Form.” Course participants should review the instructions carefully. It is important, as practicing mortgage professionals, to know how to prepare the disclosure without violating any of the Department’s rules. For example, the form provides guidance to those licensees who want to create their own disclosure form, stating that their disclosure forms must meet the following minimal requirements:

• The disclosure must be on one page
• The disclosure must contain the “exact verbiage” used on the Department’s form
• Neither the type nor any other part of the disclosure can be any smaller than it appears on the Department’s form
• Licensees can print the disclosure on larger paper to permit the inclusion of more information
• Any additional information must appear at the top of the disclosure and separately from the Department’s verbiage
• Although licensees can add information to the top of the form, this information is limited to identifying information for the loan applicant and lender, additional signature lines, and the name of the originator handling the transaction

**Evaluating the Loan Applicant’s Repayment Ability (§46.2(g))**

In the preamble to its publication of “Proper Conduct of Lending and Brokering in the Mortgage Loan Business,” the Department emphasized the importance of evaluating a loan applicant’s repayment ability stating:

> ...it is the Department's belief that the regulations' ability to repay provisions will provide a future stabilizing force in the market by providing a degree of assurance to investors and lenders in the secondary market that licensees in this Commonwealth gave due consideration to an applicant's ability to repay the
Title 10 Chapter 46 prohibits a licensee from offering a loan without making a reasonable determination that the loan applicant can repay it. Furthermore, the loan applicant must have a demonstrated ability to:

- Repay the loan according to the loan terms
- Complete repayment by the time that the loan fully matures at the fully indexed rate, assuming a fully amortized repayment schedule

An evaluation of repayment ability must include consideration of the following factors:

- Income of the applicant, which must be verified and documented (§46.2(g)(2)(i))
- Fixed expenses of the applicant, which must be verified and documented (§46.2(g)(2)(ii))
- Any facts or circumstances that the licensee “knows or reasonably should know” that indicate that the loan applicant does not have the ability to repay (§46.2(g)(7))

When evaluating the loan applicant’s income, licensees:

- May consider and document supplemental information that the applicant offers to show his/her ability to repay the loan (§46.2(g)(4))
- Are only required to verify resources that the loan applicant chooses to rely on when repaying the loan (§46.2(g)(3))

Licensees must retain these and all other records and documentation that relate to the evaluation of repayment ability in the applicant’s loan file. Record retention requirements include a requirement to keep all worksheets used in evaluating repayment ability. (§46.2(g)(6))

Prohibited Practices related to evaluation of the applicant’s repayment ability include:

- Ignoring facts that the licensee “knows or reasonably should know” that indicate an inability to repay the loan (§46.2(g)(7))
- Relying primarily on the loan applicant’s refinancing or sale of the applicant’s collateral in determining repayment ability (§46.2(g)(5))

Special Rules for Loans Offered with a Balloon Payment include the following:

- The licensee may consider the refinance or sale of the applicant’s collateral when evaluating his/her ability to make the balloon payment

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• The licensee must base the fully amortized payment schedule on the full term the borrower chooses when calculating the amortization period for a loan containing a borrower option for an extended amortization period.

• The licensee must consider whether the applicant will have enough equity in the property securing the loan to make the balloon payment through refinance or sale of the property. ([§46.2(g)(9)(i)-(iii)]

**Disclosing a Material Change** in the ability to repay requires the following actions: ([§46.2(i)]

• Licensees who are brokers must “immediately” send a notice to the loan applicant that discloses that there is a material change and that the change may affect the applicant’s ability to repay the offered loan.

• Licensees who are lenders must “immediately” perform another evaluation of the loan applicant’s repayment ability.

The regulation defines a “material change” as:

• A change of fact or circumstance that the licensee “knows or reasonably should know” that will “substantially affect” the loan applicant’s ability to repay the offered loan. ([§46.1 – Definitions])

• A change that would require a disclosure under Regulation Z, including a change in the annual percentage that is more than 1/8 of one percentage point in a regular transaction, or ¼ of one percentage point in an irregular transaction, such as one that includes multiple advances or irregular payment periods (12 CFR 226.17(f)(2))

**Presumption of Repayment Ability** exists if the loan offered to the loan applicant is: ([§46.2(g)(8)])

• Insured by the Federal Housing Administration

• Guaranteed by the United States Department of Veterans Affairs

• Originated or approved for purchase by the Pennsylvania Housing Finance Agency

• Includes a verification of repayment ability, made by a HUD-approved counseling agency

The requirements for evaluating repayment ability do not apply to transactions that involve the offering or the making of a reverse mortgage. ([§46.2(h)])

**Prohibited Practices Under Title 10 Chapter 46 ([§46.2(j)])**

The Regulation on Proper Conduct of Lending and Brokering in the Mortgage Loan Business prohibits all of the following practices during loan transactions:

• Telling or suggesting to a loan applicant that his/her income is not relevant to the transaction ([§46.2(j)(1)])
- Recommending or implying that a loan applicant should default on an existing contract or financial obligation (§46.2(j)(2))
- Advising or inducing a loan applicant to enter a new financial obligation without conducting an evaluation of his/her repayment ability (§46.2(j)(3))
- Offering the applicant a “covered loan” when he/she qualifies for a loan that is not a “covered loan,” and failing to advise the applicant of his/her qualification of a lower-priced loan (§46.2(j)(4))
- Advising or implying to an applicant to ignore any required disclosure or suggest that disclosures are unimportant and/or that execution of disclosures is unimportant (§46.2(j)(5))
- Taking part, directly or indirectly, in the improper execution of documents, including:
  - Requesting or allowing a loan applicant to sign a document with blank spaces where material information about the loan should be stated (§46.2(j)(6)(i))
  - Executing documents that require witnesses when no witness is present (§46.2(j)(6)(ii))
  - Allowing someone other than the required signatory to execute documents (unless authorized by law through a legal agreement such as the creation of a power of attorney) (§46.2(j)(6)(iii))
- Permitting or encouraging a loan applicant or a third party to submit information to any party to a loan transaction that the licensee “reasonably should know” is false or misleading (§46.2(j)(7))
- Influencing the judgment of an appraiser improperly by committing any act that is intended to compromise the appraiser’s independent judgment or to ensure that an appraisal matches a “target value” (§46.2(j)(8)(i))
- Improperly influencing any other individual or entity related to a mortgage loan transaction such as a notary, title company, real estate agent, builder or seller (§46.2(j)(8)(ii))
- Obtaining hazard insurance at loan consummation without allowing the loan applicant to have an opportunity to secure his/her own hazard insurance (§46.2(j)(9))
- Paying or receiving compensation related to a loan transaction from a person who is not licensed or exempt from licensing (§46.2(j)(10))
- Enter a contract with an originator or employ a person to engage in the mortgage loan business who is not licensed or exempt from licensing (§46.2(j)(10))

**Rules for Loan Funding (§46.2(k))**

Title 10 Chapter 46 includes a number of rules related to the funding of loans. Several of these rules refer to “consummated loans.” The regulation adopts the definition of “consummation” that is provided in the Truth-in-Lending Act’s Regulation Z. Under Regulation Z, “Consummation means the time that a consumer becomes contractually obligated on a credit transaction” (12 C.F.R, Section 226.2(a)(13)). Contractual obligations begin when a loan
applicant signs a lending agreement, agreeing to abide by the terms for repayment of a mortgage loan that are set forth in the agreement.

At the same time that the borrower becomes obligated under a loan, lenders and brokers also have obligations, and the provisions on loan funding that are included Title 10 Regulation 46 are intended to ensure that licensees meet these obligations.

These obligations include the following requirements:

- Licensee lenders must fund a loan within a reasonable time after consummation of the loan, although lenders are not required to fund a loan that is subject to a right of rescission, until the rescission period has passed \(^4\) (§46.2(k)(1))
- Licensee lenders and brokers must disburse loan funds to third parties according to any commitment or agreement with the loan applicant \(^5\) (§46.2(k)(2))
- Upon request, licensees must provide loan applicants with copies or originals of any documents in their possession that are related to the loan, including the application, appraisals, surveys, disclosures, and fee agreements. This is specifically relevant to documents the applicant has paid for or signed. (§46.2(l))
- Licensee lenders that hold and service loans must respond, within seven business days of receipt of a written request from the borrower, with a payoff statement or a mortgage reinstatement (§46.2(m))

The provisions related to loan funding also include two prohibitions:

- A licensee may not refuse to fund a consummated loan, except in transactions in which the borrower exercises his/her right to rescind (§46.2(k)(4))
- A licensee lender cannot delay the funding of a loan after consummation based on a post-closing underwriting or quality control review unless the loan applicant has committed fraud (§46.2(k)(5))

**Discussion Scenario: Loan Funding Issues**

Triple A Mortgage Corporation began doing business two years ago. They incurred a large amount of start up expenses and had not been successful in finding efficient operational procedures. Despite the operational havoc, business was going great! Their phones were ringing and potential borrowers were very receptive to the mortgage loan programs the company offered.

Jeff, the company’s accountant, ran into a problem one month with paying the company’s operational expenses. He decided to “borrow” a significant amount of funds from Triple A Mortgage Company’s escrow account just for a few weeks to pay the bills. At the same time, Triple A Mortgage Company’s sales team was experiencing a high volume of closings.

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\(^4\) Under the Truth-in-Lending Act, certain loans that are secured by the borrower’s principal dwelling are subject to a three-business-day rescission period.

\(^5\) These disbursements are often to other creditors that the borrower intends to pay with funds secured in a refinance.
The time came to disburse funds after several mortgage closings, as required by Pennsylvania’s Title 10, Chapter 46 provisions. The closing agent failed to disburse funds for 25 agreements it entered into with Pennsylvania residential mortgage loan customers. Triple A Mortgage Corporation was ordered to cease and desist several months later due to violation of state laws.

Discussion Questions

- Which state (and federal) laws did Triple A Mortgage Company violate?
- If you are the President of Triple A Mortgage Company and you find out what Jeff has been doing, how would you react and why?
- If you were Jeff, what could you have done differently to avoid these prohibited acts?
- Discuss the impact of failing to disburse funds or untimely fund distribution on the whole mortgage process.

Discussion Feedback

When handling funds on behalf of a consumer or a lender for loan funding or the payment of third party services, mortgage professionals are required to manage those funds carefully. Escrow requirements are covered not only under Title 10, Chapter 46, but also under the federal Real Estate Settlement Procedures Act (RESPA).

Because escrow funds are not the property of the mortgage professional, the funds must be handled according to the instructions of their owner. By “borrowing” money for business expenses, Jeff was actually misappropriating the funds, which is not a minor offense in most jurisdictions. If the President of the company was aware of Jeff’s actions he/she would also be guilty. However, upon discovery of Jeff’s actions, if the President took action, such as termination, replacement of the funds, etc. the company’s liability could potentially be minimized.

Failing to disburse funds and mishandling escrow funds is not only a violation of the law, but it also puts a black mark on the mortgage industry. Consumer trust greatly diminishes if borrowers believe that their financial matters will not be handled with diligence and care.

Enforcement (§46.3)

Violations of Title 10 Chapter 46 are treated as violation of the Mortgage Act and the Consumer Discount Company Act.

First Mortgage Loan Business Practices—Statement of Policy

At the same time that it issued a proposed regulation on “Proper Conduct of Lending and Brokering in the Mortgage Loan Business,” the Department of Banking issued a proposed a guidance to help licensees understand “…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....” 6

On August 1, 2009, the Department published its Statement of Policy, incorporating it into Title 10 Chapter 48 of the Pennsylvania Code.

These provisions apply to the following licensees under the Pennsylvania Mortgage Licensing Act when they are engaged in the mortgage loan business:

- Mortgage brokers
- Mortgage lenders
- Mortgage loan correspondents
- Mortgage originators

The regulation incorporates the definitions of each of the professionals, listed above, that are found in the Mortgage Licensing Act, 7 Pa. C.S. Section 6101, et seq.

The regulation states that its purpose is to provide guidance to licensees, helping them to identify conduct and practices that the Department will regard as: (§48.2)

- Dishonest, fraudulent, or illegal in any business
- Unfair or unethical in the mortgage business
- Negligent and incompetent when performing an act requiring a license

Conduct and/or practices that are dishonest, fraudulent, illegal, unfair, unethical, negligent, or incompetent may result in license suspension or revocation or the Department’s refusal to renew a license.

The Department provides guidance for licensees by offering examples of practices and conduct that it regards as dishonest, fraudulent, illegal, unfair or unethical, or negligent or incompetent. These examples are copied from 10 Pa. Code Chapter 48.3 and included for the course participants’ review. The regulation notes: “The examples listed under each paragraph are for illustrative purposes only and do not limit or otherwise alter the Department’s discretion or the applicability of the guidance contained in each paragraph to all licensees” (10 Pa. Code Chapter 48.3).

A dishonest practice or conduct is characterized by a lack of truth, honesty or trustworthiness, or is deceptive or implies a willful perversion of the truth to deceive, cheat, or defraud (§48.3(1))

Example A: In the process of obtaining a mortgage loan for a consumer, a mortgage originator employed by a mortgage broker discloses to the consumer in the Good Faith Estimate that the mortgage broker’s fee for the transaction will be $1,000, although the mortgage originator knows

that the fee will be much higher. There are no material changes to the loan prior to closing. The consumer appears at the loan closing and discovers when reviewing the HUD-1 settlement sheet that the mortgage broker’s fee is $3,000.

Example B: A consumer tells a mortgage originator employed by a mortgage broker that she seeks a fixed-rate mortgage loan without a prepayment penalty that has an interest rate within a certain range. The mortgage originator knows that the consumer does not qualify for such a fixed-rate mortgage loan, but does not inform the consumer of that fact. Additionally, in all legally-required disclosures it is indicated that the consumer is getting a fixed-rate loan without a prepayment penalty. However, when the consumer arrives at the loan closing, the mortgage loan that is offered is a variable-rate loan with a prepayment penalty.

Example C: A mortgage loan correspondent designs and issues targeted loan solicitations that purposefully appear to come from Federal or State government agencies or consumers’ existing lenders, or both.

A fraudulent practice or conduct is characterized by deceit or trickery, an intentional perversion of the truth 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 (§48.3(2))

Example A: A mortgage originator employed by a mortgage broker has promised a certain low-rate mortgage loan to a consumer. However, the consumer does not have the minimum debt-to-income ratio set by the lender preferred by the mortgage originator’s employer to qualify for the lowest-rate mortgage loan offered. Therefore, the mortgage originator changes the W-2 statement of the consumer to reflect a higher income for the consumer without the consumer’s knowledge, and then submits the documentation to the lender.

Example B: An employee of a mortgage lender contacts a real estate appraiser with a request to perform an appraisal and informs the appraiser that the sale price of the property is $150,000. The employee knows that the property will not appraise for that amount, but promises the appraiser future business if the appraiser “can make the deal work.” The mortgage loan is closed by the mortgage lender based upon the appraisal report showing the value of the property as $150,000.

Example C: A consumer seeks a particular mortgage loan from a mortgage broker but does not have sufficient income or assets to obtain the specified product offered by one of the mortgage broker’s lenders. After the mortgage broker explains the problem to the consumer, the consumer tells the mortgage broker he forgot to mention previously that he makes double his previously-stated income based upon a side business. The consumer later provides documentation to the mortgage broker regarding the additional income. The mortgage broker, although suspicious of the sudden change in the consumer’s circumstances, does not question the consumer on the additional income and submits a loan application including the additional income to the lender. The mortgage loan is closed by the lender and the lender later discovers that the purported additional income never existed.
An illegal practice or conduct is characterized as not according to or authorized by law. (§48.3(3))

**Example A:** A mortgage broker fails to provide a consumer with a good faith estimate within three business days of receiving the consumer’s mortgage loan application as required by the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A. §§ 2601—2617) in a situation where the lender has not rejected the application within three days.

**Example B:** A mortgage loan correspondent fails to implement a plan to safeguard confidential consumer information as required by the Gramm-Leach-Bliley Act and the Federal Trade Commission’s Privacy and Safeguards Rules.

**Example C:** A mortgage lender advertises an interest rate without conspicuously disclosing the annual percentage rate and identifying the qualification terms, as required by the Truth-in-Lending Act (15 U.S.C.A. §§ 1601—1667f).

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 mortgage loan business or profession. (§48.3(4))

**Example A:** A consumer tells a mortgage originator employed by a mortgage broker that he seeks a $30,000 fixed-rate home equity loan on a house that the consumer has advised the mortgage originator he intends to remain in permanently. Although the mortgage originator’s employer is able to provide the requested loan, the mortgage originator “steers” the consumer to variable-rate products with balloon payment features for which the mortgage originator’s employer, and thus the mortgage originator, will receive higher compensation than with a traditional fixed-rate home equity loan.

**Example B:** A lender has an agreement with a mortgage broker to provide qualified consumers a certain interest rate. The mortgage broker then tells a consumer who qualifies for the certain interest rate that the interest rate is locked in with the lender; however, the consumer was not asked by the mortgage broker or lender to sign a lock-in agreement with the lender. The lender later informs the mortgage broker that the lender is not going to honor the agreement between the mortgage broker and the lender to provide certain interest rates. Therefore, the mortgage broker is unable to offer the consumer a mortgage loan with the promised interest rate and the consumer has no written lock-in agreement to enforce against the lender.

**Example C:** A mortgage lender enters into a lock-in agreement with a consumer. During the lock-in period, interest rates rise. The mortgage lender decides to delay closing until the lock-in agreement with the consumer expires, thus causing the consumer to lose his locked-in interest rate and forcing the consumer to accept a mortgage loan with a higher interest rate.

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. (§48.3(5))

**Example A:** A mortgage originator employed by a mortgage lender takes mortgage loan applications from consumers on behalf of the licensee, but then leaves the company. The mortgage lender fails to follow up on the former employee’s application files. A consumer assumes that his mortgage loan is being processed by the mortgage lender until he contacts the mortgage lender as the closing date on his home purchase approaches. The mortgage lender realizes the error but is unable to provide the applied-for mortgage loan in time for the closing date.

**Example B:** A mortgage broker routinely fails to timely forward information received from consumers that was requested by the lenders and which is necessary to meet lenders’ underwriting criteria. As closing approaches, the lenders receive the consumers’ information and determine that the consumers do not qualify for the loans promised by the mortgage broker, thereby causing the consumers to delay closings or obtain different loans, or both.

**Example C:** A mortgage lender consistently fails to file mortgage satisfaction pieces, thereby repeatedly causing consumers to have to send notices to satisfy to the mortgage lender to get the mortgage lender to issue mortgage satisfaction pieces regarding the consumers’ paid-off mortgage loan obligations.

**The Mortgage Licensing Act of 2008 and Act 31 of 2009**

The Mortgage Licensing Act regulates the “mortgage loan business” conducted by the mortgage professionals defined in the following section. The law defines “mortgage loan business” as advertising, soliciting, negotiating, arranging, or offering to arrange or make mortgage loans. It is illegal to conduct “mortgage loan business” without a license.

**Definitions (§6101)**

When reviewing the Mortgage Licensing Act, it is important to have an understanding of frequently used terms and phrases. Below are the definitions and terms found in the Mortgage Licensing Act:

**Advance fee:** Any funds requested by or to be paid to a person in advance of or during the processing of a mortgage loan application, excluding those fees paid by a consumer directly to a credit agency reporting bureau, title company or real estate appraiser.

**Branch:** An office or other place of business, other than the principal place of business where a person engages in the mortgage loan business subject to the Mortgage Licensing Act.

**Clerical or support duties:**

- The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage loan.
• Communicating with a consumer to obtain the information necessary for the processing or underwriting of a mortgage loan, to the extent that the communication does not include offering or negotiating mortgage loan rates or terms or counseling consumers about mortgage loan rates or terms.

**Dwelling:** A residential structure, mobile home or trailer, whether or not that structure is attached to real property, if it is used as a residence, which contains one to four family housing units, or individual units of condominiums or cooperatives.

**First mortgage loan:** A loan which is made primarily for personal, family or household use and secured by any mortgage, deed of trust, or equivalent consensual security interest on a dwelling or on residential real estate.

**Loan processor or underwriter:** An individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under the Mortgage Licensing Act.

**Nationwide Mortgage Licensing System and Registry (NMLS):** The licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

**Net worth:** Assets less liabilities and assets unacceptable to HUD for purposes of complying with 24 CFR § 202.5(n) (relating to general approval standards) or 202.8(b)(1) (relating to loan correspondent lenders and mortgagees)

**Registered mortgage loan originator:** An individual who:

• Meets the definition of mortgage originator and is an employee of a banking institution or federally-chartered or State-chartered credit union, a subsidiary owned and controlled by a federally-chartered or State-chartered credit union and supervised by a Federal banking agency or an institution regulated by the Farm Credit Administration and

• Is registered with, and maintains a unique identifier through, the NMLS

**Unique identifier:** A number or other identifier assigned by NMLS

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**Module 2**

**Learning Objectives**

In Module 2, students will:

• Achieve awareness of mortgage licensing requirements in the state including exemptions, qualifications, the application process, grounds for license denial and license maintenance

• Review requirements for mortgage professionals in the state to maintain a license including license display, annual report, advertising and more
• Review prohibited conduct and practices, based on the Mortgage Licensing Act

Loans Protected by the Mortgage Licensing Act

The Mortgage Licensing Act of 2008 applies to first mortgages and to mortgages secured by a second lien on a residence. Extending the scope of the law to second lien mortgages is a change from the MBBCEPA. The MBBCEPA applied only to first-lien mortgages.

Until the enactment of the Mortgage Licensing Act of 2008, the Secondary Mortgage Loan Act created regulations for mortgages secured by a second mortgage or other subordinate mortgages on a dwelling. In its 2005 study, The Department noted that lenders and brokers that wanted to offer first and second mortgage loans were required to have two licenses: One under the MBBCEPA and another under the Secondary Mortgage Loan Act. The law was inconvenient for mortgage professionals. It also compromised the interests of consumers. The provisions of the Secondary Mortgage Loan Act were less strict than those under MBBCEPA, leaving consumers with second mortgages particularly vulnerable to poor lending practices.

Many secondary mortgages are open-end mortgages, such as home equity lines of credit. The Mortgage Licensing Act specifically provides that the provisions of the law apply to open-end loans. The law defines an open-end loan as one in which: (§6101)

• The consumer can obtain advances from time to time
• The amount of each advance, interest, and permitted charge is debited to the consumer’s account
• Payments and credits are credited to the consumer’s account
• Interest is computed on the unpaid principal balance
• The consumer can repay the balance in full at any time, or make monthly installment payments

The law does not apply to loans made for business or commercial purposes.

Mortgage Businesses and Individuals Regulated by the Mortgage Licensing Act

The Mortgage Licensing Act defines four distinct groups of mortgage professionals. These are:

• Mortgage lenders
• Mortgage loan correspondents
• Mortgage brokers
• Mortgage originators

The Pennsylvania Department of Banking acknowledges that some licensed mortgage lenders, mortgage loan correspondents or mortgage brokers might now also be required to be licensed as
mortgage originators. In those instances, the individual will not be required to pay a state licensing fee for the mortgage originator license. However, the NMLS processing fee will be charged.

 Individuals in this situation should select the license type of “Sole Proprietor Mortgage Originator” when applying for licensure through the NMLS in order to obtain a mortgage originator license at a reduced fee.

The law defines the regulated entities and individuals as described below. The word, “person” is frequently used in the law to describe those who are subject to its requirements. Note that under the Mortgage Licensing Act, the word “person” not only means an individual, but also refers to a joint venture, joint-stock company, partnership, limited partnership, Limited Liability Company, corporation, non-profit organization or other organization of individuals. (§6102)

**Mortgage Lender:** A mortgage lender is a person who directly or indirectly originates and closes mortgage loans with the use of his/her/its own funds. (§6102)

A licensed mortgage lender is authorized under the Mortgage Broker Act to: (§6122(a))

- Make first and second mortgages
- Collect all fees associated with the completion of third party settlement services, when the mortgage lender actually pays these fees
- Offer the loan applicant access to credit life, disability, accident, and health, or unemployment insurance, provided that the loan applicant receives a clear written disclosure that the purchase of insurance is not a prerequisite to obtaining a mortgage loan
- Require the purchase of property insurance, such as homeowners or hazard insurance, or require proof that the loan applicant has adequate insurance to protect the home used as security for the loan
- Collect fees for a dishonored check, within the limitations prescribed by Pennsylvania’s law on bad checks
- Collect reasonable attorney’s fees when the loan is executed or in the collection of a delinquent loan

**Mortgage Loan Correspondent:** A mortgage loan correspondent is a person who directly or indirectly originates and closes mortgage loans in his/her/its own name, using funds obtained from a wholesale table funder or other lender, to whom the loan is assigned at the time of closing. (§6102)

A licensed mortgage loan correspondent is authorized under the Mortgage Broker Act to: (§6122(b))

- Collect title examination, credit report, and appraisal fees related to a mortgage loan, if the licensee pays these fees, and to include these fees in the mortgage loan principal
- Charge a broker’s fee if the fee is disclosed to the consumer who is applying for a mortgage loan
- Receive fees or premiums for brokering a mortgage loan, as long as the receipt of the fees are in compliance with the Real Estate Settlement Procedures Act

**Mortgage Broker:** A mortgage broker is a person who directly or indirectly negotiates or places mortgage loans for others. A licensed mortgage broker has the same rights to collect and charge fees that are conferred to licensed loan correspondents. (§6122(b))

**Mortgage Originator:** An individual who takes a mortgage loan application or offers or negotiates the terms of a mortgage loan for compensation or gain. (§6102(1))

The definition of “mortgage originator” specifically excludes those individuals engaged solely as a loan processor or underwriter or a person or entity solely involved in extensions of credit relating to timeshare plans. A loan processor or underwriter is defined as an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing. (§6102(2))

The term mortgage originator also does not include an employee of a licensee or person exempt from licensure under the Mortgage Licensing Act who solely renegotiates terms for existing mortgage loans held or serviced by that licensee. These renegotiations are typically handled under a lender or servicer’s loan modification department. (§6102(3))

Registered mortgage loan originators are another category of mortgage professionals which are important to make note of.

**Registered Mortgage Loan Originator:** An individual who meets the definition of mortgage originator and is an employee of: (§6102(1))

- A banking institution or federally-chartered or state-chartered credit union
- A subsidiary owned and controlled by a federally-chartered or state-chartered credit union and supervised by a Federal banking agency
- An institution regulated by the Farm Credit Administration

Registered mortgage loan originators must register with the NMLS and maintain a unique identifier; however they are not required to become licensed under the Mortgage Licensing Act. (§6102(2))

The creation of licensing requirements for individual mortgage loan originators was one of the changes to MBBCEPA that the Department’s 2005 study urged Pennsylvania legislators to make. The study concluded:

"...each individual that solicits, provides, or accepts mortgage loan applications or assists borrowers in completing mortgage applications should be required to obtain an individual license, in addition to the current requirement for entity"
licensure. This would create more responsibility on the part of each individual mortgage solicitor....

Exemptions

Full Exemption (§6112)

The following institutions and individuals remain fully exempt from the provisions of the Mortgage Licensing Act:

- Attorneys who do not hold themselves out to the public as engaging in the mortgage loan business and who are not compensated by a company or individual in the mortgage business (§6112)(2))
- A person who makes, offers, or negotiates terms of a mortgage loan with, or on behalf of, a member of the person’s immediate family. Immediate family is defined in the new legislation to mean spouse, parent, child, brother or sister. (§6112)(3))
- Banking institutions and credit unions and their subsidiaries. However, their employed mortgage originators must register (not license) through NMLS according to regulations to be issued by federal regulatory agencies. (§6112)(1))
- Registered mortgage loan originators who are employees of banking institutions, credit unions or their subsidiaries (§6112)(9))
- Loan processors and underwriters solely performing clerical or supportive functions if employed by a mortgage licensee or entity exempt from licensure (§6112)(8)(i))
- Employees of a mortgage business who only re-negotiate existing mortgage loans held or serviced by his or her employer unless determined otherwise by HUD or a court of competent jurisdiction (§6102)(“Mortgage originator”)(3); (4))
- An individual or entity solely involved in offering to make or negotiating extensions of credit relating to timeshare plans (§6102)(“Mortgage originator”)(2)(ii))

Partial Exemptions (§6112)

The Department provides a partial exemption for certain entities. If an entity is partially exempt they are not required to obtain a license. However, they are subject to certain provisions of the Mortgage Licensing Act. These provisions include either maintaining bond coverage for its mortgage originators and filing an annual report with the Department through the NMLS or demonstrating that all mortgage originators employed by the entity have obtained and maintained surety bond coverage.

Partially exempt entities must file an annual report through NMLS if they carry a surety bond covering their mortgage originators. In order to file an annual report, an entity must register as a “Partially Exempt Mortgage Company” on the NMLS. The Department has strongly encouraged all partially exempt entities to register their company whether or not they carry the bond. The


7 Id. at 36
Department highlights that registration will provide the partially exempt entity with enhanced oversight of the status of their mortgage originators’ licenses. It will further relieve the mortgage originators employed by the partially exempt entities from the requirement to provide verification of employment to the Department.

The following are entities partially exempt from the Act:

- Agencies of the federal government or a corporation created by an act of the United States Congress (e.g. Fannie Mae, Freddie Mac, Ginnie Mae, FHA, or VA) (§6112)(4)
- Agencies of state or local government including the Pennsylvania Housing Finance Agency or other government finance agencies (§6112)(5)
- Affiliates of banking institutions or state and federally chartered credit unions (§6112)(7)
- Consumer discount companies (licensed under the Consumer Discount Company Act) (§ 6112(6))
- Nonprofit corporations that are not otherwise engaged in, or hold themselves out to the public as engaged in, the mortgage loan business but who promote home ownership or improvements for the disadvantaged (§6112)(11)
- Nonprofit corporations that are not otherwise engaged in, or hold themselves out to the public as engaged in, the mortgage loan business that do not make more than 12 mortgage loans in a calendar year with their own funds and make mortgage loans to promote and advance the cultural traditions and lifestyles of bona fide religious organizations (§6112)(12)

Affiliates of banking institutions or state/federal credit unions and consumer discount companies must provide bond coverage for mortgage originators.

**Consumer Discount Companies (§6112(6))**

As noted above, institutions that make consumer loans in Pennsylvania are licensed under the Consumer Discount Company Act. If a Consumer discount company acts as a mortgage lender, mortgage loan correspondent, or as a mortgage broker, it is only partially exempt from the provisions of the Mortgage Licensing Act of 2008.

Employees of licensees under the Consumer Discount Company Act that act as mortgage originators are subject to the licensing requirements of the Mortgage Licensing Act. Consumer discount companies that employ mortgage originators are subject to the same requirements as mortgage lenders in regard to the employment and supervision of mortgage originators. These consumer discount companies must comply with the following provisions of the Mortgage Licensing Act:

- They must comply with Subchapter C of the Mortgage Licensing Act, which establishes a list of prohibited lending practices and lending terms (these are itemized in the subsequent section on prohibited practices)
- They must maintain a line of credit or a repurchase agreement of not less than $1,000,000
- They must demonstrate and maintain a net worth of $250,000
- They must display their consumer discount company license
- They must state, in all advertisements, that they are licensed by the Department
- They must provide the Department with free access to their records
- They must file an annual report with the Department
- They must submit to examination by the Department and provide examiners with access to their records
- They must maintain accounting records in compliance with generally accepted accounting principles and keep records relating to the mortgage loan business separate from records relating to other business
- They must submit to the authority of the Department by taking part in its administrative proceedings, providing any records or other information that it requests, operating in compliance with its regulations, and complying with any orders that it issues
- Paying any penalties imposed by the Department

In addition to the foregoing requirements, consumer discount companies must meet the following requirements if they hire any employees who act as mortgage originators:

- They must require all employees who act as mortgage originators to meet the licensing requirements of the Mortgage Licensing Act
- They must supervise their mortgage originators in the same manner and according to the standards that the Mortgage Licensing Act creates for mortgage lenders

**Partial Exemption For Certain Affiliates and Subsidiaries (§6112(7))**

Affiliates of banking institutions (national banks, state-chartered banks, and federally or state-chartered savings associations) and subsidiaries and affiliates of federally-chartered and state-chartered credit unions are partially exempt from the provisions of the Mortgage Licensing Act. These affiliates and subsidiaries must comply with the following requirements of the Mortgage Licensing Act:

- They must comply with Subchapter C of the Mortgage Licensing Act, which establishes a list of prohibited lending practices and lending terms (these are itemized in the subsequent section on prohibited practices)
- They must maintain their records at the principal place of business and separate records relating to mortgage transactions from other records
- They must file an annual report with the Department
- They must submit to examination by the Department and provide examiners with access to their records
- They must maintain accounting records in compliance with generally accepted accounting principles and keep records relating to the mortgage loan business separate from records relating to other business
They must submit to the authority of the Department by taking part in its administrative proceedings, providing any records or other information that it requests, operating in compliance with its regulations, and complying with any orders that it issues.

Paying any penalties imposed by the Department

In addition to meeting the above requirements of the Mortgage Licensing Act, partially-exempt affiliates and subsidiaries must:

- Provide the Department, on an annual basis, with copies of financial reports made to supervisory agencies
- Register with the Department

If a mortgage lending business is not certain that it falls within one of the full or partial exceptions, it should seek legal counsel to determine its status with certainty.

License Application Requirements for Mortgage Lenders, Mortgage Loan Correspondents, and Mortgage Brokers

In order to obtain a license as a mortgage lender, applicants must complete the forms that are available on the NMLS website and submit them electronically. There are a total of four forms. The forms known as the MU1, MU2, and MU3 forms are those that an applicant must use in order to obtain a license as a mortgage lender. The fourth form - MU4 - pertains to loan originators. We will review it in a subsequent section.

The three forms required for lender licensing in Pennsylvania serve the following purposes:

**Form MU1:** This form is the application for business entities and sole proprietors seeking a license as a mortgage lender. The form allows applicants to indicate whether they will function as a mortgage lender, mortgage broker, or mortgage servicer. This form requires the following information:

- Name of the applicant
- Address of the applicant’s principal place of business and addresses of other locations where the applicant will conduct mortgage loan business
- Name, official title, and business address of each director and principal officer

The form also requires applicants to complete criminal and regulatory action disclosures and requires personal information on owners, officers, and control persons. (NMLS MU1 Form)

**Form MU2:** License applicants must submit this form along with the MU1 form. It requests biographical information for individuals identified as control persons and as the “qualifying individual” on the MU1 form. (NMLS MU2 Form)
Form MU3: A license applicant must submit this form with the MU1 form if it is opening a branch office. The form is also used for additional branch offices that a licensee opens after obtaining its initial license.

After providing this basic information regarding business locations and the identity of its principal officers and directors, applicants must meet the particular application requirements, as outlined in the following sections. (NMLS MU3 Form)

Mortgage Lender Applicant (§6131(c))

In order to obtain a license as a mortgage lender, an applicant must meet each of the following requirements:

- Payment of a nonrefundable application fee of $1,500 (plus the $100 NMLS processing fee for the MU1; a $15 credit report fee may also be added if one has not been authorized through the NMLS in the prior 30 days) for the principal place of business and payment of an additional $1,500 (plus the $20 NMLS processing fee for each MU3) for each branch office (§6132(a)(1))

- Proof that at least one partner, or ultimate equitable owner, of at least 10% of the business has successfully completed 20 hours of instruction and testing from a program approved by the Department of Banking (§6131.1(b)(1); (c)(1))

- Proof that the applicant has approval or can meet the criteria for approval as a lender for Fannie Mae, Freddie Mac, or the Federal Housing Administration (§6131(c)(1))

- Proof that the applicant has and will maintain a line of credit or a repurchase agreement of at least $1,000,000 (§6131(c)(2))

- Proof that the applicant has and will maintain fidelity bond coverage in accordance with guidelines established by Fannie Mae and Freddie Mac (§6131(c)(4))

- Proof that the applicant has and will maintain a minimum net worth of $250,000 (§6131(c)(3))

Mortgage Loan Correspondent Applicant (§6131(d))

In order to obtain a license as a mortgage loan correspondent, an applicant must meet each of the following requirements:

- Payment of a nonrefundable application fee of $1,500 (plus the $100 NMLS processing fee for the MU1; a $15 credit report fee may also be added if one has not been authorized through the NMLS in the prior 30 days) for the principal place of business and payment of an additional $1,500 (plus the $20 NMLS processing fee for each MU3) for each branch office (§6132(a)(1))

- Proof that at least one partner, or ultimate equitable owner, of at least 10% of the business has successfully completed 20 hours of instruction and testing from a program approved by the Department of Banking (§6131.1(b)(1); (c)(1))
Proof that the applicant has and will maintain a surety bond of at least $100,000 from a surety company authorized to do business in Pennsylvania, and the bond must be used to satisfy judgments entered against the licensee for violations of the law (§6131(d)(1))

Proof that the applicant has and will maintain a minimum net worth of $100,000 (§6131(d)(2))

Mortgage loan correspondents and applicants for a correspondent license are not required to obtain a surety bond if they can prove that they do not and will not accept advance fees. The Mortgage Licensing Act defines “advance fees” as funds paid during the processing of a mortgage loan except for those fees paid directly by the borrower to a credit reporting agency, a title company, or a real estate appraiser. (§6131(d)(1))

Mortgage Broker Applicant (§6131(e))

In order to obtain a license as a mortgage broker, an applicant must meet each of the following requirements:

- Payment of a nonrefundable application fee of $1,000 (plus the $100 NMLS processing fee for the MU1; a $15 credit report fee may also be added if one has not been authorized through the NMLS in the prior 30 days) for the principal place of business and $250 (plus the $20 NMLS processing fee for each MU3) for each branch office (§6132(a)(2))

- Proof that the applicant’s partner, or ultimate equitable owner, of at least 10% of the business has successfully completed 20 hours of pre-licensing instruction and testing from a program approved by the Department of Banking (§6131.1(b)(1); (c)(1))

- Proof that the applicant has and will maintain a surety bond (§6131(e)(1))

The Mortgage Licensing Act includes a lengthy provision that addresses the need for and the use of a surety bond for mortgage brokers. Mortgage brokers and applicants for a mortgage broker license are not required to obtain a surety bond if they can prove that they do not and will not accept advance fees. (§6131(e)(2))

If a mortgage broker or applicant for a mortgage broker license accepts or plans to accept advanced fees, he/she/it must obtain a surety bond. An action to recover damages from the bond can arise if a mortgage broker fails to honor an agreement with a consumer regarding the use of advanced fees. The Mortgage Licensing Act allows injured consumers to seek recovery from the bond in any of the following ways:

- The consumer can obtain the consent of the Department to file a claim with the surety company to recover advance fees and costs

- The consumer can file a formal complaint against the mortgage broker with the Department

Bonds are not valid unless they include a provision stating that the bond cannot be canceled unless the Department receives notice of intent to cancel at least 30 days prior to the date that the cancellation will take effect. (§6131(e)(3)(iii))
Surety Bond Requirements

The amendments to the Mortgage Licensing Act require mortgage lender, mortgage loan correspondent and mortgage broker applicants to obtain a surety bond. The purpose of surety bonds is to ensure that funds are available to indemnify borrowers who are harmed if a licensee breaches its contract with a borrower or harms a borrower by violation of state or federal lending laws. The surety bond amount reflects the volume of mortgage loans originated by the mortgage originators employed by the business. The amount of the bond will be determined by the amount of mortgage loans secured by Pennsylvania real property in a calendar year as indicated on the licensee’s annual report.

For initial mortgage business applicants, the amount of the bond will be determined by the anticipated amount of mortgage loans secured by Pennsylvania real property originated by its mortgage originators in the first calendar year of licensing. The following bond amounts apply:

**Mortgage Lenders and Mortgage Loan Correspondents: (§6131(c)(5)(i)); (d)(3)(i)**

<table>
<thead>
<tr>
<th>Total Amount of Originated Loans (Secured by PA real estate in calendar year)</th>
<th>Surety Bond Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>$29,999,999 or less</td>
<td>$100,000</td>
</tr>
<tr>
<td>$30,000,000 to $99,999,999.99</td>
<td>$200,000</td>
</tr>
<tr>
<td>$100,000,000 to $249,999,999.99</td>
<td>$300,000</td>
</tr>
<tr>
<td>$250,000,000 or more</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

**Mortgage Brokers: (§6131(e)(3)(i))**

<table>
<thead>
<tr>
<th>Total Amount of Originated Loans (Secured by PA real estate in calendar year)</th>
<th>Surety Bond Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>$14,999,999.99 or less</td>
<td>$50,000</td>
</tr>
<tr>
<td>$15,000,000 - $29,999,999.99</td>
<td>$75,000</td>
</tr>
<tr>
<td>$30,000,000 - $49,999,999.99</td>
<td>$100,000</td>
</tr>
<tr>
<td>$50,000,000 or more</td>
<td>$150,000</td>
</tr>
</tbody>
</table>

The bond amount is determined annually by the Department. Surety bonds are required to contain a provision stating it may not be canceled unless notice is given to the Department at least 30 days before the day upon which cancellation takes effect.

**Out-of-State Applicants (§6131(i))**

Applicants no longer need to have a physical office in the state of Pennsylvania. However, an applicant that is seeking a mortgage lender or a mortgage broker license from outside of the state must meet these additional requirements:

- They must maintain at least one office, which the Department will treat as the principal office for purposes of determining compliance with the Mortgage Licensing Act (§6131(i)(1))
They must file an irrevocable consent for the service, to the Department, of any complaints or pleadings against them (§6131(i)(2))

In order to ensure that out-of-state licensees receive notice of complaints or pleadings filed against them, the Department requires three copies of these documents. After retaining one copy for its files, the Department will forward the other two to the last known principal place of business of the licensee, using certified mail, return receipt requested.

License Application Requirements for Mortgage Originators

The licensing for mortgage originators is different from the licensing for lenders, loan correspondents, and brokers. Although an individual can obtain a license as a mortgage lender, loan correspondent, or mortgage broker, most applications for these licenses are filed by business entities. All of the applicants for a license as a mortgage originator are individuals.

In order to obtain a license as a mortgage originator, applicants must meet the following requirements:

- Payment of a nonrefundable application fee of $200 (plus the $30 NMLS processing fee; a $15 credit report fee may also be added if one has not been authorized through the NMLS in the prior 30 days; an additional $39 criminal background check may also be added at the time of application) (§6132(a)(3))
- Proof that the applicant has successfully completed 20 hours of instruction and testing from a program approved by the Department of Banking (§6131.1(b)(1))
- Proof that the applicant is employed and supervised by a single mortgage lender, mortgage loan correspondent, or mortgage broker licensee. The licensee is responsible for the direct supervision and control of the mortgage originator. (§6131(f)(1))
- Maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System (§6131(f)(3))
- Be assigned to and work out of a licensed location of the employer licensee (§6131(f)(2))

Surety Bond Requirements (§6131(f)(4))

A mortgage originator’s employer may provide the surety bond for the loan originator. However, if an exempted person or entity does not maintain a bond for the originator, the originator is required to secure a bond.
The bond requirements are as follows: (§6131(f)(4)(i))

<table>
<thead>
<tr>
<th>Total Amount of PA Loan Originations</th>
<th>Surety Bond</th>
</tr>
</thead>
<tbody>
<tr>
<td>7,499,999.99 or less</td>
<td>$25,000</td>
</tr>
<tr>
<td>$7,500,000 - $14,999,999.99</td>
<td>$50,000</td>
</tr>
<tr>
<td>$15,000,000 - $29,999,999.99</td>
<td>$75,000</td>
</tr>
<tr>
<td>$30,000,000 - $49,999,999.99</td>
<td>$100,000</td>
</tr>
<tr>
<td>$50,000,000 or more</td>
<td>$150,000</td>
</tr>
</tbody>
</table>

As is the case with the lender bonds, the bond amount is determined annually by the Department. Surety bonds are required to contain a provision stating it may not be canceled unless notice is given to the Department at least 30 days before the day upon which cancellation takes effect. (§6131(f)(4)(iii))

The Department has authority under the Mortgage Licensing Act to issue a conditional license to a mortgage originator upon receipt of the application, if the mortgage originator agrees to complete the licensing requirements. (§6133(f))

**Criminal Background Check**
Completion of a criminal background check is another requirement for applicants. This involves taking fingerprints and submitting them to the Federal Bureau of Investigation (FBI) and to other state, national, or international agencies with authority to complete criminal background checks. Applicants must also authorize these agencies to release information to the Department of Banking and the NMLS.

Certain criminal charges and convictions can prevent an applicant from being granted licensure. These reasons will be examined in a subsequent section on actions pertaining to licensing applications.

**Pre-licensing Education (§6131.1 (b))**

The amendments to the Mortgage Licensing Act require pre-licensing education for loan originators as well as a written test.

A mortgage originator applicant must complete at least 20 hours of education programs which include all of the following: (§6131.1 (b)(1))

- **Three hours** of Federal law and regulations
- **Three hours** of ethics (including instruction on fraud, consumer protection, and fair lending issues)
- **Two hours** of training related to lending standards for the nontraditional mortgage loan marketplace
- **Three hours** of Pennsylvania law and regulations, including the Mortgage Licensing Act, the Housing Finance Agency Law and Loan Interest and Protection Law.
The remainder of the course work (nine hours) must be related to the mortgage industry.

The pre-licensing education is also a requirement for at least one partner or ultimate equitable owner of 10% or more of an applicant. If the NMLS pre-approves an education program, the program may be given by the loan originator’s employer. (§6131.1 (b)(3))

Pre-licensing programs may be in classroom or on-line. If an applicant received the pre-licensing education while completing an application for another state, Pennsylvania will accept that education as credit toward the NMLS requirements as long as the pre-licensing education was completed within the last 12 months. (§6131.1 (b)(4); (5)

Written Test (§6131.1 (c))

As with the pre-licensing education requirement, both the mortgage originator applicant and at least one partner or ultimate equitable owner, must take, and pass the National and Uniform State Test (UST) components.

Pennsylvania adopted the Uniform State Test on April 1, 2013. As a result, license applicants are no longer responsible for passing a Pennsylvania -specific licensing exam. Instead, applicants must take the National Test Component with UST, which consists of 125 total questions, 115 of which are scored. There is also a Stand-alone UST available until April 1, 2014 for those license applicants who have previously passed the National Test without the UST component.

Applicants are permitted to take the test three consecutive times, provided that at least 30 days passes between examinations. Those who fail the test three times must wait at least six months before taking the examination again. Those who fail to maintain a valid license for at least five years are required to take the examination again prior to their re-application.

Action on License Applications

Within 60 days of the receipt of a complete application, the Department must issue or deny a license or provide written notice to the applicant that it is giving a 30-day extension to its consideration of the license application. (§6133(a)) Grounds for license denial include any of the reasons that the Department can also rely on to suspend, revoke, or refuse to renew a license. These include: (§6139(a))

- The submission of a material misstatement in an application or in any other information provided to the Department (§6139(a)(1))
- Violations of the Mortgage Licensing Act (§6139(a)(2))
- Involvement in dishonest, illegal, fraudulent, or unethical practices related to the mortgage loan business (§6139(a)(3))
- Receipt of a temporary or permanent injunction from taking part in the mortgage loan business (§6139(a)(5))
- Failure to comply with regulations, orders, or policy statements issued by the Department (§6139(a)(8))
- Demonstration of negligence or incompetence in the mortgage loan business
  (§6139)(a)(10))
- Acceptance of an advance fee, as a mortgage broker, without obtaining or maintaining a
  surety bond (§6139)(a)(11))
- Insolvency (§6139)(a)(12))
- Failure to complete continuing education requirements (§6139)(a)(13))
- Conducting mortgage loan business through an unlicensed mortgage originator
  (§6139)(a)(14))
- Failure to comply with an agreement with the Department regarding the location of
  mortgage business records (§6139)(a)(15))
- Conviction for a crime of moral turpitude or a felony (§6139)(a)(4))
- Entering a guilty plea or a plea of nolo contendere to a crime of moral turpitude or a
  felony (§6139)(a)(4))

License denials based on convictions, guilty pleas, or pleas of nolo contendere may occur if the
conviction or the pleas are those of the applicant or of a director, officer, partner, employee,
agent, or ultimate equitable owner of 10% or more. The Department considers crimes committed
in Pennsylvania and outside of the state. (§6133(d))

The Mortgage Licensing Act expands the criteria used for denying a loan originator application.
The Department may deny a license application if it finds that an applicant has been convicted of
any felony during the seven-year period preceding the date of the application or at any time
preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of
trust or money laundering. (§6133(d)(1))

The Department may also deny a license application for a loan originator if the applicant has had
a license issued by the Department or another state licensing agency or a federal regulatory
agency revoked. (§6133(e)(1))

The Act contains a section ensuring the financial responsibility of a loan originator applicant.
The Act states that the Department may deny a license if the applicant does not possess the
financial responsibility, character, reputation, integrity and general fitness to command the
confidence of the public. Furthermore, an applicant must warrant the belief that the mortgage
loan business will be operated lawfully, honestly, and fairly. (§6133(e)(5))

An applicant’s financial responsibility is determined by a set of factors and reviewed by the
Department. An applicant is not financially responsible if the applicant has shown a disregard in
the management of his or her own financial condition.

The factors that the Department may consider in making a determination regarding an applicant's
financial responsibility include:
- Current outstanding judgments, other than judgments solely as a result of medical
  expenses
• Current outstanding tax liens or other government liens and filings
• Foreclosures within the past three years or
• A pattern of seriously delinquent accounts within the past three years

If the Department denies a license application, it must provide the license applicant with a written notice stating: (§6133(b))
• The reason(s) for the denial
• The applicant’s right to appeal the denial
• The applicant’s need to file a request for an appeal within 30 days of the notice of denial

Appeals (§6138(b))

An applicant or licensee may appeal a decision of the Department to the Secretary of Banking who will issue a final order of the Department after an appropriate hearing. That order is enforceable in a court of competent jurisdiction. However, a final ruling of the Secretary of Banking may appeal the decision under the Pennsylvania Code, bringing an action in civil court.

Maintaining and Renewing a License Under the Mortgage Licensing Act of 2008

Licenses for mortgage lenders, mortgage loan correspondents, mortgage brokers, and mortgage originators are valid for one year. In order to maintain a license and to ensure that the Department will approve a renewal application, licensees must comply with the requirements of the Mortgage Licensing Act and must take steps to ensure that they do not commit any of the practices specifically prohibited by the law.

Continuing Education (§6131.1(d))

Mortgage originators are required to obtain eight hours of continuing education to renew their license. Additionally, one individual from each licensed office of a mortgage broker, mortgage lender or mortgage loan correspondent that is not a mortgage originator must also complete at least eight hours of education programs. If non-clerical staff members at a particular licensed office are licensed as mortgage originators then the additional person is not required to take the continuing education requirements.

The continuing education classes include the following:
• Three hours of Federal law and regulations
• Two hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues
• Two hours of training related to lending standards for the nontraditional mortgage loan marketplace and
One hour of Pennsylvania law, including the Mortgage Licensing Act, the Housing Finance Agency Law and the Loan Interest and Protection Law

Requirements for Mortgage Lenders, Mortgage Loan Correspondents, and Mortgage Brokers

In order to maintain a license and to ensure that they are not risking license suspension or revocation, or the denial of a renewal application, licensees must operate in compliance with specific requirements that are set forth in the Mortgage Licensing Act. The requirements that apply specifically to mortgage lenders, mortgage loan correspondents, and mortgage brokers include:

- **License Display:** Mortgage lenders, loan correspondents and brokers must conspicuously display their licenses, and copies of the licenses of their mortgage originators, at each licensed place of business. (§6135(a)(1))

- **Report of Condition:** Also known as the NMLS Mortgage Call Report, this quarterly report of mortgage activity and company information replaces the previously required annual report. All licensed mortgage companies that employ mortgage loan originators must complete this report.  
  

- **Advertising:** Mortgage lenders, loan correspondents and brokers must indicate in their advertisements that they are licensed by the Department. (§6135(a)(5))

- **Supervision of Mortgage Originators:** One of the primary goals of the Mortgage Licensing Act is to ensure that accountability always exists for the actions of mortgage professionals. The Department and the General Assembly have recognized that one cause of poor lending practices is the ability of originators to make loans using negligent or unscrupulous practices, leave, and “…pick up and victimize people in other places.”  

To address this problem, the Mortgage Licensing Act includes provisions to ensure that licensees supervise their employees and provide the Department with information that will allow it to track originators from one mortgage business office to another. These provisions require mortgage lenders, loan correspondents, and brokers to: (§6121(13))

- Supervise and control the mortgage originators that they employ
- Assume responsibility for the acts and omissions of the mortgage originators that they employ
- Maintain a list of all current and former mortgage originators employed by the licensee
Provide the Department with written notice that a mortgage originator under the licensee’s employment is engaged in an activity that is in violation of the law

Provide the Department with written notice of the corrective measures taken to address the illegal activity of a mortgage originator

Provide these notices of illegal activity and corrective actions within 30 days

Renewal Applications

At the time that a licensee files an annual renewal application, renewal fees and proof of the completion of education requirements are required, as outlined next.

License Renewal Requirements for Mortgage Lenders and Mortgage Loan Correspondents

Mortgage lenders and loan correspondents must meet these requirements in order to renew a license:

- Payment of a nonrefundable license renewal fee of $750 for the principal place of business and an additional $750 for each branch office (§6132(b)(1))
- Completion of eight hours of continuing education by at least one individual, other than a mortgage originator, from each licensed office (§6131.1(d)(1))
- Proof that all mortgage originators employed by the licensee have completed at least eight hours of continuing education (§6131.1(d))

License Renewal Requirements for Mortgage Brokers

- Payment of a nonrefundable license renewal fee of $500 for the principal place of business and an additional $250 for each branch office (§6132(b)(2))
- Completion of eight hours of continuing education by at least one individual, other than a mortgage originator, from each licensed office (§6131.1(d)(1))
- Proof that all mortgage originators employed by the licensee has completed at least eight hours of continuing education (§6131.1(d))

License Renewal Requirements for Mortgage Originators

- Payment of a nonrefundable license renewal fee of $100 (§6132(b)(3))
- Proof of completion of eight hours of continuing education (§6131.1(d))
Prohibitions for Mortgage Lenders, Mortgage Loan Correspondents, and Mortgage Brokers

There are some prohibitions under the Mortgage Licensing Act that apply specifically to lenders, loan correspondents, and/or brokers:

- **Business Name:** Mortgage lenders, loan correspondents and brokers may not conduct business under any name other than the name stated in the license. (§6136(a))

- **Use of Own Name in Transactions:** Mortgage brokers are prohibited from closing or servicing mortgage loans in their own names. They are also prohibited from offering lock-in agreements in their own name, although they can pass on the lock-in agreement of a lender. (§6123(7))

- **Limitation on Funds for Closing and Servicing:** A mortgage loan correspondent cannot use funds, other than those of a wholesale table funder, in the servicing or closing of mortgage loans, except in an emergency. The circumstances constituting an emergency are not defined. (§6123(6))

Requirements and Prohibitions for Mortgage Originators

Requirements for Mortgage Originators

There are a few requirements that apply specifically to mortgage originators. These include:

- **License Possession:** A mortgage broker must keep his/her license in his/her immediate possession when engaging in the mortgage loan business. (§6135(1))

- **Advertising:** Advertisements generated by a mortgage originator must identify the name of his/her employer. (§6135(5))

Prohibitions for Mortgage Originators

Prohibitions under the Mortgage Licensing Act that apply specifically to mortgage originators include the following:

- **Use of Other Names:** A mortgage originator is prohibited from using any name other than his/her personal and legal name. (§6136(a))

- **Use of Own Name in Transactions:** A mortgage originator is prohibited from closing or servicing mortgage loans in his/her own name. An originator is also prohibited from offering lock-in agreements in his/her own name, although he/she can give a loan applicant a lock-in agreement from the lender. (§6123(7))

- **Use of Own Name in Accepting Fees:** A mortgage originator is prohibited from accepting any fees from consumers in his/her own name. However, a mortgage originator can accept fees on behalf of his/her license/employer. (§6123(8))

- **Multiple Employers:** A mortgage originator cannot work in the mortgage loan business for more than one employer. (§6111(a))
General Requirements for All Licensees (7 Pa.C.S. §6121)

The Mortgage Licensing Act requires all licensees to meet the following requirements:

- Comply with the state usury law
- Comply with the Housing Finance Agency Law
- Provide a borrower with a promissory note evidencing the mortgage loan that the borrower has signed
- Give the borrower written evidence of any insurance purchased by the borrower and through the licensee
- Document cash payments related to a mortgage loan with a written receipt that includes an account number, or any other identification, and the date, amount paid, and, if requested by the borrower, the unpaid balance prior to and after the payment
- Respond to a borrower’s written request for a loan statement within ten days, providing dates and amounts of payments, dates and amounts of charges and credits, and the unpaid balance (Licensees are not required to provide more than two statements within a 12-month period)
- Indicate that a mortgage is paid in full by stamping or writing on the face of the promissory note
- Release and cancel any liens at the time that a mortgage is paid in full, and cancel any insurance provided by the licensee in connection with the mortgage
- Provide annual escrow statements, showing amounts received from the borrower and amounts disbursed from the account
- Return all fees, other than those paid to third parties, when a mortgage loan is not produced within the time specified by the licensee or at the rate, term, and overall cost agreed to by the loan applicant
- Respond, within ten days of the receipt of a written request from a borrower, with a statement showing the unpaid balance of a loan and the total pay-off amount (Licensees are not required to provide more than two such statements within a 12-month period)
- Ensure that all lock-in agreements are in writing and include the following provisions, when they are part of the agreement:
  - The expiration date of the lock-in
  - The interest rate locked in
  - The discount points locked in
  - The fee locked in
  - The lock-in fee
In addition to the requirements outlined above, licensees must comply with important requirements for recordkeeping and accounting:

**Recordkeeping Requirements:** Licensees must maintain records at their principal place of business. All records relating to the mortgage loan business shall be kept separate and apart from the records of any other business conducted by the licensee. Records of first and secondary mortgage loans must be easily distinguishable and easily separated.

Licensees are required to preserve records and keep them available for investigation or examination by the Department for a minimum of four years. The law is not specific about the records that licensees must keep, but they must generally include accounts, documents, and other materials related to the licensee’s mortgage loan business. (7 Pa.C.S. §6135(a)(2))

**Accounting Requirements:** Licensees must keep accounting records in compliance with generally accepted accounting principles. (7 Pa.C.S. §6135(b))

**General Prohibitions for All Licensees**

The Mortgage Licensing Act prohibits all licensees from committing any of the following acts:

- Charging or collecting fees in excess of those allowed by the Mortgage Licensing Act (§6123(1))
- Disbursing the proceeds of a loan to a closing agent in any form other than cash, electronic funds transfer, certified check, or cashier’s check (§6123(2))
- Using misleading or deceptive advertising (§6123(3))
- Making a mortgage loan that is conditioned on the borrower’s use of insurance services from a particular agent, broker, or underwriter (§6123(4))
- Requiring a loan applicant or borrower to pay a broker’s fee, finder’s fee, or other fee other than fees that are permitted under the law (§6123(8))

Note that “finder’s fee” is defined under the Mortgage Licensing Act to mean “*Any payment of money or other consideration for the referral of a mortgage loan to a licensee, except for consideration paid for goods or facilities actually furnished or services actually performed.*” (§6102)

**Notice Requirements**

Although the deadlines for the following notice requirements are discussed in other sections of the course, the following list provides a summary of the time limitations for providing requisite notices to the state.

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Ten Days’ Notice

Notice to the Department is due within ten days of the following events:

- Notice of any change in information provided in a license application or in a renewal application is due within ten days after the change occurs or is discovered (§6131(b))
- Notice of changes in a licensee’s name or place of business are due within ten days of the change (§6136(a))

Thirty Days’ Prior Notice

Notice to the Department is due 30 days prior to the following:

- Notice of intent to cancel a surety bond is due 30 days prior to the date of cancellation (§6131(c)(5)(iii))
- Notice of a licensee’s intent to conduct business other than mortgage loan business is due 30 days prior to conducting other business (§6136(b))

Thirty Days’ Notice

Notice to the Department is due within 30 days of the following:

- Notice, from a licensee, of violations by a mortgage originator are due within 30 days of the discovery of the violations (§6121(13)(iii))

Additional Provisions

As noted in the introduction, repeal of the Secondary Mortgage Loan Act was one of the reforms that the General Assembly made in July 2008. Reasons for repeal of the law included the need for consistent regulation of first mortgage loans and secondary mortgage loans and easing the regulatory burden on mortgage professionals who were required to obtain licenses under two laws.

The Mortgage Licensing Act includes specific provisions regarding interest rates and application fees for secondary mortgage loans. Many second mortgages are open-end loans, and the Mortgage Licensing Act includes lengthy provisions on the computation of interest on these loans, the prepayment of these loans, and credit insurance products associated with these loans.

The Mortgage Licensing Act clarifies the fees that lenders may charge. Lenders making secondary loans may charge the following:

- Interest not exceeding 1.85% per month (§6125(b)(2)(i))
- An origination fee not exceeding 3% (this fee was formerly known as an application fee) (§6125(b)(2)(ii))
- Delinquency charges of $20 or 10% of the late payment (whichever is greater), which is more than 15 days late (§6125(b)(2)(iii))
Penalties for Violation of the Mortgage Licensing Act (§6140)

An unlicensed person who is subject to the Mortgage Licensing Act may be fined up to $10,000 for each offense by the Department if he/she violates any provision of the law. The same $10,000 fine may be imposed if an unlicensed person commits any action which would subject a licensee to suspension, revocation or nonrenewal. (§6140(a))

A licensee who violates the Mortgage Licensing Act, or who commits any action which would subject the licensee to suspension, revocation or nonrenewal, may be fined by the Department up to $10,000 for each offense. This regulation also applies to any director, officer, owner, partner, employee or agent of a licensee. (§6140(b))

Module 3

Learning Objectives

In Module 3, students will:

- Learn the obligations held under the state’s Consumer Equity Protection Act, including enforcement authority and penalties
- Review provisions relating to the Loan Interest and Protection Law
- Explore the Pennsylvania Housing Finance Agency Law
- Take a look at loan modification in Pennsylvania

Pennsylvania’s Consumer Equity Protection Act

Introduction

The Pennsylvania General Assembly passed the Consumer Equity Protection Act in 2001 to curb the unethical practices of predatory lenders. Predatory lending involves the use of abusive lending practices and oppressive lending terms in mortgage loan transactions. The use of these unfair practices and lending terms inevitably results in the loss of equity in borrowers’ homes, and may ultimately lead to foreclosure.

Predatory lending is often associated with subprime lending transactions. Subprime loans, which are loans with interest rates above the prime rate, are typically offered to first-time borrowers who have not had an opportunity to establish credit or to borrowers with blemished credit records.

At the present time, the subprime market is virtually non-existent, however subprime loans have served as a valuable product for those who need financing for a home and who cannot qualify for a prime loan. Subprime lending becomes predatory lending when loans with high interest rates
are offered to borrowers who do not realize that they can qualify for prime loans, or when the terms of the loan are so oppressive that they are likely to lead to default or foreclosure.

In 1994, Congress addressed the problem of predatory lending with the enactment of the Home Ownership and Equity Protection Act (HOEPA). The purposes of HOEPA are:

- To require the use of disclosures to alert consumers that there are risks involved in accepting a high-cost home loan
- To discourage the use of common predatory lending practices associated with high-cost home loans

The protections of HOEPA are extended to those loans that meet interest rate or points and fees thresholds. A common criticism of HOEPA is that its thresholds are too high, allowing the origination of many high-cost loans without offering any protection to consumers. Another criticism is the failure of the law to cover loans to purchase a home.

State and Federal legislatures responded to the need for additional consumer protection against predatory lenders by adopting stricter legislation. Pennsylvania’s 2001 Consumer Equity Protection Act reflects a concern that was shared by many state legislatures at the time of its enactment. The General Assembly wanted to offer protection to consumers without discouraging lenders from funding subprime loans and investors from buying them. In order to balance these concerns, the Pennsylvania law uses the same thresholds that HOEPA uses, covering a relatively small range of loans, but imposes stricter disclosure requirements for these loans.

In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law on July 21, 2010. This Act was passed in order to address the multiple issues blamed for the financial crisis. The Act includes a section regarding amendments to HOEPA and the expansion of coverage to include home purchase loans.

**Loans Covered by the Consumer Equity Protection Act (§503)**

Pennsylvania’s Consumer Equity Protection Act applies to “covered loans,” which the law defines as a mortgage loan that:

- Involves property located in Pennsylvania
- Has an original principal balance of less than $100,000
- Meets the criteria for a mortgage loan covered by HOEPA, as we will discuss next

As a result of the Dodd-Frank Act, HOEPA now applies to any consumer loan secured by the consumer’s principal dwelling (excluding reverse mortgages) provided it meets any one of three independent triggers:

- **Interest Rate Threshold:** For first-lien mortgages, the rate trigger is 6.5% above the average prime offer rate (8.5% if the dwelling is personal property and the transaction is less than $50,000). For subordinate liens, the rate trigger is 8.5% above the average prime offer rate.
- **Points and Fees Threshold:** 5% or less of the total loan amount for loans $20,000 or over, or the lesser of 8% or $1,000 for loans under $20,000.

- **Prepayment Penalty Trigger:** The loan documents permit either a prepayment penalty after 36 months or prepayment penalties that exceed more than 2% of the amount prepaid.\(^\text{11}\)

The Pennsylvania Consumer Equity Protection Law incorporates the federal regulations that relate to HOEPA. Included in these regulations is a definition of “points and fees,” which mortgage professionals need to understand in order to accurately identify loans that are subject to the special provisions of the state’s equity protection laws. Under the regulations, points and fees include all of the following:

**Mortgage Broker Fees:** Fees that the borrower pays directly or indirectly to a mortgage broker are included in the calculation of points and fees.

**Closing Agent Fees:** Fees charged by the party that conducts the closing (e.g. settlement agent, attorney, or title company) are included in the calculation of points and fees if the lender requires the use of particular services or retains a portion of the charges.

**Charges by Third Parties:** Finance charges by any party other than the lender are included in the calculation of points and fees if the lender requires the use of the third party or retains a portion of the third-party charge. Examples of finance charges listed in Regulation Z include:

- Service, transaction, or carrying charges
- Points, loan fees, finder’s fees, and assumption fees
- Appraisal, investigation, and credit report fees
- Premiums or other charges for insurance protecting the lender’s interest
- Premiums for homeowners or liability insurance coverage
- Debt-cancellation coverage

**Insurance Premiums:** Whether required by the lender or voluntarily purchased by the borrower, premiums and other charges for credit life, accident, or loss of income insurance of debt-cancellation coverage is included in the calculation of points and fees.

**Real-estate Related Fees:** The following real-estate related fees are included in the calculation of points and fees if they are not reasonable, if the lender receives direct or indirect compensation from the charge, or the charge is paid to an affiliate:

- Fees related to title insurance including title examination, title abstract, and property survey

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- Fees related to the preparation of loan documents such as deeds, mortgages, and settlement documents
- Notary fees and credit report fees

By requiring the inclusion of all of these items in the calculation of points and fees, the law discourages the charging of excessive fees in lending transactions.

**Disclosures and Notifications Required by the Consumer Equity Protection Act**

Pennsylvania’s Consumer Equity Protection Law includes two special notice requirements that are intended to help consumers to make well-informed decisions when deciding whether to accept a covered loan.

**Cautionary Notice (§512(a))**
At least three business days prior to the consummation of a mortgage transaction, the borrower must receive the following written notice or a “substantially similar” notice:

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NOTICE TO BORROWER
If you obtain this loan, the lender will have a mortgage on your home. You could lose your home and any money you put into it if you do not meet your obligations under the loan.

Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your employment history, the loan-to-value requested and the type of property that will secure your loan. The loan rate and fees could also vary based on which lender or broker you select. As an obligor, you shop around and compare loan rates and fees.

You should also consider consulting a qualified independent credit counselor or other experienced financial advisor regarding the rate, fees, and provisions of this mortgage loan before your proceed. A list of qualified counselors is available by contacting the Pennsylvania Housing Finance Agency.

You are not required to complete this loan agreement merely because you have received these disclosures or have signed a loan application. Remember, property taxes and homeowner’s insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services. Also, your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors.
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**Insurance Notice (§512(f)(1))**
Packing unnecessary fees and optional insurance products into mortgage loans is a characteristic of predatory lending. Charges for single premium credit life, health, accident, or unemployment insurance are the most common and unnecessary fees included in predatory loans. It ensures the repayment of a mortgage in the event of the borrower’s death, disability, or unemployment. Its
inclusion in a loan agreement is a predatory practice if lenders or brokers lead borrowers to think that they cannot obtain the loan without purchasing the insurance, or if they fail to explain to borrowers that although they will finance the insurance over the life of the loan, it usually provides coverage for only three to five years.

Borrowers often do not know that they can buy traditional term insurance for significantly less. When fees of single premium credit life are financed, the cost for the borrower increases significantly. With fees such as credit life insurance packed into a loan, borrowers may reach the closing before they discover that they are purchasing a much more expensive loan than they had originally intended.

In order to protect borrowers from unknowingly purchasing optional insurance products, the Pennsylvania Consumer Equity Protection Law requires the following disclosure, insurance cancellation form, and acknowledgment of receipt of the disclosure:

**INSURANCE NOTICE TO BORROWER(S)**
You have elected to purchase credit life, accident and health and/or unemployment insurance in conjunction with this mortgage loan. The cost of this insurance is being prepaid and financed at the interest rate provided for in the loan. This insurance is NOT required as a condition of closing this loan and has been included with the loan at your request.

At any time you have the right to cancel any or all such policies in conjunction with this loan. You may cancel you policy or policies by signing and returning a copy of this notice to your lender or you may contact your lender directly.

If you cancel your insurance within 30 days of the date of you loan, you will receive either a full refund or a credit against your loan account. If you cancel your insurance at any other time, you will receive either a refund or credit against your loan account of any unearned premium.

**YOU MUST CANCEL WITHIN 30 DAYS OF THE DATE OF THE LOAN TO RECEIVE A FULL REFUND.**

**CREDIT INSURANCE CANCELLATION**
I (we) request that the lender cancel the _________ insurance that I (we) purchased in Conjunction with my (our) mortgage loan dated ________.

____________________Date
____________________Borrower

**ACKNOWLEDGMENT OF RECEIPT**
I (we) acknowledge receipt of the above notice.

____________________Date
____________________Borrower
If the borrower decides to cancel insurance coverage, the lender or the insurer can decide whether to refund the premium (or the portion due) directly to the borrower or by issuing a credit to the account.

The law specifically provides that the provision that allows borrowers to cancel insurance applies to policies in which the lender is the beneficiary of the policy, and not to policies in which the borrower chooses the primary beneficiary.

**Discussion Scenario: Failure to Meet Disclosure Requirements**

Disclosure requirements are an important component of conducting business in the mortgage industry. Failing to provide proper disclosures in the course of a loan transaction is a consumer protection issue and places mortgage professionals at risk for civil and criminal action. *What if this risk cost you $2,000 per violation?*

There are numerous provisions under Pennsylvania law requiring proper disclosure. Some disclosure requirements (such as the Good Faith Estimate of loan costs and Truth-in-Lending disclosures) are specific to federal requirements and others are unique to state law. The Cautionary Notice and the Insurance Notice are two that are specifically addressed under Pennsylvania law.

To illustrate the importance of proper disclosure, consider the fate of a mortgage loan finance company which was faced with steep fines in 2009 for failure to provide disclosures to consumers. The broker, which had ceased business in 2007 and surrendered its license, became the focus of an investigation by the Pennsylvania Attorney General. Through the investigation it was discovered that nearly every loan file reviewed was missing disclosures and/or contained incomplete documents.

**Discussion Questions**

- *Why do state and federal laws mandate disclosures?*
- *Based on the state requirements we have reviewed so far, what impact could the missing and incomplete documents have had on the borrowers involved?*
- *What do you think could have led the finance company to fail to meet disclosure requirements on such a great scale?*
- *In addition to Pennsylvania law, what are some federal laws that may have been violated?*

**Discussion Feedback**

State and federal disclosure requirements have a number of purposes. Some ensure that a consumer is advised on fees and charges (the “cost of credit”) and the terms of their loan. This allows consumers to make an educated decision before entering into a loan transaction – often the biggest investment they will make in their lives. Other disclosures advise them of their rights and their obligations as a party to the transaction. In addition to state requirements, federal mortgage-related laws include specific disclosure provisions; the Truth-in-Lending Act (TILA),
the Real Estate Settlement Procedures Act (RESPA) and the Equal Credit Opportunity Act (ECOA) are just a few.

When consumers are not provided with appropriate disclosures on mortgage transactions, they may make decisions without knowing all of the facts. Poor decisions can result in debt problems, default and foreclosure, and places the lien holder’s investment in jeopardy. Failing to meet disclosure requirements on a large scale is a sign that the mortgage broker was either unaware of the disclosure obligations or was simply not committed to good business practices. Another possibility is that the broker failed to disclose in order to hide unprofessional or unethical business practices such as charging illegal fees, etc.

**Failure to Meet Disclosure Requirements: The Potential Outcome**

Following the investigation, the Attorney General filed a lawsuit against the finance company charging it with violations of the federal Real Estate Settlement Procedures Act (RESPA), Truth-in-Lending Act, and Pennsylvania law. The lawsuit asked the court to prohibit the company from committing further violations, require the company to make restitution to all the borrowers who had lost money due to the violations and to pay civil penalties of $10,000 per violation.

**Discussion Questions**

- What are some business practices a mortgage broker could put in place to ensure disclosure requirements are met?
- How would you react if you were one of the borrowers harmed by the mortgage broker’s actions?

**Discussion Feedback**

Education and research on state and federal disclosure requirements is the first step in ensuring mortgage professionals meet their obligations. Once those obligations have been determined, it is up to the business to set up policies and procedures that ensure the requirements are met on each and every transaction. Consistency, professionalism and full disclosure give consumers confidence in the services they are provided as part of a loan transaction.

**Restricted Acts and Practices**

The Pennsylvania Consumer Equity Protection Law creates a number of prohibitions on particular lending terms and practices that are frequently associated with predatory loans.

These prohibitions include the following:

**No Lending Without Cautionary Notice:** It is illegal to make a covered loan without providing the loan applicant with the cautionary notice regarding the risks associated with a covered loan. The mandatory contents of the notice are discussed in the preceding section on disclosures and notifications. (§512(a))

**No Call Provisions:** The lending agreement cannot include provisions allowing the lender to accelerate the indebtedness and demand immediate repayment of the loan balance unless
repayment is accelerated by the borrower’s default, sale of the property, material misrepresentation by the borrower when obtaining the loan, or any action or inaction by the borrower that adversely affects the lender’s security for the loan. (§511(b))

**No Negative Amortization:** Negative amortization occurs when a lender establishes a repayment schedule that does not demand sufficient funds from the borrower to pay the interest due with each periodic payment. The lender adds the unpaid interest to the principal, resulting in a principal balance that increases over time.

Pennsylvania law prohibits payment schedules for covered loans that will result in negative amortization. However, this prohibition does not apply if the borrower and/or others who are obligated to repay the loan have a gross income in excess of 150% of the median family income in the area where the property securing the loans is located. (§511(c))

**No Increased Interest Rate After Default:** Lending agreements for covered loans may not include terms that allow a lender to increase the rate of interest on a loan after a borrower defaults. The law provides that the prohibition on increased interest rates does not apply to an increase that is calculated in accordance with a variable rate agreement. (§511(d))

**No Advance Payments:** A covered loan may not include terms that allow for the borrower to make any periodic payments, in advance, from the proceeds of the loan. (§511(e))

**No Loan Flipping:** Loan flipping is the repeated refinancing of a loan within a short period of time. Borrowers who are struggling to meet the payments on a mortgage may be enticed by offers to secure more affordable terms through refinancing. Unfortunately, refinancing usually does little to improve the financial plight of beleaguered borrowers. These borrowers rarely have cash to cover closing costs. They finance these costs by adding them to the principal, or work with brokers who will pay the closing costs from the additional commission that they earn when borrowers accept mortgages at higher interest rates. With each financing, borrowers incur additional costs and increase their loan balances.

To discourage loan flipping, Pennsylvania law prohibits lenders from charging any points in connection with a covered loan if the borrower is refinancing a loan that is less than a year old, and intends to use the proceeds of the new loan to pay off an existing covered loan with the same lender. (§512(c))

**No Refinancing of Low-Rate Loans:** Pennsylvania law prohibits the refinancing of a zero-interest loan or a low-rate loan made by a government or nonprofit lender with a covered loan within the first ten years of the zero-interest or low-rate loan unless the holder of the loan consents in writing to the refinancing. The law defines a low-rate loan as one with an interest rate that is two percentage points below the current yield on treasury securities with a comparable rate of maturity. (§512(d))

**No Direct Payments to Home Improvement Contractors:** Some of the most outrageous accounts of predatory lending practices involve fraudulent schemes in which unethical mortgage brokers and home improvement contractors coordinate their efforts to fleece unsuspecting
homeowners. These schemes usually take place in low-income neighborhoods. Using aggressive door-to-door sales tactics, home improvement contractors target consumers whose homes need repairs and who are not likely to pursue bids from other contractors. Elderly housebound homeowners are often the recipients of these solicitations. After persuading the homeowners to allow them to do the work, the contractors urge the use of a particular mortgage broker for financing. When the closing takes place and the funds are secured, the broker pays the home improvement contractor immediately. The contractor performs little or no work, and the homeowner realizes too late that he/she is the victim of fraud.

Pennsylvania law addresses this type of predatory practice by forbidding lenders to make any direct payments to home improvement contractors. The law allows lenders to: Issue payments directly to the borrower; make joint payments to the borrower and the home improvement contractor; or to pay a third-party escrow agent in accordance with terms in a written agreement signed by the borrower, the lender, and the contractor. (§512(e))

**No Lending Without Regard to Repayment Ability:** It is a common predatory lending practice to make loans without verifying whether borrowers or others who are obligated to repay the loan, such as co-borrowers or cosigners, have the ability to repay. Unscrupulous lenders and mortgage brokers are willing to make loans without verification of income and employment and without a meaningful assessment of debt to income ratios. In extreme cases, lenders have given loans to elderly borrowers on fixed incomes in spite of the fact that monthly payments would exceed their incomes. Lending without considering repayment ability is sometimes referred to as equity-based or collateral-based lending.

Pennsylvania law prohibits equity-based lending and requires the consideration of tangible factors when assessing a borrower’s repayment ability, including consideration of his/her current and expected income, current financial obligations, income, and employment. The law creates a presumption of the ability to repay if the borrower, or other person obligated to repay the loan has scheduled monthly payments that do not exceed 50% of his/her monthly gross income, as shown in a financial statement or credit report. The law provides that if the monthly payments obligations exceed 50% of the obligor’s gross monthly income, a presumption of inability to repay does not automatically arise.

The special restrictions related to the prohibition on lending without considering repayment ability do not apply when the obligor(s) income, as reported on a loan application, is greater than 120% of the median family income for the area where the property securing the loan is located. HUD updates median family incomes each year and lists them on its website. (§512(b))

**No Lending Without License Verification:** Pennsylvania law requires lenders to verify that the mortgage brokers with whom they conduct business are licensed. (§513(b))

**Limitations on Particular Lending Terms**

The Pennsylvania Consumer Equity Protection Law creates limitations for balloon payments, prepayments penalties, and single premium credit insurance.
**Balloon Payments:** Balloon payments, which require a large payment at the end of a loan term, are included in many predatory loans. Often borrowers do not realize that the loan includes a balloon payment, or they fail to understand the amount of the final payment. Most borrowers are unable to make the balloon payment, and if they cannot refinance the loan, foreclosure is inevitable.

In Pennsylvania, covered loans cannot include a scheduled payment that is more than twice as large as the average of the earlier scheduled payments unless the balloon payment is due and payable ten years (120 months) or more after the consummation of the loan. The limitation on balloon payments does not apply to bridge loans (defined as an interest-only loan with a term of 18 months or less) that are connected with the construction of the borrower’s principal dwelling or with payment schedules that are made to accommodate borrowers with seasonal or irregular income. (§511(a))

**Prepayment Penalties:** If a borrower pays off a loan balance before the loan term is over, the lender does not earn the interest that it anticipated earning on the loan. Prepayment penalties allow lenders to recoup losses that occur with the early payment or prepayment of a loan. Prepayment penalties can discourage borrowers from refinancing when interest rates fall or when they qualify for a loan with a better rate. Prepayment penalty provisions are typically associated with subprime lending agreements, and they are an abusive lending term if they are effective after the first few years of a loan’s life.

In Pennsylvania, a covered loan cannot include prepayment penalty provisions in the following circumstances:

- The loan cannot include prepayment penalties unless the lender also offers a loan without a prepayment penalty.
- The loan cannot impose prepayment penalties after the first five years (60 months) of the loan.
- When a borrower uses the proceeds of a covered loan to prepay the balance of an existing covered loan, the lender cannot charge prepayment penalties if it owns the loan that the borrower is refinancing. (This provision is included to discourage loan flipping).

(§511(f))

**Single Premium Credit Insurance:** The previous section on “Disclosures and Notifications Required by the Consumer Equity Protection Law” discusses the sale of optional insurance products with covered loans. In addition to the notice requirements, the law addresses single premium credit insurance by creating certain conditions for the sale of these products as part of a covered loan transaction. The conditions include:

- Making refunds if the borrower cancels the policy
- Offering the borrower the option of purchasing the insurance with the payment of monthly premiums
Financing optional insurance products makes them unnecessarily expensive, and the payment of monthly premiums allows borrowers to purchase insurance products without incurring the additional expenses associated with financing. (§512(f))

**Enforcement Actions and Penalties for Violations of the Consumer Equity Protection Act (§521(d))**

The Department of Banking has authority to take the following actions to address violations of the law:

- Impose penalties of $2,000 per violation
- Require offenders to pay for the cost of investigating violations
- Revoke or suspend a license issued by the Department
- Issue restraining orders

**Pennsylvania’s Loan Interest and Protection Law**

In 2008, the Pennsylvania General Assembly adopted Senate Bill 483, which made amendments to the “Loan Interest and Protection Law.” This law is also known in Pennsylvania as Act 6. The law, which was originally adopted in 1974, is Pennsylvania’s usury law. Usury is generally defined as lending money while charging excessive rates of interest. Although all states have laws against usury, these laws have limited impact on the interest rates for mortgage loans.

The limited impact of usury laws is due to the enactment, by Congress, of the Depository Institutions Deregulation and Monetary Control Act in 1980. This law made many changes in the banking and finance industry. These changes included the federal preemption of state usury laws that limited the interest rates that lenders could charge on residential mortgage loans. Without caps on interest rates, lenders were able to charge higher rates of interest when making mortgage loans to borrowers who represented a higher risk of default.

With high-interest loans now under fire, states are finding ways to reassert some control on interest rates, in spite of the over-riding force of federal law. In Pennsylvania, the “Loan Interest and Protection Law” strengthened the state’s control over usurious interest rates by:

- Increasing the number of mortgage loans subject to the law
- Increasing the number of loans subject to special disclosures and limitations
- Extending foreclosure notices and procedures to a greater number of loans
- Applying the prohibition on prepayment penalties to a greater number of loans

The Loan Interest and Protection Law, or Act 6, establishes the **maximum lawful rate of interest at 6 percent.** When the provisions of Act 6 apply to a mortgage loan, the borrower is not required to pay any interest that exceeds the maximum rate. Of course, this cap on interest rates does not apply to all loans.
These provisions of the law do not apply to:

- Business loans in any amount (§201(b)(iii))
- Unsecured, non-collateralized loans in excess of $35,000 (§201(b)(ii))
- Obligations to pay a bona fide principal amount over $50,000 (§201(b)(i))
- Residential mortgage loans that exceed an annually-adjusted amount (§301(b))
- Federally guaranteed loans, such as loans insured or guaranteed by the Federal Housing Administration or the Veterans Administration, as long as the loan is subject to a maximum interest rate established by the federal agency that insures or guarantees the loan (§302)

Pennsylvania’s General Assembly increased the number of mortgage loans subject to limitations under the state’s usury law by raising the principal amount that triggers protection under Act 6. Prior to the 2008 amendments to the law, the usury law only offered protection to residential mortgage loans with a principal amount of $50,000 or less.

Now, a “residential mortgage” is defined as:

- An obligation to pay a principal amount, that is adjusted annually for inflation, and that is set at $230,110 or less for 2012
- The obligation is secured by a lien on real property located in Pennsylvania, and
- The property has two or fewer residential units constructed or to be constructed on it, and these units include residential condominium units

The amount that is adjusted annually is referred to as the “base figure,” and at the beginning of each year, Pennsylvania mortgage professionals should refer to the Department of Banking page on “Act 6 Lending Rates” to find the new base figure. This page on the Department’s website posts the inflation-adjusted base figure and also provides lending rates for each month of the year. 12

After establishing the maximum lawful interest rate at 6 percent and subjecting residential loans of $230,110 or less to this limitation, Act 6 creates a number of provisions that it refers to as “Protective Provisions,” and these include:

- A prohibition on discount points
- Advanced notice of intent to foreclose
- Right to Cure a Default
- Prohibition on Prepayment Penalties
- Limitations on Attorney’s Fees

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12 Pennsylvania Department of Banking. Act 6 Lending Rates. “Adjustment to Definition of ‘Base Figure’ in the Loan Interest and Protection Law.” December 10, 2011. [http://www.pabulletin.com/secure/data/vol41/41-50/2111.html](http://www.pabulletin.com/secure/data/vol41/41-50/2111.html)
Each of these protective provisions is discussed below.

**Prohibition on Discount Points (§402)**

Act 6 defines “discount points” as “… charges, whether or not actually denominated as ‘discount points,’ which are paid by the seller of residential real property to a residential mortgage lender which directly or indirectly affects the ability of the buyer of the estate to secure a residential mortgage” (Loan Interest and Protection Act, Article I Section 101). Article IV of Act 6 expressly prohibits residential mortgage lenders from charging or receiving discount points from a seller of real estate. Actual settlement costs are exempted from this prohibition.

**Foreclosure Notices (§403)**

Act 6 requires residential mortgage lenders to provide at least 30 days notice prior to beginning any action to foreclose. This notice must be in writing and it must include a description of:

- The real estate security interest, which is typically a mortgage lien
- The nature of the default
- The right to cure the default, including a statement of the amount of payment needed to cure the default
- The period of time that the borrower has to cure the default
- The methods that will be employed to terminate the borrower’s ownership of the real estate
- The right of the borrower to transfer the real estate to another person who is subject to the mortgage or to refinance the mortgage loan

Act 6 defines “residential mortgage lender” to include not only the lenders who fund residential loans, but also those who hold the mortgage at any time before the loan is paid off. Therefore, the foreclosure notice provisions apply to loan servicers and investors who purchase the mortgage.

**Right to Cure a Default (§404)**

After a borrower receives a foreclosure notice, he/she may, at any time up to one hour prior to the commencement of a judicial sale, pay the amount necessary to cure the default. In order to cure the default and prevent the sale of the property and the acceleration of indebtedness, a borrower must:

- Pay all sums that are due, making the payment with cash, a cashier’s check, or certified check
- Perform any other obligations due
- Pay any reasonable fees related to the foreclosure proceedings
- Pay any late fees due under the terms of the lending agreement
A borrower or anyone on the borrower’s behalf can cure a default no more than three times within a calendar year.

**Prohibition on Prepayment Penalties (§405)**

Loans that are a “residential mortgage,” as that term is defined in Act 6, are not subject to prepayment penalties. Therefore, borrowers can prepay the loan at any time without any charge or penalty.

**Limitations on Attorney’s Fees (§406)**

Residential mortgage lenders cannot receive attorney’s fees from a borrower except for those that are:

- Reasonable fees for services included in actual settlement costs
- Fees actually incurred by an attorney during a foreclosure or pursuant to another legal action related to a mortgage
- $50 or less, as long as these fees do not represent expenses incurred during the 30-day notice period

**Actions to Recover Excess Charges (§502)**

A borrower who has paid interest that exceeds the legal rate for a residential mortgage may bring an action to recover **triple the amount of the excess charges**.

There are two important limitations on bringing such an action and on the amount of recovery:

- Borrowers must bring the action for recovery within four years of the time of making the excess payment
- Recovery is limited to the excess charges paid over a four-year period of the lending agreement

In an action to recover excess fees, the borrower can also recover the costs and expenses of bringing the action, including reasonable attorney’s fees. The law includes factors to be considered in assessing the reasonableness of attorney’s fees including time invested to bring the action, difficulty of the questions of law, customary charges for these services, and the amount of interest that is the subject of the controversy.

**Penalties (§505)**

The penalties for violations of the Loan Interest and Protection Act are very serious. The penalty provisions provide that:

- Knowing and intentional violations of the law constitute a misdemeanor of the third degree, potentially subjecting a person convicted to imprisonment of up to one year
- Violations of the provisions of the law may result in fines of $10,000 for each offense
Enforcement Actions (§506)

The Attorney General has the authority to bring a civil action against anyone suspected of violating the provisions of the Loan Interest and Protection Act. The Department has the authority to enforce the Act by doing any of the following:

- Examine the books and records of “any person” and charge the cost of the examination to the person whose books and records are subject to examination
- Issue subpoenas for the production of documents or appearance of witnesses
- Question witnesses under oath
- Suspend or revoke a license for violations of provisions of Act 6
- Prohibit a person responsible for violations of Act 6 from engaging in work that involves activities regulated by the Department
- Issue cease and desist orders
- Require a person in violation of the law to pay the costs incurred by the Department for bringing an enforcement action

Pennsylvania Housing Finance Agency Law

The Pennsylvania Housing Finance Agency Law of 1959, P.L. 1688, No. 621, was enacted in 1959, and amended in 1998, to promote the welfare of Pennsylvania residents by broadening the housing market for persons of low and moderate income. The law also assists in the housing for elderly persons through the creation of the Pennsylvania Housing Finance Agency. The 2009 session of the Pennsylvania General Assembly introduced bills that would further amend the law. This section contains a review of the current law.

Power of the Finance Agency (§401-C)

The Housing Finance Agency Law established the Pennsylvania Housing Finance Agency (the Agency) as a public corporation and government instrumentality. The law gives the Agency broad powers and provides the organization structure, membership and administration of the agency. The Agency has the power and authority to make housing loans to qualified mortgagors.

Under the Housing Finance Agency Law, the Agency is also empowered to perform the following activities:

- Determine interest rates and other terms of housing loans
- Acquire real or personal property
- Make agreements with financial institutions and Federal agencies
- Provide for the purchase of housing units by persons of low and moderate income
- Sell housing loans
- Create regulations including penalties
- Borrow money upon its own credit by the issuance and sale of bonds and notes and by giving security and make other transactions related to those bonds or notes

Under Pennsylvania law, the Agency is required to conduct a periodic study of housing needs, focusing on the needs of low-income and moderate-income individuals. The Agency must conduct the study every four years.

**Housing Purchase Program (§403-C(b))**

The Agency may make loans to any mortgagor and individual purchaser for the construction, reconstruction or rehabilitation of housing units for sale to individual purchasers of low or moderate income. Loans made by the Agency may not exceed 100% of the total approved project cost. Section 301-A of the law details the conditions placed on loans made by the Agency.

**Rental Housing Programs (§401-A)**

The law also contains a rental housing provision authorizing the Agency to provide funding for rental housing to persons and families of low and moderate income. The Agency may make loans secured by real property or a leasehold estate, including mortgages to finance projects designed and planned to be available for low and moderate income persons and families or elderly persons. As with the housing purchase provision, there are conditions and prohibitions attached to the loans granted by the Agency. These prohibitions can be found in Section 401-A of the law.

**Mortgage Loans (§31.202)**

The Agency has the power to make mortgage loans for projects that have promise of supplying well planned and well designed apartment units for low- and moderate-income persons, families or the elderly where there is a need for such housing. The Agency may also set the interest rates for these loans.

The Agency may limit the rate of return of the mortgagor (borrower/debtor) and its interest in the housing project and may establish or limit the rental charge a mortgagor may charge if the property is a rental. Additionally, the law requires that the mortgagor have a nondiscrimination policy, renting or selling to persons regardless of their race, national origin, religion, gender, handicap or disability, familial status or creed.

Agency rules are designed to allocate the proceeds of any qualified mortgage bond issue to encourage maximum use throughout Pennsylvania. The proceeds must be equitably distributed throughout the State. The Agency must specify standards, criteria and procedures to be employed in selecting eligible mortgagors. Also, the Agency has the power to enter into agreements with housing authorities and similar entities to assist in the administration of the allocated loans.
Homeowner’s Emergency Assistance (§31.202(d))

The Housing Finance Agency Law gives the Agency the power to administer emergency assistance to homeowners. The Agency may provide assistance to homeowners only if:

- The homeowner is less than 24 months delinquent on their mortgage or less than 24 months in default on their principal place of residence
- The property securing the mortgage is a one- or two-family owner-occupied residence

Additionally, to qualify for assistance, the total sum of the delinquent payments may not exceed $60,000 and the property may not be encumbered by more than two mortgages.

Notice and Institution of Foreclosure Proceedings (§402-C); (§31.203)

Under the Housing Finance Agency Law, mortgagees (lenders) are required to give proper notice to the debtor before beginning a foreclosure or legal action. Furthermore, mortgagees may not begin a foreclosure action on mortgages covered by the law, take possession of property or begin legal action until the Agency makes a determination on a mortgagor’s application for emergency mortgage assistance payments.

A debtor must be at least 60 days late on the mortgage before a mortgagee can begin the foreclosure process. Under the Housing Finance Agency Law, the mortgagee must notify the debtor of the foreclosure action, in writing, at the debtor’s last known address.

The notice is required to contain specific information outlined under the Housing Finance Agency Law and the Pennsylvania Loan Interest and Protection Law. The notice must be sent at least 30 days before the mortgagee asks for full payment of any mortgage obligation, begins any legal action or takes possession of the mortgagor’s security. The notice must also be published in the Pennsylvania Bulletin within 120 days of the effective date. There are also provisions in the law relating to foreclosures that grant additional protections to a debtor if he/she meets with a consumer credit counseling agency.

Eligibility for Assistance (§404-C)

Mortgagors must meet certain requirements to be eligible for assistance from the Agency. The criteria are fully detailed in Section 404-C of the law, and include, but are not limited to:

- The type of housing
- The delinquency period of the mortgage notes
- Ability to repay assistance
- Income and net worth
- Residential credit history

If the Agency determines that a mortgagor qualifies for assistance, the Agency will make the real estate payments on his/her behalf directly to the mortgagee. The initial payment made by the Agency will make the mortgagor current on his or her mortgage note. Debtors who receive assistance are required to provide the Agency specific documentation and information as
outlined under the law. After the Agency pays all arrears the mortgagor may be entitled to monthly mortgage assistance payments. Those payments will be in an amount which will cause the mortgagor’s total housing expense not to exceed 40% of his/her net effective income.

When the Agency approves mortgage assistance, the person receiving the assistance must enter into a contract with the Agency for repayment of all funds paid on his/her behalf. Repayment is based on the mortgagor’s total household expenses and net income. The law establishes a 40% ratio, which is detailed in Section 406-C.

**Loan Modification**

Due to a recent increase in the number of struggling homeowners seeking loan modification assistance, the Department of Banking added Chapter 47 to the Pennsylvania Code. This Chapter is designed to help licensees maintain compliance and to protect consumers participating in loan modification programs.

A mortgage loan modification is defined under Chapter 47 as an “agreement which revises the terms of an existing mortgage loan, including an agreement to reduce mortgage loan payment amounts, balance or interest rate. A mortgage loan modification may also include an agreement to waive any accrued or prospective mortgage loan charges.” (§47.1)

Licensees wishing to provide modification services for loans not held or serviced by them must either:

- Be approved as a counselor by a governmental agency or employed by a counselor approved by a governmental agency, or
- Verify and document that the borrower has received counseling relating to modification from an approved counselor

(§47.3)

A licensee must inform any borrower interested in loan modification of alternatives prior to performing a modification. These options may include:

- Repayment of the loan according to the contracted terms
- A self-negotiated modification
- Sale of the property which is collateral for the loan
- Filing for personal bankruptcy

(§47.4)
Prohibited Practices

There are several prohibited practices for licensees providing loan modifications. Licensees may not:

- Provide loan modifications for loans not held or serviced by them, unless they have met the requirements of §47.3
- Encourage or permit a borrower to stop making payments on an existing loan unless a modification is completely negotiated with the holder or servicer of the borrower’s loan, and the loan provides for a delay in making scheduled payments on the existing loan
- Accept, hold, or transmit money unless in compliance with federal and state laws
- Charge advance fees
- Negotiate a loan modification which the licensee has reason to believe the borrower will not be able to afford
- Enter into an agreement to purchase a borrower’s property
- Accept a power of attorney to represent a borrower
- Fail in a timely manner to:
  - Communicate with or on behalf of a borrower
  - Act on a reasonable request from a borrower
- Engage in false or misleading advertising, including advertising that:
  - Makes it appear that the licensee is a government agency
  - Includes a guarantee unless there is a bona fide guarantee which will benefit a borrower
  - Makes it appear that a licensee has a special relationship with lenders when no relationship exists
- Make a false or misleading statement

(§47.5)

Discussion Scenario: Consumer Complaint

Consumer Complaint Letter

March 16, 2011
State of Pennsylvania
Pennsylvania Department of Banking

To Whom It May Concern:

On February 2, 2011 I telephoned the Marvelous Mortgage Company of Anytown, Pennsylvania. I spoke to a Robert DoGood. On that day, Mr. DoGood advised me that his company was one of
the most competitive in the state. He told me the rate to refinance my mortgage for 15 years would be 6.625% and zero points. He also told me that based upon the information I gave and my credit report that I would also qualify for this loan with ease – “slam dunk” I believe were his exact words.

A sudden death in my family made it impossible for me to see Mr. DoGood until February 14th. On the morning of the 14th, I called Mr. DoGood to confirm our appointment and to verify that my rate would still be 6.625% with zero points – which he indeed confirmed. That evening when Mr. DoGood arrived at my home for our appointment (late), he advised me that turmoil in the market that afternoon caused the rates to go up to 6.75%. We proceeded to complete the application anyway.

After apologizing for his lateness, Mr. DoGood quickly completed the application, told me to review the documents and disclosures he asked me to sign, and because he was unable to make copies of our originals at that time, he said he would have his processor forward my originals back to me with some additional papers.

I left a message for Mr. DoGood on February 28th. When he returned my call, I asked how everything was going and he said “fine.” I indicated that I had read that rates were going up and I was relieved because I knew I had a 30-day lock. I asked when the appraisal was going to be done and he said that it had been ordered but that the appraisers were quite busy this time of year. He said he would check on it, but not to worry, I would be closing soon.

On March 16th, Mr. DoGood advised me that my rate would be 7.375%. I told Mr. DoGood that wasn’t what I was told my rate would be and that I wanted my money back. He said that the fees he collected from me were already spent and that my rate was “floating.” He said he would forward a copy of the appraisal to me but that no money would be refunded.

I am sick about the loss of money as well as the time I have wasted, especially now that rates are almost a full point higher! Can you please help me get my money back?

Thank you,
I.M. NotHappy

**Marvelous Mortgage Company Loan Log**

Borrower: I.M. NotHappy  
Address: 4332 W Anywhere St  
Loan No. 12341-0  
LO/Proc: R. DoGood/L. Smith
2/14/11 Notes to processor
Linda – copy attached original documents and return to borrower. Open file and send GFE, TIL and broker agreement. Lock loan at Investor A at 6.625% and zero points. (RD)

2/16/11
Opened file, ordered appraisal, sent originals back to borrower. (LS)

2/18/11
Credit report back – looks OK – alt. doc, should be ready to go to UW as soon as I get appraisal. (LS)

2/18/11 Notes to processor
Linda – lock-in fax confirmation to Investor A shows busy, called Stan in secondary marketing dept., he shows NO LOCK! Rates have moved…will have to float. Notice we didn’t send the GFE/TILA/Retention …back date disclosures but do not send lock confirmation or retention agreement. (RD)

2/28/11 Notes to processor
Linda – borrower called on appraisal. What is status? (RD)

2/28/11 Notes to LO
Rob – I called Fabulous Appraisal – Betty said they let their clerical person go because of mistakes, couldn’t find order. Will send Tom out ASAP. Rates are rising and loan is still not locked yet. (LS)

3/4/11
Loan submitted to Investor A (LS)

3/7/11 Notes to LO
Rob – loan approved – rate is floating; need to send approval letter. (LS)

3/7/11 Notes to processor
Send approval out dated March 9 at original rate and zero points. Will advise borrower we are unable to close… don’t see lock agreement in file (RD)

3/11/11
Advised borrower, investor needed 48 hours notice to close, plus loan has to fund within rescission period. Only thing we can do is wait until original “lock” expires, then get the best market price. Will call borrower on 3/16/11. (RD)

Discussion Questions

- Refer to the Consumer Complaint Letter. How do you think this complaint might be:  
  - Handled by the regulator?
  - Handled by Marvelous Mortgage Company?

- Refer to the Marvelous Mortgage Company Loan Log. How could better communication have affected or prevented the complaint? What about follow-up?

- Refer to the Consumer Complaint Letter and Loan Log. What potential perceptions have been created by the interaction between the consumer and the mortgage company?  
  - Perception of the regulator
  - Perception of the consumer
  - Perception of the mortgage company owner/management
- **Do you think the loan originator’s actions were ethical or unethical? What most influenced your decision?**

**Consumer Complaint Letter: The Potential Outcome**

It is a possibility that a complaint letter such as this could motivate the regulator to investigate the mortgage broker company. While Rob DoGood’s actions might not be standard operating procedure for all loan originators at his company, I.M. NotHappy’s complaint certainly puts the company at risk for being put under the microscope.

The company would be wise to take a close look at its policies and procedures pertaining to rate locks and floating rates. Management may need to retrain staff and ensure loan originators are clear on following borrower requests to lock an interest rate.

Based on discrepancies between the consumer’s complaint letter to the regulator and the notes in the Loan Log, it appears that Rob DoGood did a poor job of communicating with I.M. NotHappy and, in fact, may have lied about certain aspects of the loan process. Appropriately advising the customer about the rate lock situation, and possibly the appraisal, seem questionable.

Ultimately the loan originator handled the rate lock in a sloppy and unethical manner. Mistakes happen, but the customer should have been advised immediately when it was discovered that the rate was not locked as expected. The telling event is I.M. NotHappy’s description of a call placed to Rob DoGood on February 28th – the loan originator was well aware the rate was floating based on the Loan Log, but the customer was under the impression the rate was locked.
Review of Pennsylvania Laws Affecting Mortgage Professionals

Appendix

- Consumer Mortgage Disclosure Form
- Consumer Mortgage Disclosure Form Instructions