

No. 2001-55

AN ACT

SB 377

Amending the act of December 22, 1989 (P.L.687, No.90), entitled "An act providing for the regulation and licensing of mortgage bankers and mortgage brokers; imposing additional powers and duties on the Department of Banking and the State Real Estate Commission; and providing penalties," further providing for license exemptions, for application for license, for licensee requirements, for authority of department or commission and for penalties; regulating the terms and conditions of certain subprime mortgage loan transactions; and making editorial changes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of December 22, 1989 (P.L.687, No.90), known as the Mortgage Bankers and Brokers Act, is amended by adding a chapter and a chapter heading to read:

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Mortgage Bankers and Brokers and Consumer Equity Protection Act.

Section 102. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of Banking of the Commonwealth.

CHAPTER 3
LICENSURE

Section 2. Section 1 of the act is amended to read:

Section [1] 301. [Short title] ***Scope.***

This [act shall be known and may be cited as the Mortgage Bankers and Brokers Act] *chapter deals with licensure.*

Section 3. Sections 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the act, amended December 21, 1998 (P.L.987, No.131), are amended to read:

Section [2] 302. ***Definitions.***

The following words and phrases when used in this [act] *chapter* shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Advance fee." Any funds requested by or to be paid to a loan correspondent, mortgage broker or limited mortgage broker in advance of or during the processing of a mortgage loan application, excluding those fees

paid by an applicant borrower directly to a credit agency reporting bureau, title company or real estate appraiser.

“Branch.” An office or other place of business located in this Commonwealth or any other state, other than the principal place of business, where a person engages in the first mortgage loan business which falls under the scope of this [act] *chapter*.

“Commission.” The State Real Estate Commission.

["Department.” The Department of Banking of the Commonwealth.]

“Finder’s fee” or “referral fee.” Any payment of money or other consideration for the referral of a mortgage loan to a lender, but shall not include consideration paid for goods or facilities actually furnished or services actually performed.

“First mortgage loan business.” A person is deemed to be engaged in the first mortgage loan business in this Commonwealth if that person advertises, causes to be advertised, solicits, negotiates or arranges in the ordinary course of business, offers to make or makes more than two first mortgage loans in a calendar year in this Commonwealth, whether directly or by any person acting for his benefit.

“Licensee.” A person who is licensed under this [act] *chapter*.

“Limited mortgage broker.” An individual who directly or indirectly negotiates or places nonpurchase money mortgage loans for others in the primary market for consideration.

“Loan correspondent.” A person who, in the regular course of business, directly or indirectly originates and closes loans in his own name utilizing funds provided by a wholesale table funder and simultaneously assigns the loans to the wholesale table funder. A loan correspondent may close a mortgage loan utilizing other funding sources but only in an emergency circumstance where wholesale table funding is not available.

“Lock-in agreement.” An agreement between a mortgage banker or loan correspondent and borrower whereby the licensee guarantees until a specified date the availability of a specified rate of interest or specified formula by which the rate of interest and/or a specific number of discount points will be determined, provided the loan is approved and closed by the specified date. If a specified date is not determinable, the licensee may fulfill the requirement of this provision by setting forth with specificity the method by which the duration of the lock-in period will be determined.

“Mortgage banker.” A person who directly or indirectly originates and closes mortgage loans with its own funds in the primary market for consideration.

“Mortgage broker.” A person who directly or indirectly negotiates or places mortgage loans for others in the primary market for consideration.

“Mortgage loan.” A loan which is secured by a first mortgage or other similar instrument or document which creates a first lien on real property,

which real property is used as a one-family to four-family dwelling, a portion of which may be used for nonresidential purposes.

“Nonpurchase money mortgage loan.” A mortgage loan [as defined in this act] the proceeds of which are not used to finance the purchase of the real property securing the mortgage loan.

“Person.” An individual, association, joint venture or joint-stock company, partnership, limited partnership, limited partnership association, business corporation, nonprofit corporation, or any other group of individuals, however organized.

“Primary market.” The market wherein mortgage loans are originated between a lender and a borrower.

“Principal place of business.” The primary office of the licensee located in this Commonwealth which is staffed on a full-time basis and at which books, records, accounts and documents are to be maintained.

“Secretary.” The Secretary of Banking of the Commonwealth or his designee.

“Service a mortgage loan.” The collection or remittance of payments for another or the right to collect or remit payments for another of principal, interest, taxes, insurance and any other payments pursuant to a mortgage loan.

“Tangible net worth.” Net worth less the following assets:

(1) That portion of any assets pledged to secure obligations of any person or entity other than that of the applicant.

(2) Any asset, except construction loans receivables secured by first mortgages from related companies, due from officers or stockholders of the applicant or related companies in which the applicant’s officers or stockholders have an interest.

(3) That portion of the value of any marketable security, listed or unlisted, not shown at lower of cost or market, except for any shares of Federal National Mortgage Association stock required to be held under a servicing agreement, which should be carried at cost.

(4) Any amount in excess of the lower of the cost or market value of mortgages in foreclosures, construction loans or foreclosed property acquired by the applicant through foreclosure.

(5) Any investment shown on the balance sheet in the applicant’s joint ventures, subsidiaries, affiliates or related companies which is greater than the value of the assets at equity.

(6) Goodwill.

(7) The value placed on insurance renewals or property management contract renewals or other similar intangibles of the applicant.

(8) Organization costs of the applicant.

(9) The value of any servicing contracts held by the applicant not determined in accordance with American Institute of Certified Public Accountants Statement of Position 76-2, dated August 25, 1976, or subsequent revision thereto.

(10) Any real estate held for investment where development will not start within two years from the date of its initial acquisition.

(11) Any leasehold improvements not being amortized over the lesser of the expected life of the asset or the remaining term of the lease.

(12) Any commitment fees paid or collected which are not recoverable through the closing or selling of loans.

“Wholesale table funder.” A licensed mortgage banker or an entity exempt pursuant to section [3(b)(1), (10) or (12)] *303(b)(1), (10) or (12)* who, in the regular course of business, provides the funding for the closing of mortgage loans through loan correspondents and who by assignment obtains title to such mortgage loans.

Section [3] *303*. License requirements and exemptions.

(a) License required.—On and after the effective date of this act, no person shall act as a mortgage banker, loan correspondent, mortgage broker or limited mortgage broker in this Commonwealth without a license as provided for in this [act] *chapter*, provided, however, that any person licensed as a mortgage banker may also act as a loan correspondent or mortgage broker and any person licensed as a loan correspondent may also act as a mortgage broker without a separate license. A person licensed as a mortgage broker may only perform the services of a mortgage broker [as defined in section 2].

(b) Exceptions.—The following persons shall not be required to be licensed under this [act] *chapter* in order to conduct the first mortgage loan business but shall be subject to those provisions of this [act] *chapter* as specifically provided in this section:

(1) A State-chartered bank, bank and trust company, savings bank, private bank or national bank, a State or federally chartered savings and loan association, a federally chartered savings bank or a State or federally chartered credit union.

(2) An attorney authorized to practice law in this Commonwealth, who acts as a mortgage broker in negotiating or placing a mortgage loan in the normal course of legal practice.

(3) A person licensed pursuant to the provisions of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, who is principally engaged in a third-party real estate brokerage business, but only to the extent that he provides information, verbal or written, to or negotiates or places a mortgage loan for a buyer of real estate and is not compensated by the buyer or any other person for providing such information or negotiating or placing such mortgage loan. If he is compensated for providing such information or negotiating or placing such mortgage loan, he shall be subject to the provisions of sections [8, 10, 11 and 14(b)] *308, 310, 311 and 314(b)*, excluding section [8(a)(1)] *308(a)(1)*.

(4) A seller of a dwelling, if he has resided in the dwelling at least one year and as part of the purchase price receives a first mortgage executed by the purchaser.

(5) A person who either originates or negotiates less than three mortgage loans in a calendar year in this Commonwealth unless he is otherwise deemed to be engaged in the first mortgage loan business.

(6) Builders, when obtaining mortgages for their own construction or for the sale of their own construction.

(7) Any agency or instrumentality of the Federal Government or a corporation otherwise created by an act of the United States Congress, including, but not limited to, the Federal National Mortgage Association, the Government National Mortgage Association, the Veterans' Administration, the Federal Home Loan Mortgage Corporation and the Federal Housing Administration.

(8) The Pennsylvania Housing Finance Agency.

(9) A licensee under the act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act, except that any such licensee who makes a mortgage loan other than under the provisions of that act shall be subject to the provisions of sections [4(b)(2) and (3), 8, 10 and 14(b) of this act] 304(b)(2) and (3), 308, 310 and 314(b), excluding section [8(a)(1)] 308(a)(1).

(10) Except for licensees described in paragraph (9), subsidiaries and affiliates of the following institutions: State-chartered banks, bank and trust companies, savings banks, private banks, savings and loan associations and credit unions or national banks, federally chartered savings and loan associations, federally chartered savings banks and federally chartered credit unions, except that such subsidiaries and affiliates of institutions enumerated in this paragraph shall:

(i) be subject to the provisions of sections [8, 9(a)(3), 10 and 14(b)] 308, 309(a)(3), 310 and 314(b), excluding section [8(a)(1)] 308(a)(1);

(ii) deliver as required to the department annually copies of financial reports made to all supervisory agencies; and

(iii) be registered with the department.

(11) Employees of a mortgage banker, mortgage broker and loan correspondent licensee or excepted persons acting for their employers.

(12) An insurance company, association or exchange authorized to transact business in this Commonwealth under the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, and any subsidiaries and affiliates thereof, except that such subsidiaries and affiliates shall:

(i) be subject to the provisions of sections [8, 9(a)(3), 10 and 14(b)] 308, 309(a)(3), 310 and 314(b), excluding section [8(a)(1)] 308(a)(1);

(ii) deliver as required to the department annually copies of financial reports made to all supervisory agencies; and

(iii) be registered with the department.

(13) Any person who makes a mortgage loan to an employee of that person as an employment benefit, given that person does not hold himself out to the public as a first mortgage lender.

(14) Nonprofit corporations making mortgage loans to promote home ownership or improvements for the disadvantaged, given that the corporation does not hold itself out to the public as a first mortgage lender.

(15) A nonprofit corporation making not more than 12 mortgage loans a calendar year with its own funds, that shall not include funds borrowed through warehouse lines of credit or other sources for the purpose of making mortgage loans, which loans are retained in the corporation's own portfolios and not regularly sold to others and are made to promote and advance the cultural traditions and lifestyles of bona fide religious organizations provided that the corporation does not hold itself out to the public as a first mortgage lender.

(c) Loans for business or commercial purposes.—This [act] *chapter* shall not apply to mortgage loans made for business or commercial purposes.

Section [4] 304. Application for license.

(a) Contents.—An application for a license to act as a mortgage banker, loan correspondent, mortgage broker or limited mortgage broker shall be on such forms as may be prescribed and provided by the department. Each application shall include the address or addresses where business is to be conducted, the full name, official title and business address of each director and principal officer of the business and any other information that may be required by the department. An applicant shall demonstrate to the department that policies and procedures have been developed to receive and process customer inquiries and grievances promptly and fairly.

(b) Mortgage banker's license.—The department shall issue a mortgage banker's license applied for pursuant to this [act] *chapter* if the applicant establishes that he has met the following conditions:

(1) That he is approved by or meets the current criteria for approval of at least one of the following:

(i) Federal National Mortgage Association.

(ii) Federal Home Loan Mortgage Corporation.

(iii) Federal Housing Administration.

(2) That he maintains or is approved for, and will continue to maintain as a licensee, a line of credit or equivalent mortgage-funding capability of not less than \$1,000,000.

(3) That he has a minimum tangible net worth of \$250,000 at the time of application and will, at all times thereafter, maintain such minimum net worth, provided, however, that those applicants who were

in business prior to June 20, 1990, may be licensed with a minimum tangible net worth of \$100,000 if, in the opinion of the department, the applicant has established that it has an otherwise adequate financial structure and operating history.

(4) That he will maintain fidelity bond coverage in accordance with the guidelines established by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(b.1) Loan correspondent's license.—

(1) The department shall issue a loan correspondent's license applied for pursuant to this [act] *chapter* if the applicant establishes that he has met the following conditions:

(i) That he is eligible to and will obtain and maintain a bond in the amount of \$100,000, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The bond shall run to the Commonwealth of Pennsylvania and shall be for the use of the Commonwealth and any person or persons who obtain a judgment against the loan correspondent for failure to carry out the terms of any provision for which advance fees are paid. No bond shall comply with the requirements of this section unless it contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days before the day upon which cancellation shall take effect.

(ii) That he has a minimum tangible net worth of \$100,000 at the time of application and will, at all times thereafter, maintain such minimum net worth.

(iii) Notwithstanding subparagraph (ii), an applicant who was in the business as a mortgage banker, mortgage broker or otherwise authorized to engage in the first mortgage loan business by the department prior to the effective date of this section who files an application within 90 days after the effective date of this section may be licensed for one year with a minimum tangible net worth of \$50,000. Thereafter, for a period of one year, the applicant may continue to be licensed with a minimum tangible net worth of \$75,000. Following that period, the applicant may continue to be licensed with a minimum tangible net worth of \$100,000.

(c) Mortgage broker's license.—

(1) The department shall issue a mortgage broker's license applied for pursuant to this [act] *chapter* if the applicant establishes that he is eligible to and will obtain and maintain a bond in the amount of \$100,000, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The bond shall *be a penal bond conditioned on compliance with this chapter and subject to forfeiture by the department and shall* run to the Commonwealth of Pennsylvania [and

shall be for the use of the Commonwealth and] *for its use. The bond shall also be for the use of any person [or persons] against the mortgage broker for failure to carry out the terms of any provision for which advance fees are paid. If such person [or persons shall be so] is aggrieved, he may [upon recovering judgment against such licensee issue execution under such judgment and maintain an action upon the bond of the licensee in any court having jurisdiction for the amount claimed plus costs, provided the department assents thereto.], with the written assent of the department, recover advance fees and costs from the bond by filing a claim with the surety company or maintaining an action on the bond. In the alternative, an aggrieved person may recover advance fees and costs by filing a formal complaint against the mortgage broker with the department which shall adjudicate the matter. Such an adjudication shall be binding upon the surety company and enforceable by the department in Commonwealth Court and by an aggrieved person in any court. Any aggrieved person seeking to recover advance fees and costs from a bond that has already been forfeited by the department or which the department is in the process of forfeiting may recover payment on such bond if, after filing a petition with the department, the department assents to his requested payment or portion thereof. The department may pay the aggrieved person from the bond proceeds it recovered in such case. Nothing in this section shall be construed as limiting the ability of any court or district justice to award to any aggrieved person other damages, court costs and attorney fees as permitted by law, but those claims that are not advance fees or related costs may not be recovered from the bond. The department, in its discretion, may assent to or order pro rata or other recovery on the bond for any aggrieved person if claims against the bond may or do exceed its full monetary amount. No bond shall comply with the requirements of this section unless it contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days before the day upon which cancellation shall take effect. Cancellation of the bond shall not invalidate the bond regarding the period of time it was in effect.*

(2) Mortgage brokers who can demonstrate to the satisfaction of the department that they do not accept advance fees shall be exempt from the bond requirement of this subsection.

(c.1) Limited mortgage broker's license.—The department shall issue a limited mortgage broker's license applied for pursuant to this [act] *chapter* if the applicant establishes that he is an individual who operates from one location and maintains no branch offices and can demonstrate to the satisfaction of the department that he accepts or collects no advance fees.

(d) Foreign corporation.—If the applicant is a foreign corporation, that corporation shall be authorized to do business in this Commonwealth in

accordance with the law of this Commonwealth regulating corporations and shall maintain at least one office in this Commonwealth which is the office that shall be licensed as the principal place of business for the purposes of this [act] *chapter*. A foreign corporation which will act only in the capacity of a wholesale table funder shall be exempt from the requirement that it maintain at least one office in this Commonwealth. The corporation shall file with the application an irrevocable consent, duly acknowledged, that suits and actions may be commenced against that licensee in the courts of this Commonwealth by the service of process of any pleading upon the department in the usual manner provided for service of process and pleadings by the statutes and court rules of this Commonwealth. The consent shall provide that this service shall be as valid and binding as if service had been made personally upon the licensee in this Commonwealth. In all cases where process or pleadings are served upon the department pursuant to the provisions of this section, such process or pleadings shall be served in triplicate; one copy shall be filed in the Office of the Secretary of Banking and the others shall be forwarded by the department, by certified or registered mail, return receipt requested, to the last known principal place of business in the Commonwealth and to the corporation's principal place of business.

(e) Education.—To maintain a mortgage banker's, a loan correspondent's or a mortgage broker's license, the applicant or licensee shall demonstrate to the satisfaction of the secretary that at least one [person] *individual* from each licensed office has attended a minimum of six hours of such continuing education each year. To maintain a limited mortgage broker's license, the licensee shall demonstrate to the satisfaction of the secretary that he has attended at least two hours of continuing education each year. The secretary shall delineate the requirements for such continuing education by regulation within three years of the effective date of this act. The secretary may review and approve continuing education programs *and providers* to satisfy the continuing education requirement. *The secretary may charge providers of continuing education programs a fee, to be determined by the secretary, for department review of continuing education programs and providers.*

Section [5] 305. Annual license fee.

(a) General rule.—A mortgage banker, mortgage broker or applicant shall pay to the department at the time an application is filed an initial license fee for the principal place of business and an additional license fee for each branch office as provided for in section 603-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. On or before July 1 of each year and thereafter, a licensee shall pay a license renewal fee for the principal place of business and an additional license renewal fee for each branch office as provided for in section 603-A of The Administrative Code of 1929. An applicant for a license to operate as a loan correspondent shall pay the department the same fee for the initial license

for principal place of business, each branch office and annual license renewal as provided for mortgage bankers licensed under section 603-A of The Administrative Code of 1929. An applicant for a license to operate as a limited mortgage broker shall pay to the department at the time an application is filed an initial license fee of \$250. On or before July 1 of each year thereafter, a limited mortgage broker licensee shall pay a renewal fee of \$200.

(b) Recovery of costs.—No abatement of any license fee shall be made if the license is issued for a period of less than one year. The department shall be entitled to recover any cost of investigation in excess of license or renewal fees from the licensee or from any person who is not licensed under this [act] *chapter* but who is presumed to be engaged in business contemplated by this [act] *chapter*.

Section [6] 306. Issuance of license.

(a) Time limit.—Within 60 days after a complete application is received, the department shall either issue a license or, for any reason for which the department may suspend, revoke or refuse to renew a license as provided for by section [13] 313, refuse to issue a license. Upon receipt of an application for license, the department shall conduct such investigation as it deems necessary to determine that the applicant and its officers, directors and principals are of good character and ethical reputation.

(b) Appeal of denial.—If the department refuses to issue a license, it shall notify the applicant, in writing, of the denial and the reason therefor and of the applicant's right to appeal from such action to the Commonwealth Court. An appeal from the department's refusal to approve an application for a license shall be filed by the applicant within 30 days of notice thereof.

(c) Contents of license.—Each license issued by the department shall specify:

(1) The name and address of the licensee, the address so specified to be that of the licensee's principal place of business within this Commonwealth or, for a licensee acting only in the capacity of a wholesale table funder, either in or outside of this Commonwealth.

(2) The licensee's reference number, which may remain the same from year to year despite variations in annual license numbers which may result from the renewal of licenses by mechanical techniques.

(3) Such other information as the department shall require to carry out the purposes of this [act] *chapter*.

(d) Denial of license due to conviction.—The department may deny a license if it finds that the applicant or any person who is a director, officer, partner, agent, employee or ultimate equitable owner of 10% or more of the applicant has been convicted of a misdemeanor or felony in any jurisdiction or of a crime which, if convicted in this Commonwealth, would constitute a misdemeanor or felony under the laws of this Commonwealth. For the purposes of this [act] *chapter*, a person shall be deemed to have been

convicted of a crime if the person shall have pleaded guilty or nolo contendere to a charge thereof before a court or Federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or Federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, unless the pleas of guilty or nolo contendere or the decision, judgment or verdict shall have been set aside, vacated, reversed or otherwise abrogated by lawful judicial process.

(e) Denial of license for other reason.—The department may deny a license or otherwise restrict a license if it finds that, within two years prior to or from the date of the application, the applicant or any person who is a director, officer, partner, agent, employee or ultimate equitable owner of 10% or more of the applicant:

(1) has had a license application or license issued by the department denied, suspended or revoked;

(2) is the subject of an order of the department denying, suspending or revoking a license as a mortgage banker, loan correspondent, mortgage broker or limited mortgage broker; or

(3) has violated or failed to comply with any provision of this [act] *chapter* or any rule or order of the department.

Section [7] 307. License duration.

A license issued by the department shall:

(1) Be renewed on July 1 of each year upon payment of the annual renewal fee and after a determination that the licensee is conducting business in accordance with the provisions of this [act] *chapter* is made by the department. No refund of any portion of the license fee shall be made if the license is voluntarily surrendered to the department or suspended or revoked by the department prior to its expiration date.

(2) Be invalid if the mortgage banker's corporate charter is voided in accordance with the provisions of any law of this Commonwealth or any other state.

(3) Not be assignable or transferable by operation of law or otherwise without the written consent of the department.

Section [8] 308. Licensee requirements.

(a) Requirements on licensee.—A licensee shall:

(1) Conspicuously display its license at each licensed place of business.

(2) Maintain, at its principal place of business within this Commonwealth, or at such place within or outside this Commonwealth if agreed to by the Secretary of Banking or the commission, either the original or a copy of such books, accounts, records and documents, or electronic or other similar access thereto, of the business conducted under the license as may be prescribed by the department or commission to enable them to determine whether the business of the licensee is being conducted in accordance with the provisions of this [act] *chapter* and the

orders, rules and regulations issued under this [act] *chapter*. The department, at its determination, shall have free access to and authorization to examine records maintained outside of this Commonwealth. The costs of the examination, including travel costs, shall be borne by the licensee. The secretary may deny or revoke the authority to maintain records outside of this Commonwealth for good cause in the interest of consumer protection for Commonwealth borrowers.

(3) Annually, before May 1, file a report with the department or commission which shall set forth such information as the department or commission shall require concerning the business conducted as a licensee during the preceding calendar year. The report shall be in writing, under oath, and on a form provided by the department.

(4) Be subject to examination by the department or commission at the discretion of the department or commission at which time the department or commission shall have free access, during regular business hours, to the licensee's place or places of business in this Commonwealth and to all instruments, documents, accounts, books and records which pertain to a licensee's mortgage loan business, whether maintained in or outside of this Commonwealth. The department or commission may examine a licensee at any time if the department or commission deems such examination to be necessary or desirable. The cost of any such examination shall be borne by the licensee.

(5) Comply with all provisions of the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law, provided, however, that this shall not be deemed an override of section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (94 Stat. 161, 12 U.S.C. § [1735f-7 note] 1735f-7a).

(6) Comply with the provisions of the act of December 23, 1983 (P.L.385, No.91), entitled "An act amending the act of December 3, 1959 (P.L.1688, No.621), entitled, as amended, 'An act to promote the health, safety and welfare of the people of the Commonwealth by broadening the market for housing for persons and families of low and moderate income and alleviating shortages thereof, and by assisting in the provision of housing for elderly persons through the creation of the Pennsylvania Housing Finance Agency as a public corporation and government instrumentality; providing for the organization, membership and administration of the agency, prescribing its general powers and duties and the manner in which its funds are kept and audited, empowering the agency to make housing loans to qualified mortgagors upon the security of insured and uninsured mortgages, defining qualified mortgagors and providing for priorities among tenants in certain instances, prescribing interest rates and other terms of housing loans, permitting the agency to acquire real or personal property, permitting the agency to make agreements with financial institutions and Federal

agencies, providing for the purchase by persons of low and moderate income of housing units, and approving the sale of housing units, permitting the agency to sell housing loans, providing for the promulgation of regulations and forms by the agency, prescribing penalties for furnishing false information, empowering the agency to borrow money upon its own credit by the issuance and sale of bonds and notes and by giving security therefor, permitting the refunding, redemption and purchase of such obligations by the agency, prescribing remedies of holders of such bonds and notes, exempting bonds and notes of the agency, the income therefrom, and the income and revenues of the agency from taxation, except transfer, death and gift taxes; making such bonds and notes legal investments for certain purposes; and indicating how the act shall become effective,' providing for homeowner's emergency assistance."

(7) Provide for periodic accounting of any escrow accounts held by the licensee to the borrowers not less than annually, showing the amounts received from the borrower and the amounts disbursed.

(8) Refund all fees, other than those fees paid by the licensee to a third party, paid by an applicant borrower when a mortgage loan is not produced within the time specified by the mortgage banker, loan correspondent, mortgage broker or limited mortgage broker at the rate, term and overall cost agreed to by the borrower, provided, however, that this provision shall not apply when the failure to produce a loan is due solely to the borrower's negligence, his refusal to accept and close on a loan commitment or his refusal or inability to provide information necessary for processing, including, but not limited to, employment verifications and verifications of deposits. The licensee shall disclose to the borrower, in writing, at the time of a loan application which fees paid or to be paid are nonrefundable.

(9) Ensure that all lock-in agreements shall be in writing and shall contain at least the following provisions:

- (i) The expiration date of the lock-in, if any.
- (ii) The interest rate locked in, if any.
- (iii) The discount points locked in, if any.
- (iv) The commitment fee locked in, if any.
- (v) The lock-in fee, if any.

(10) Include in all advertisements language indicating that the licensee is licensed by the department.

(11) Allow for the evidence of any insurance required in connection with a loan by a policy or binder or a copy of either.

(b) Accounting records.—After the effective date of this act, the licensee's accounting records must be constructed and maintained in compliance with generally accepted accounting principles if the licensee is a mortgage banker or in such manner as may be provided by regulation for all other licensees, and all of the aforementioned instruments, documents,

accounts, books and records shall be kept separate and apart from the records of any other business conducted by the licensee and shall be preserved and kept available for investigation or examination by the department or commission for at least two years after a mortgage loan has been paid in full. The provisions of this subsection shall not apply to any instrument, document, account, book or record that is assigned, sold or transferred to another person, nor shall the two-year requirement apply to an instrument or document which must be returned to a borrower at the time a mortgage loan is paid in full.

(c) **Copies.**—If copies of instruments, documents, accounts, books or records are maintained under subsection (a)(2), they may be photostatic, microfilm or electronic copies or copies provided in some other manner approved by the Secretary of Banking or the commission, as long as access to information required by the secretary or commission exists electronically at all times within this Commonwealth.

(d) **Limited powers.**—The powers conferred upon the commission by this section, excluding subsection (a)(1), shall only be exercised by the commission in relation to persons licensed pursuant to the provisions of the act of February 19, 1980 (P.L. 15, No. 9), known as the Real Estate Licensing and Registration Act, who are subject to this section under section [3(b)(3)] 303(b)(3), and the exercise of such power by the commission in relation to such persons shall be exclusive.

Section [9] 309. Licensee limitations.

(a) **Prohibitions.**—A licensee shall not:

(1) Transact any business subject to the provisions of this [act] *chapter* under any other name except those designated in its license. A licensee that changes its name or place or places of business shall immediately notify the department, which shall issue a certificate, if appropriate, to the licensee which shall specify the licensee's new name or address.

(2) Conduct any business other than any business regulated by the department in any place of business licensed pursuant to this [act] *chapter* without at least 90 days' prior written notification to the department.

(3) Disburse the proceeds of a mortgage loan in any form other than cash, electronic fund transfer, certified check or cashier's check where such proceeds are disbursed by the licensee to a closing agent. This paragraph shall not be construed as requiring a lender to utilize a closing agent and shall not apply to disbursements by check directly from the licensee's account payable to the borrower, borrower designees or other parties due funds from the closing.

(4) In the case of a loan correspondent, service mortgage loans.

(5) In the case of a mortgage broker or limited mortgage broker, commit to close or close mortgage loans in its own name, service mortgage loans, enter into lock-in agreements or collect lock-in fees.

provided, however, that a mortgage broker or limited mortgage broker can provide a lender's lock-in agreement to a borrower on behalf of that lender and collect lock-in fees on the lender's behalf payable to that lender.

(b) Authority to close loans in attorneys' and title insurance companies or agencies' offices.—Nothing contained in this [act] *chapter* shall prohibit any licensee or person exempt from licensure hereunder from closing any loans made under the provisions of this [act] *chapter* in the offices of attorneys-at-law licensed by and located in this Commonwealth and title insurance companies or agencies licensed by and located in this Commonwealth.

Section [10] 310. Authority of department or commission.

(a) Department regulations.—Except as provided in subsection (b), the department shall have the authority to issue rules and regulations and orders as may be necessary for the proper conduct of the business of a mortgage banker, loan correspondent, a mortgage broker or limited mortgage broker and for the enforcement of this [act] *chapter*, including, but not limited to, cease and desist orders, notices of fines and such other orders as the department in its discretion may issue.

(b) Joint regulations.—The department and the commission shall have the authority to jointly issue rules and regulations as may be necessary to carry out the purposes of sections [8, 10 and 14(b)] 308, 310 and 314(b), excluding section [8(a)(1)] 308(a)(1). Initial rules and regulations shall be jointly issued by the department and the commission within 180 days after the effective date of this subsection.

(c) Powers.—The department and the commission shall have the authority to:

(1) Examine any instrument, document, account, book, record or file of a licensee or any other person, or make such other investigation as may be necessary to administer the provisions of this [act] *chapter*.

(2) Conduct administrative hearings on any matter pertaining to this [act] *chapter*, issue subpoenas to compel the attendance of witnesses and the production of instruments, documents, accounts, books and records at any such hearing, which may be retained by the department or commission until the completion of all proceedings in connection with which they were produced, and administer oaths and affirmations to any person whose testimony is required. In the event a person fails to comply with a subpoena issued by the department or commission or to testify on any matter concerning which he may be lawfully interrogated, on application by the department or commission, the Commonwealth Court may issue an order requiring the attendance of such person, the production of instruments, documents, accounts, books or records or the giving of testimony.

(3) *Request and receive any information or records of any kind, including a report of criminal history record information, from any*

Federal, State, local or foreign government entity, regarding any applicant for a license, licensee or any person related in any way to the business of such applicant or licensee, at a cost to be paid by the applicant or licensee.

(d) Limited powers.—The powers conferred upon the commission by subsection (c) shall only be exercised by the commission in relation to persons licensed pursuant to the provisions of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, who are subject to subsection (c) under section [3(b)(3)] 303(b)(3) and the exercise of such power by the commission in relation to such persons shall be exclusive.

Section [11] 311. Fees.

(a) Certain fees prohibited.—No real estate broker or salesperson who has received a fee, commission or other valuable consideration in connection with the sale or transfer of real estate shall be paid or receive a fee or other compensation, directly or indirectly, for providing mortgage brokering services in connection with the origination of a mortgage loan relative to such sale or transfer of real estate, but such broker or salesperson may receive a fee in connection with such mortgage loan transaction which shall not exceed an amount as established by the commission pursuant to this section.

(b) Regulations.—The commission shall, within 180 days of the effective date of this subsection, promulgate rules and regulations establishing the maximum fees which a real estate broker or salesperson may charge for services rendered in connection with mortgage brokering services. Said fees shall:

(1) Be for actual services rendered in connection with the origination of a mortgage loan.

(2) Be expressed in terms of dollars or as a percentage of the mortgage loan being created.

(c) Formulation procedure.—Prior to the publication of any notice of proposed rulemaking under this section, the commission shall hold public hearings to afford any interested party, including the department, full opportunity to present testimony, comment thereon and make recommendations regarding the formulation of such rules and regulations. The department shall also have 30 days following the close of the hearings to submit further comments and recommendations to the commission. The procedure contained in this section shall be in addition to the requirements contained in the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, and shall not affect any right the department may have to participate in the rulemaking process following the commission's publication of proposed rules and regulations as permitted by that act. In establishing the maximum fees allowable, the commission shall consider the nature of the services performed by the real estate broker or salesperson and the time required for the performance thereof.

(d) Licensing option.—A real estate broker or salesperson who is also a bona fide mortgage broker, mortgage banker or loan correspondent who holds himself out publicly as such shall have the option of being licensed and regulated by the department, in which case he shall not be subject to the fee limitations provided for in this section or the rules and regulations promulgated by the commission hereunder.

(e) Disclosure.—No real estate broker or salesperson shall receive a fee, commission or other valuable consideration pursuant to this section and the regulations promulgated hereunder unless he makes the following written disclosure to the buyer in at least ten-point boldface capital letters.

The real estate broker in this transaction who has offered to assist me in obtaining a mortgage loan has advised me of the following:

(1) He does not represent any particular mortgage lender; or the name of the mortgage lender he represents is.....

(2) I am not required to obtain the mortgage for the purchase of the real estate from the mortgage banker whom the broker represents.

(3) The real estate broker has a fiduciary obligation to the seller, from whom he will receive a commission.

(4) Should the real estate broker violate any of the provisions of the Real Estate Licensing and Registration Act or the Mortgage Bankers and Brokers Act I may file a complaint with the Pennsylvania Real Estate Commission.

Section 4. Section 12 of the act is amended to read:

Section [12] 312. Surrender of license.

Upon satisfying the department that all creditors have been paid or that other arrangements satisfactory to the creditors and the department have been made, a licensee shall surrender its license to the department by delivering its license to the department with written notice that the license is being voluntarily surrendered, but such an action by a licensee shall not affect the licensee’s civil or criminal liability for acts committed.

Section 5. Sections 13 and 14 of the act, amended December 21, 1998 (P.L.987, No.131), are amended to read:

Section [13] 313. Suspension, revocation or refusal.

(a) Departmental action.—The department may suspend, revoke or refuse to renew any license issued pursuant to this [act] chapter after giving 30 days’ written notice forwarded to the licensee’s principal place of business, by registered or certified mail, return receipt requested, stating the contemplated action and the reason therefor, if the department shall find, after the licensee has had an opportunity to be heard, that the licensee has:

(1) Made any material misstatement in his application.

(2) Failed to comply with or violated any provision of this [act] chapter or any rule, regulation or order promulgated by the department pursuant to this [act] chapter.

(3) If licensed under section [4(c)(3)] *304(c)*¹, accepted an advance fee.

(4) Become insolvent, meaning that the liabilities of the applicant or licensee exceed the assets of the applicant or licensee or that the applicant or licensee cannot meet the obligations of the applicant or licensee as they mature, or is in such financial condition that the applicant or licensee cannot continue in business with safety to the customers of the applicant or licensee.

(5) Engaged in dishonest, fraudulent or illegal practices or conduct in any business or unfair or unethical practices or conduct in connection with the mortgage business.

(6) Been convicted of a misdemeanor or of a felony.

(7) Filed an application for a license which, as of the date the license was issued or as of the date of an order denying, suspending or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(8) Permanently or temporarily been enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage business.

(9) Become the subject of an order of the department denying, suspending or revoking a license as a mortgage banker, mortgage broker, limited mortgage broker or loan correspondent.

(10) Become the subject of a United States Postal Service fraud order that is currently effective and was issued within the last five years.

(11) Failed to comply with the requirements of this [act] *chapter* to make and keep records prescribed by rule or order of the department, to produce such records required by the department or to file any financial reports or other information the department by rule or order may require.

(12) Become the subject of an order of the department denying, suspending or revoking a license under the provisions of any other law administered by the department.

(13) Failed to comply with a cease and desist order entered after notice and opportunity for hearing and issued by the department within the last five years.

(14) Demonstrated negligence or incompetence in performing any act for which the licensee is required to hold a license under this [act] *chapter*.

(15) In the case of a limited mortgage broker, negotiated or placed, either directly or indirectly, a mortgage loan other than a nonpurchase money mortgage loan as defined in this [act] *chapter*.

The hearing and notice provisions of this section shall not apply if the licensee's corporate charter is voided in accordance with the provisions of

¹"304(c)(3)" in enrolled bill.

any law of this or any other state, in which event the department may suspend or revoke the license.

(b) Reinstatement.—The department may subsequently reinstate a license which has been suspended or revoked or renew a license which had previously been refused for renewal if the condition which warranted the original action has been corrected and the department has reason to believe that such condition is not likely to occur again and the licensee satisfies the requirements of this [act] *chapter*.

Section [14] 314. Penalties.

(a) Nonlicensees.—Any person who is not licensed by the department or is not exempted from the licensing requirements in accordance with the provisions of this [act] *chapter* and who engages in the business of a mortgage banker, loan correspondent, mortgage broker or limited mortgage broker commits a felony of the third degree.

(b) Nonlicensees subject to the provisions of this [act] *chapter*.—Any person who is subject to the provisions of this [act] *chapter*, even though not licensed hereunder, or any person who is not licensed by the department or is not exempt from the licensing requirements, who violates any of the provisions to which it is subject shall be subject to a fine levied by the department or commission of up to \$2,000 for each offense. Any such nonlicensed person who commits three or more offenses may, at the discretion of the department or commission, be prohibited from engaging in [the business of a mortgage broker or mortgage banker] *the first mortgage loan business* unless licensed under this [act] *chapter*.

(c) Violations by licensees.—Any person licensed under the provisions of this [act] *chapter* or any director, officer, employee or agent of a licensee who shall violate the provisions of this [act] *chapter* or shall direct or consent to such violations shall be subject to a fine levied by the department of up to \$2,000 for each offense.

(d) Limited powers.—The powers conferred upon the commission by subsection (b) shall only be exercised by the commission in relation to persons licensed pursuant to the provisions of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, who are subject to subsection (b) under section [3(b)(3)] 303(b)(3) and the exercise of such power by the commission in relation to such persons shall be exclusive.

Section 6. Sections 16 and 17 of the act are amended to read:

Section [16] 316. Referral fees.

Nothing in this [act] *chapter* shall permit a real estate broker or salesperson, who receives a fee, commission or other valuable consideration relating to the sale of residential real property, to be paid or receive a finder's fee or a referral fee for the referral of a mortgage loan to a lender in connection with that sale, whether or not the real estate broker or salesperson is licensed and regulated by the department.

Section [17] 317. Real Estate Recovery Fund.

Any person injured by the wrongful act, default or misrepresentation of a person engaged in the activities of a mortgage broker who is exempt from licensure under this [act] *chapter* by virtue of being licensed pursuant to the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, shall be entitled to seek recovery from the Real Estate Recovery Fund established by the Real Estate Licensing and Registration Act notwithstanding the fact that such wrongful act, default or misrepresentation occurred in conjunction with mortgage-brokering activities subject, however, to all other terms and conditions of the Real Estate Licensing and Registration Act regarding recovery from that fund.

Section 7. Section 18 of the act, amended December 21, 1998 (P.L.987, No.131), is amended to read:

Section [18] 318. [Scope of act] *Applicability.*

The provisions of this [act] *chapter* shall apply to:

(1) Any mortgage loan which is:

(i) negotiated, offered or otherwise transacted within this Commonwealth, in whole or in part, whether by the ultimate lender or any other person;

(ii) made or executed within this Commonwealth; or

(iii) notwithstanding the place of execution, secured by real property located in this Commonwealth.

(2) Any person who engages in the first mortgage loan business in this Commonwealth.

Section 8. The act is amended by adding a chapter and a chapter heading to read:

**CHAPTER 5
CONSUMER EQUITY PROTECTION**

**SUBCHAPTER A
GENERAL PROVISIONS**

Section 501. *Scope.*

This chapter deals with consumer equity protection.

Section 502. *Legislative findings.*

The General Assembly finds and declares as follows:

(1) *All citizens are entitled to fair access to credit and the ability to share in the American dream of homeownership, including those whose financial or other personal circumstances make them vulnerable to predatory lenders who could take advantage of them by making or arranging high-cost loans that borrowers may not be able to repay and by refinancing mortgage loans with added fees that result in the borrower's equity being stripped.*

(2) *The subprime lending market provides loans to many borrowers who have impaired credit, and this lending market performs a*

significant service to citizens of this Commonwealth, particularly those in distressed urban areas.

(3) Legislation affecting the subprime market should not be overly broad and should restrict only those relatively few lenders who are purposefully engaged in patterns and practices of unfair treatment to vulnerable consumers commonly referred to as predatory lending.

(4) The legitimate conventional and subprime markets should not be subject to the same restrictions, prohibitions, remedies and penalties as the high-cost loans which meet thresholds that distinguish them from loans in other markets.

Section 503. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Affiliate.” Any entity that controls, is controlled by or is under common control with another entity as determined under the Bank Holding Company Act of 1956 (70 Stat. 133, 12 U.S.C. § 1841 et seq.).

“Bridge loan.” A loan with a maturity of less than 18 months which only requires payments of interest until such time as the entire unpaid balance is due and payable.

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

“Creditor.” A person considered a creditor pursuant to 12 CFR § 226.2(a)(17) (relating to definitions and rules of construction).

“Gross income.” An obligor’s gross income as set forth on a credit application, the obligor’s financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor or as determined by any other reasonable means by a lender.

“Lender.” Any creditor that in any 12-month period originates at least one covered loan. The creditor to whom the covered loan is initially payable, either on the face of the note or contract or by agreement when there is no note or contract, shall be deemed to be the lender.

“Median family income.” Median family income for the Metropolitan Statistical Area (MSA) as defined by the Director of the United States Office of Management and Budget in which property which secures a covered loan is located or, for loans secured by property not located within an MSA, the nonmetropolitan median family income for the Commonwealth as reported in the most recent estimates made available by the United States Department of Housing and Urban Development at the time a loan application is received or the latest such estimates made

available in the preceding calendar year, whichever amount is lower. To the extent such information is not readily available from the United States Department of Housing and Urban Development in a form suitable for use by lenders, the Department of Banking shall periodically publish or otherwise make available to lenders median family income information for MSAs and nonmetropolitan areas that may be relied upon by lenders for purposes of this chapter.

“Mortgage broker.” *A person required to be licensed as a mortgage broker, limited mortgage broker or loan correspondent pursuant to the act of December 22, 1989 (P.L.687, No.90), known as the Mortgage Bankers and Brokers Act, or as a secondary mortgage loan broker pursuant to the act of December 12, 1980 (P.L.1179, No.219), known as the Secondary Mortgage Loan Act.*

“Municipality.” *A county, city, borough, incorporated town or township.*

“Obligor.” *Each obligor, co-obligor, cosigner or guarantor obligated to repay a covered loan.*

“Person.” *A corporation, partnership, limited liability company, business trust or any other common enterprise or undertaking involving two or more persons, association of two or more persons, estate, trust, foundation or natural person.*

“Political subdivision.” *A municipality, school district, vocational school district or municipal authority.*

“Principal balance.” *The amount of a promissory note secured by a mortgage in a consumer credit mortgage transaction.*

“Servicer.” *A servicer as defined in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 (Public Law 93-533, 12 U.S.C. § 2605(i)(2)).*

Section 504. Relationship to other laws.

(a) General rule.—*All political subdivisions of this Commonwealth, including home rule municipalities, shall be prohibited from enacting and enforcing ordinances, resolutions and regulations pertaining to the financial or lending activities of persons who:*

(1) *are subject to the jurisdiction of the department, including activities subject to this chapter;*

(2) *are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission or the United States Department of Housing and Urban Development; or*

(3) *that originate, purchase, sell, assign, securitize or service property interests or obligations created by financial transactions or loans made, executed or originated by persons referred to in paragraph (1) or (2) or assist or facilitate such transactions.*

The requirements of this subsection shall apply to all ordinances, resolutions and regulations pertaining to financial or lending activities, including any ordinances, resolutions or regulations disqualifying persons from doing business with a political subdivision based upon financial or lending activities or imposing reporting requirements or any other obligations upon persons regarding financial or lending activities.

(b) Corporate powers.—Nothing in this chapter shall be deemed to limit the corporate powers of incorporated institutions or their subsidiaries subject to the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965, or to impose conditions, limitations or restrictions upon the exercise of such powers contrary to the provisions of section 201 of the Banking Code of 1965.

(c) Preemption.—Any provision of this chapter preempted by Federal law with respect to a national bank or Federal savings association shall not apply to the same extent to an operating subsidiary of a national bank or Federal savings association which satisfies the requirements for operating subsidiaries established in 12 CFR § 5.34 (relating to operating subsidiaries) or 559.3 (relating to what are the characteristics of, and what requirements apply to, subordinate organizations of Federal savings associations).

(d) Interpretation.—The provisions of this chapter shall be interpreted and applied to the fullest extent practical in a manner consistent with applicable Federal laws and regulations, policies and orders of Federal regulatory agencies and shall not be deemed to constitute an attempt to override Federal law.

SUBCHAPTER B PROTECTION OF OBLIGORS

Section 511. Limitations on covered loan terms.

(a) Limitation of balloon payment.—No covered loan may contract for a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments unless such balloon payment becomes due and payable not less than 120 months after the date of the loan. This prohibition does not apply when the payment scheduled is adjusted to account for the seasonal or irregular income of the obligor or if the purpose of the loan is a bridge loan connected with or related to the acquisition or construction of a dwelling intended to become the obligor's principal dwelling.

(b) No call provision.—No covered loan may contain a call provision that permits the lender in its sole discretion to accelerate the indebtedness. This prohibition does not apply when repayment of the loan has been accelerated:

- (1) by default;*
- (2) pursuant to a due-on-sale provision;*

(3) where there is fraud or material misrepresentation by an obligor in connection with the loan; or

(4) where there is any action or inaction by the obligor that adversely affects the lender's security for the loan or any rights of the lender in such security.

(c) No negative amortization.—Except for loans to obligors with gross income in excess of 150% of median family income, no covered loan may contract for a payment schedule with regular periodic payments that cause the principal balance to increase. This subsection shall not prohibit negative amortization as a consequence of a temporary forbearance or restructure consented to by the obligor.

(d) No increased interest rate upon default.—No covered loan may contract for any increase in the interest rate as a result of a default. This provision shall not apply to periodic interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan agreement provided the change in the interest rate is not occasioned by the event of default or permissible acceleration of the indebtedness.

(e) No advance payments.—No covered loan may include terms under which any periodic payments required under the loan are paid in advance from the loan proceeds.

(f) Limitations on prepayment fees.—The following limitation on prepayment fees shall be observed:

(1) A prepayment fee or penalty shall be permitted only during the first 60 months after the date of execution of a covered loan.

(2) A lender shall not include a prepayment fee in a covered loan unless it also makes available a loan product without a prepayment fee.

(3) No prepayment fee or penalty may be charged on a refinancing of a covered loan with a covered loan if the covered loan being refinanced is owned by the refinancing lender at the time of such refinancing.

Section 512. Restricted acts and practices.

(a) No lending without cautionary notice.—A lender may not make a covered loan unless the lender or a mortgage broker has given the following notice, or substantially similar notice, in writing to the obligor not later than the time the notice is required under the notice provision contained in 12 CFR 226.31(c) (relating to general rules) as amended from time to time:

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 should 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 you 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.

Provision of a consumer information pamphlet or other publication prepared by the Office of Consumer Protection of the Office of Attorney General regarding covered loans shall be deemed to constitute a substantially similar notice.

(b) No lending without due regard to repayment ability.—A lender shall not engage in a pattern or practice of making covered loans based on the consumer's collateral without regard to the consumer's repayment ability, including, but not limited to, the consumer's current and expected income, current obligations as disclosed to the lender by the loan application and the consumer's credit report, employment status and other financial resources other than the obligor's equity in the dwelling which secures repayment of the loan. An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's scheduled monthly payments as disclosed to the lender by the loan application and the consumer's credit report do not exceed 50% of the obligor's monthly gross income. For purposes of determining median income, the income of all obligors shall be considered. The requirements of this subsection shall apply only to obligors whose income, as reported on the loan application, is no greater than 120% of the median family income. No presumption shall arise that an obligor is not able to make the scheduled payments if the obligor's scheduled monthly payments exceed 50% of the obligor's monthly gross income as determined pursuant to this subsection.

(c) Refinancing of existing covered loan with a new covered loan.—A lender may not charge any points in connection with a covered loan if the proceeds of the covered loan are used to refinance an existing covered loan held by the lender and the last financing was within one year of the

current refinancing; provided, however, this provision shall not prohibit a lender from charging points in connection with any additional proceeds paid to or for the account of the obligor, other than charges or costs attributable to the covered loan, in connection with the refinancing. For purposes of this subsection, additional proceeds shall be defined as the amount over and above the current principal balance of the existing covered loan; provided, however, in the event the lender refunds all the points on the covered loan being refinanced, the additional proceeds shall be the principal balance of the new covered loan.

(d) No refinancing of certain low-rate loans.—A lender shall not replace or consolidate a zero interest rate or low-rate loan made by a governmental or nonprofit lender with a covered loan within the first ten years of the zero interest or low-rate loan unless the current holder of the loan consents in writing to the financing. For purposes of this subsection, a low-rate loan shall be defined as a loan that carries a current interest rate two percentage points or more below the current yield on United States Treasury securities with a comparable maturity.

(e) Restrictions on covered loan proceeds to pay home improvement contracts.—A lender shall not pay a contractor under a home improvement contract from the proceeds of a covered loan other than by an instrument payable to the obligor or jointly to the obligor and the contractor or, at the election of the obligor, through a third-party escrow agent in accordance with terms established in a written agreement signed by the obligor, the lender and the contractor prior to the disbursement of funds to the contractor.

(f) Restrictions on single premium credit insurance.—A lender shall not sell any individual or group credit life, accident and health or unemployment insurance product on a prepaid single premium basis in conjunction with a covered loan unless the following conditions are met:

(1) After the expiration of 18 months from the date of enactment of this chapter and for an additional six-month period that may be necessary in order to secure any necessary approvals for a monthly premium credit insurance product by the Insurance Department, if a lender offers any individual or group credit life, accident and health and unemployment insurance products purchased on a prepaid single premium basis in conjunction with a covered loan, the lender shall offer the obligor the option of purchasing all such insurance on a monthly premium basis.

(2) A lender shall not sell credit life, accident and health or unemployment insurance products in conjunction with a covered loan other than where the insurance premiums are calculated, earned and paid on a monthly or other regular periodic basis without providing a separate disclosure with a copy acknowledged by the insured no later than the time of closing in a form substantially similar to the following:

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 purchased in conjunction with this loan. You may cancel your 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 your loan, then 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

(3) If an obligor elects to cancel, within 30 days of the date of the covered loan, any individual or group credit life, accident and health or unemployment insurance product purchased on prepaid single premium basis in conjunction with a covered loan, the lender or the insurance company who sold the insurance or the insurance company providing the product shall give the obligor either a full premium refund or a full premium credit against the unpaid loan balance. If the obligor elects to cancel any individual or group credit insurance purchased in conjunction with a covered loan at any other time, the refund or credit shall be computed as provided or permitted by State law. The lender or insurance company shall decide whether the return of premium shall be by means of credit to the account or by refund to the obligor.

This subsection shall not apply to credit life, accident, health and unemployment insurance sold by the lender for which the obligor chooses the primary beneficiary.

Section 513. Additional requirements.

(a) **Reporting to credit bureaus.**—A lender or its servicer shall report at least quarterly both the favorable and unfavorable payment history information of the obligor on payments due to the lender on a covered loan to a nationally recognized consumer credit reporting agency. This subsection shall not prevent a lender or its servicer from agreeing with the obligor not to report payment history information in the event of a resolved or unresolved dispute with an obligor and shall not apply to covered loans held or serviced by a lender for less than 90 days.

(b) **Verification of broker licensure.**—A lender shall verify that each mortgage broker with whom it does business in connection with covered loans holds a license or other authorization currently in effect to do business within this Commonwealth.

SUBCHAPTER¹ C
ENFORCEMENT AND CIVIL LIABILITY

Section 521. Enforcement.

(a) **Enforcement.**—The department may conduct examinations and investigations and issue subpoenas and orders to enforce the provisions of this chapter as provided by the act of May 15, 1933 (P.L.565, No.111), known as the Department of Banking Code, and with respect to a person licensed or subject to the following acts:

(1) Act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act.

(2) Act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

(3) Act of December 14, 1967 (P.L.746, No.345), known as the Savings Association Code of 1967.

(4) Act of December 12, 1980 (P.L.1179, No.219), known as the Secondary Mortgage Loan Act.

(5) Act of December 22, 1989 (P.L.687, No.90), known as the Mortgage Bankers and Brokers Act.

(6) 17 Pa.C.S. (relating to credit unions).

(b) **Examinations and reports.**—The department may examine any instrument, document, account, book, record or file of a person originating or brokering a covered loan under this chapter. The department may recover the cost of such examinations from the person. A person originating or brokering covered loans shall maintain its records in a manner that will facilitate the department determining whether the person is complying with the provisions of this chapter and the regulations promulgated under this chapter. The department may require the submission of reports by persons originating or brokering covered

¹“CHAPTER” in enrolled bill.

loans which shall set forth such information as the department may require.

(c) Subpoena.—In the event that a person fails to comply with a subpoena for documents or testimony issued by the department, the department may request an order from the Commonwealth Court requiring the person to produce the requested information.

(d) Administrative penalties.—If the department determines that a person has violated the provisions of this chapter, the department may do any combination of the following that it deems appropriate:

(1) Impose a civil penalty of up to \$2,000 for each offense. The department may require the person to pay investigative costs, if any.

(2) Suspend, revoke or refuse to renew any license issued by the department.

(3) Prohibit or permanently remove an individual responsible for a violation of this chapter from working in his or her present capacity or in any other capacity related to activities regulated by the department.

(4) Order a person to cease and desist any violation of this chapter and to make restitution for actual damages to obligors.

(5) Impose such other conditions as the department deems appropriate.

(e) Hearings.—Any person aggrieved by a decision of the department and which has a direct interest in the decision may appeal the decision of the department to the Secretary of Banking. The appeal shall be conducted in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

(f) Injunctions.—The department may maintain an action for an injunction or other process against any person to restrain and prevent the person from engaging in any activity violating this chapter.

(g) Final orders.—A decision of the Secretary of Banking shall be a final order of the department and shall be enforceable in a court of competent jurisdiction. The department shall publish the final adjudication issued in accordance with this section, subject to redaction or modification to preserve confidentiality.

(h) Appeals.—Any person aggrieved by a decision of the Secretary of Banking and which has a direct interest in the decision may appeal the decision in accordance with 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

Section 522. Civil liability.

(a) Damages for material violations.—If a lender purposefully engages in a pattern or practice of material violations of this chapter, an obligor on a covered loan may initiate a civil action to recover damages.

(b) Exclusive remedies.—The remedies provided in this subchapter shall be the sole and exclusive remedies for any violation of any provision

of this chapter. Persons engaged in the purchase, sale, assignment, securitization or servicing of covered loans shall not be held liable for the action or inactions of persons originating such loans.

Section 523. Information sharing.

The department may divulge documentary or other information pertaining to enforcement of this chapter to Federal or State banking regulatory agencies or Commonwealth agencies as may be necessary or appropriate for the enforcement of this chapter, as determined by the discretion of the Secretary of Banking. The department may enter into such information sharing agreements or other types of regulatory agreements with other Federal and State banking regulatory agencies as may be reasonably necessary or appropriate for the enforcement of this chapter, as determined by the discretion of the Secretary of Banking.

Section 524. Regulations.

The department may promulgate regulations and statements of policy for the enforcement of this chapter, including regulations establishing rules of procedure for the conduct of hearings pursuant to this subchapter and standards to govern the imposition of civil penalties.

**CHAPTER 31
MISCELLANEOUS PROVISIONS**

Section 9. Section 19 of the act is amended to read:
Section [19] **3101. Effective date.**

This act shall take effect as follows:

(1) Sections [10(a) and (b), 11(b) and (c)] **310(a) and (b) and 311(b) and (c)** shall take effect immediately.

(2) The remainder of this act shall take effect in 180 days.

Section 10. The addition of section 504(a) of the act is intended to restate and confirm the existing law of this Commonwealth, namely that the laws of this Commonwealth relating to the financial and lending activities are to be applied on a uniform Statewide basis. To effectuate this intent, the addition of section 504(a) of the act shall apply both prospectively and retroactively. The remainder of Chapter 5 of the act shall apply to loans originated after the effective date of this section.

Section 11. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) The addition of section 504(a) of the act.

(ii) Section 10 of this act.

(iii) This section.

(2) Except as provided in paragraph (1)(i), the addition of Chapter 5 of the act shall take effect in one year.

(3) The remainder of this act shall take effect in 60 days.

APPROVED—The 25th day of June, A.D. 2001.

THOMAS J. RIDGE