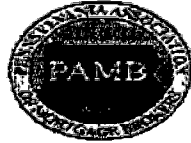


Mortgage Bankers Association of Pennsylvania Pennsylvania Association of Mortgage Brokers

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E. Robert Levy

Legislative/Regulatory Counsel

#2620

EMBARGOED MATERIALINDEPENDENT REGULATORY
REVIEW COMMISSION

2008 NOV - 5 PM 4: 49

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Date: November 4, 2008
 To: Independent Regulatory Review Commission
 From: E. Robert Levy, Legislative/Regulatory Counsel, Mortgage Bankers
 Association of Pennsylvania, Pennsylvania Association of Mortgage
 Brokers
 Re: Department of Banking Mortgage Regulation 3-43

Thank you for providing the opportunity for me to provide a statement on behalf of the Mortgage Bankers Association of Pennsylvania (MBA of PA) and the Pennsylvania Association of Mortgage Brokers (PAMB) on November 6, 2008 regarding the above-captioned Regulation. While I initially planned to attend the hearing and make a statement, after careful consideration of our objectives regarding the Department's proposal, and after discussing the matter with representatives of MBA of PA and PAMB, it was determined that I would not testify but would write this brief memorandum addressing our position.

At the outset, I must compliment the Department of Banking for the effort expended in encouraging input from the industry and consumers alike regarding the potential impact of the regulation. The members of MBA of PA and PAMB appreciate, as I do, the fact that early drafts of the regulation were provided and comments solicited from various interested parties as to how the regulation would function and whether it would result in any unintended consequences. The current Regulation reflects the Department's effort to address many of the concerns expressed.

We are painfully aware that many consumers are suffering as a result of foreclosure sales and that the Department is, as we are, desirous of avoiding such problems when caused by consumers obtaining mortgage loans they cannot afford. By the same token, we are concerned that the use of the proverbial "axe" in doing away with "stated" and "no doc" loans rather than the "scalpel" in an effort to allow for the legitimate use of these loan products, can be a serious problem for many deserving consumers. In this regard, there are numerous scenarios through which it can be seen that legitimate, affordable loans cannot be made for certain consumers in need pursuant to the "ability to repay" requirements in the Regulation.

We do recognize that there is an opportunity to work with the Department to achieve reasonable interpretations of the Regulation that may resolve some of the issues we are concerned about. We look forward to discussions along these lines. For example, it is apparent that the supplemental information that can be used to demonstrate an "ability to repay" where a borrower's documented income is insufficient is not narrowly restricted and left to a case by case analysis. Clearly, we will have to wait for some precedents to be established before it will be clear as to the extent to which some consumers will not be able to access the mortgage market. For example, the regulation provides that a licensee may not rely "primarily" upon the sale or refinancing of the collateral in determining an applicant's ability to repay the loan. If the collateral can be used, therefore, in some part of the analysis, as it seems it can, this interpretation would have an obvious impact on the underwriting of mortgage loans. These are the kinds of issues that will ultimately have to be resolved with the Department.

We were pleased that the Regulation provides a presumption that the borrower has the "ability to repay" when a loan is insured by the FHA, etc. but are concerned that the word "may" was used instead of "shall", i.e., "An applicant may be presumed to have the ability to repay" It seems that the true intent of a presumption such as this is that a lender can absolutely rely upon it once the type of loan referenced is originated or specific criteria are met. There should be no ambiguity as there would using "may" if we are to encourage lenders to make FHA or VA loans or where PHFA lending is involved. And if a HUD approved counseling agency determines that there is a "reasonable expectation" that a borrower will be able to repay the subject loan, the presumption should apply without the further consideration that the word "may" might imply is needed.

In view of the foregoing, I again thank the IRRC for the opportunity to be heard and look forward to working with the Department of Banking to achieve workable interpretative solutions to some of the issues we believe will have to be confronted upon adoption of the subject Regulation.



/ERL

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MESSAGE:

PLEASE SEE MR. LEVY'S MEMO REGARDING THE DEPARTMENT OF BANKING
MORTGAGE REGULATION 3-43.

THANK YOU.

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