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Pennsylvania

STATE HIGH COST/PREDATORY LENDING REGULATIONS

| | | |
|----------------------|-----------------|------------------|
| Last Updated: | Date: | Initials: |
| By: | 12/21/21 | BH |
| Reviewed: | | |
| Coded: | | |
| By: | 1/12/22 | SA |
| Reviewed: | | |

LAW: Consumer Equity Protection Act (Public Law 687, No. 90; PA Stat Ann 456.501 et al)
<https://www.dobs.pa.gov/Documents/Statutes/Mortgage%20Bankers%20and%20Brokers%20and%20Consumer%20Equity%20Protection%20ACT%20MBBCEPA.pdf>

LOAN AMOUNT COVERED: Principal loan amount less than \$100,000

BORROWERS COVERED:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Individuals | <input checked="" type="checkbox"/> Trusts |
| <input type="checkbox"/> Organizations | <input type="checkbox"/> Other: |

TOTAL LOAN AMOUNT (TLA) IS DEFINED AS: Public Law 687, No. 90; PA Stat Ann 456.501 et al

- | | |
|--|--------------------------------------|
| <input type="checkbox"/> Loan Amount as defined in HOEPA 226.32 | <input type="checkbox"/> Note Amount |
| <input checked="" type="checkbox"/> Loan Amount as defined in HCML 1026.32 | <input type="checkbox"/> Other: |

LOAN TYPES COVERED:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Conventional | <input checked="" type="checkbox"/> FHA |
| <input checked="" type="checkbox"/> VA | <input checked="" type="checkbox"/> RHS |
| <input type="checkbox"/> Other: | |

LOAN PURPOSES COVERED:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Purchase | <input checked="" type="checkbox"/> Construction to Perm |
| <input type="checkbox"/> Builder | <input checked="" type="checkbox"/> Refinance |
| <input checked="" type="checkbox"/> Equity Out | <input checked="" type="checkbox"/> Home Equity Closed End |
| <input checked="" type="checkbox"/> One Time Closing | <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Purchase Plus Improvements | <input checked="" type="checkbox"/> Refinance Plus Improvements |
| <input type="checkbox"/> Lot Loan | <input checked="" type="checkbox"/> Home Improvement |
| <input type="checkbox"/> Borrower Interim | <input type="checkbox"/> One Time Closing with Modification |
| <input checked="" type="checkbox"/> HELOC | <input checked="" type="checkbox"/> Assumption |

BRIDGE LOANS COVERED

- | | |
|------------------------------|--|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
|------------------------------|--|

PROPERTY OCCUPANCY COVERED:

- | | |
|---|--------------------------------------|
| <input checked="" type="checkbox"/> Primary Residence | <input type="checkbox"/> Second Home |
| <input type="checkbox"/> Investment | <input type="checkbox"/> Raw Land |

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APR THRESHOLDS:

☒ APR ☐ Unteased APR ☐ Other:

First Lien: > 6.5 %

Subordinate Lien: > 8.5 %

APR COMPARED AGAINST: Public Law 687, No. 90; PA Stat Ann 456.501 et al

☒ APOR ☐ APR Itself
☐ Treasury Yield ☐ Other:

DATE FOR APR TEST:

☐ Application ☐ Closing
☒ Other: Date interest rate is set

FEE TEST METHOD: Public Law 687, No. 90; PA Stat Ann 456.501 et al

☐ Use HC Flag
☒ Use APR & Paid To (\$1026.32)
☐ Use APR & Paid To, except:

FEE TEST THRESHOLDS: Public Law 687, No. 90; PA Stat Ann 456.501 et al

All liens: > or = 5 % of TLA \geq \$22,969

Lesser of 8% or \$1,148 for TLA < \$22,969

ADJUSTMENTS:

☐ No ☒ Yes | How: Adjusts annually per CPI

IF LOAN IS STATE HIGH-COST, THEN MUST MEET FOLLOWING REQUIREMENTS:

- Payments to Contractors prohibited under home improvement, unless payable to borrower or jointly (borrower and contractor); or at the election of borrower, by a 3rd party escrow agent per agreement between borrower, lender and contractor before pymt date.
- Single Pay Credit Insurance requires an insurance notice.
- No Advance Payments
- No loan acceleration provision (except via default, due-on-sale, fraud, or other action/inaction that adversely affects lender's security.
- No Balloon Payments in less than 10 years, unless the loan is a bridge loan in connection with the purchase or construction of a dwelling intended to become the borrower's principal residence.
- No Negative Amortization unless gross income exceeds 150% of median family income.
- No Default Interest Rate unless an ARM, not due to default.
- No Prepayment penalty after 5 years

FEES INCLUDED IN TEST: Public Law 687, No. 90; PA Stat Ann 456.501 et al

Same as Section 32 except with state-required disclosure for loans less than \$100,000.00

OTHER ITEMS TO BE TESTED/CONSIDERED: Public Law 687, No. 90; PA Stat Ann 456.501 et al

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- (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.

SPECIAL NOTES: Public Law 687, No. 90; PA Stat Ann 456.501 et al

All Lenders

The Mortgage Bankers and Brokers and Consumer Equity Protection Act (MBBCEPA) impose lending restrictions on first and second lien mortgage loans that meet the definition of a "covered loan." The provisions of the MBBCEPA addressing covered loans are contained in 63 Pa. Cons. Stat. Ann. [§456.501 et seq.](#)

Definitions

"Lender" means any creditor that in any 12-month period originates at least 1 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, will be deemed to be the lender.

"Median family income" means:

- (1) the 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
- (2) for loans secured by property not located within an MSA, the no metropolitan median family income for Pennsylvania as reported in the most recent estimates made available by HUD at the time a loan application is received or the latest estimates made available in the preceding calendar year, whichever amount is lower.

To the extent that median family income information is not readily available from HUD in a form suitable for use by lenders, the Department of Banking and Securities (Department) will periodically publish or otherwise make available to lenders median family income information for MSAs and no metropolitan areas that may be relied upon by lenders for purposes of the MBBCEPA.

"Mortgage broker" means a person required to be licensed as a mortgage broker, limited mortgage broker or loan correspondent pursuant to the first mortgage loan business provisions of the MBBCEPA, or as a secondary mortgage loan broker pursuant to the Secondary Mortgage Loan Act.

"Covered loan" means a consumer credit mortgage loan transaction involving property located within Pennsylvania, that is considered a mortgage under Section 103(aa) of the Truth in Lending Act and regulations adopted pursuant thereto by the Federal Reserve Board, including [12 C.F.R. §1026.32](#) (relating to requirements for certain closed end home mortgages), for which the original principal balance of the loan is less than \$100,000. 63 Pa. Cons. Stat. Ann. [§456.503](#); [15 U.S.C. §1602\(aa\)](#); Supplement I, [§1026.32\(a\)](#).

License Verification

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A lender must 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 Pennsylvania. 63 Pa. Cons. Stat. Ann. [§456.513\(b\)](#).

Borrower Repayment Ability

A lender may not engage in a pattern or practice of making covered loans based on the collateral without considering the borrower's ability to pay. The borrower's ability to repay includes the borrower's:

- (1) current and expected income;
- (2) current obligations as disclosed to the lender by the loan application and the borrower's credit report; and
- (3) employment status.

There is a presumption that the borrower is able to pay if the borrower's monthly scheduled payments on the loan and other obligations do not exceed 50% of the borrower's gross income. However, no presumption will arise that a borrower is not able to make the scheduled payments if the borrower's scheduled monthly payments exceed 50% of the borrower's monthly gross income.

This restriction on borrower repayment ability applies to borrowers whose gross income is less than 120% of the median family income.

63 Pa. Cons. Stat. Ann. [§456.512\(b\)](#).

Refinancing Restrictions

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 1 year of the current refinancing. This does not prohibit a lender from charging points in connection with any additional proceeds paid to or for the account of the borrower, other than charges or costs attributable to the covered loan, in connection with the refinancing. Additional proceeds means 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 are the principal balance of the new covered loan. 63 Pa. Cons. Stat. Ann. [§456.512\(c\)](#).

A lender may 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 10 years of the zero interest or low-rate loan unless the current holder of the loan consents in writing to the financing. A low-rate loan is a loan that carries a current interest rate 2 percentage points or more below the current yield on U.S. Treasury securities with a comparable maturity. 63 Pa. Cons. Stat. Ann. [§456.512\(d\)](#).

Home Improvement Contracts

A lender may not pay a contractor under a home improvement contract from the proceeds of a covered loan other than by an instrument payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender and the contractor prior to the disbursement of funds to the contractor. 63 Pa. Cons. Stat. Ann. [§456.512\(e\)](#).

Notice to Borrower

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 borrower at least 3 business days prior to the closing of the loan. See [Section VII.C.: Predatory Lending Disclosures](#). 63 Pa. Cons. Stat. Ann. [§456.512\(a\)](#).

Credit Insurance

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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 must offer the borrower the option of purchasing all insurance on a monthly premium basis.

A lender who sells a credit insurance policy on a single premium basis is required to provide the borrower an insurance notice no later than the time of closing. See [Section VII.C.: Predatory Lending Disclosures](#).

63 Pa. Cons. Stat. Ann. [§456.512\(f\)](#).

Advance Payments

A covered loan may not include terms under which any periodic payments required under the loan are paid in advance from the loan proceeds. 63 Pa. Cons. Stat. Ann. [§456.511\(b\)](#).

Call Provision

A covered loan may not contain a call provision that permits the lender in its sole discretion to accelerate the loan. 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 a borrower in connection with the loan; or
- (4) where there is any action or inaction by the borrower that adversely affects the lender's security for the loan.

63 Pa. Cons. Stat. Ann. [§456.511\(b\)](#).

Balloon Payment

A covered loan may not contain a scheduled payment that is more than twice as large as the average of the scheduled monthly payments unless the balloon payment is due and payable not less than 120 months after the date of the loan. This restriction does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the borrower or if the purpose of the loan is a bridge loan connected with the purchase or construction of a house which will become the borrower's principal residence. 63 Pa. Cons. Stat. Ann. [§456.511\(a\)](#).

Negative Amortization

A covered loan may not contract for a payment schedule with regular periodic payments that cause the principal balance to increase unless the borrowers have gross income in excess of 150% of median family income. This does not prohibit negative amortization as a consequence of a temporary forbearance or restructure consented to by the borrower. 63 Pa. Cons. Stat. Ann. [§456.511\(c\)](#).

Increased Interest Rate

A covered loan may not contract for an increase in the interest rate as a result of a default. This does 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 a result of default or permissible acceleration of the indebtedness. 63 Pa. Cons. Stat. Ann. [§456.511\(d\)](#).

Prepayment Penalty

A lender may not include a prepayment penalty in a covered loan unless the lender also makes available a loan product without a prepayment penalty.

A prepayment penalty is only permitted during the first 60 months after the date of execution of a covered loan.

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A prepayment penalty may not 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 the refinancing.

63 Pa. Cons. Stat. Ann. [§456.511\(f\)](#).

Reporting to Credit Bureaus

A lender or its servicer must report, at least quarterly, both the favorable and unfavorable payment history information of the borrower on payments due to the lender on a covered loan to a nationally recognized consumer credit reporting agency. This does not prevent a lender or servicer from agreeing with the borrower not to report payment history information in the event of a resolved or unresolved dispute with a borrower and will not apply to covered loans held or serviced by a lender for less than 90 days. 63 Pa. Cons. Stat. Ann. [§456.513\(a\)](#).

Offering a Covered Loan when Applicant Qualifies for a Non-Covered Loan

If an applicant qualifies for a loan offered by a lender or broker under the Mortgage Licensing Act or the Consumer Discount Companies Act, then the lender or broker may not offer to the applicant a covered loan without advising the applicant that the applicant qualifies for a loan other than a covered loan. 10 Pa. Code [§46.2\(j\)](#).

Reports

The Department may require the submission of reports by persons originating or brokering covered loans which will set forth the information as the Department may require. 63 Pa. Cons. Stat. Ann. [§456.521\(b\)](#).

Recordkeeping Requirements

A person originating or brokering covered loans must maintain its records in a manner that will facilitate the Department determining whether the person is complying with the covered loan provisions of the MBBCEPA. 63 Pa. Cons. Stat. Ann. [§456.521\(b\)](#).

Examinations

The Department may conduct examinations and investigations and issue subpoenas and orders to enforce the covered loan provisions of the MBBCEPA. 63 Pa. Cons. Stat. Ann. [§456.521\(a\)](#).

The Department may examine any instrument, document, account, book, record or file of a person originating or brokering a covered loan under the MBBCEPA. The Department may recover the cost of examinations from the person being examined. 63 Pa. Cons. Stat. Ann. [§456.521\(b\)](#).

Enforcement and Civil Liability

If the Department determines that a person has violated the covered loan provisions of the MBBCEPA, 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 also require the payment of investigation 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 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 and to make restitution for actual damages to borrowers; and/or
- (5) impose other conditions the Department deems appropriate.

63 Pa. Cons. Stat. Ann. [§456.521\(d\)](#).

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The Department may also maintain an action for an injunction or other process against any person to restrain and prevent the person from engaging in any activity violating the covered loan provisions of the MBBCEPA. 63 Pa. Cons. Stat. Ann. [§456.521\(f\)](#).

Any person aggrieved by a decision of the Department or of the Secretary of Banking may appeal the decision. 63 Pa. Cons. Stat. Ann. [§456.521\(e\)](#).

If a lender purposefully engages in a pattern or practice of material violations of the covered loan provisions of the MBBCEPA, a borrower on a covered loan may initiate a civil action to recover damages.

The remedies provided in the MBBCEPA are the sole and exclusive remedies for any violation of the covered loan provisions of the MBBCEPA.

63 Pa. Cons. Stat. Ann. [§456.522\(c\)](#).

Assignee and Servicer Liability

Persons engaged in the purchase, sale, assignment, securitization or servicing of covered loans will not be held liable for the action or inactions of person originating covered loans. 63 Pa. Cons. Stat. Ann. [§456.522](#).

Federal Preemption

Any covered loan provision of the MBBCEPA preempted by federal law with respect to a national bank or federal savings association will 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 C.F.R. §5.34 or 12 C.F.R. §559.3. 63 Pa. Cons. Stat. Ann. [§456.504\(c\)](#).

The covered loan provisions of the MBBCEPA will 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 will not be deemed to constitute an attempt to override federal law. 63 Pa. Cons. Stat. Ann. [§456.504\(d\)](#).

State Preemption

All political subdivisions of Pennsylvania, including home rule municipalities, are prohibited from enacting and enforcing ordinances, resolutions and regulations pertaining to the financial or lending activities of persons:

- (1) who are subject to the jurisdiction of the Department, including activities subject to the MBBCEPA;
- (2) who are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the OCC, the OTS, the NCUA, the FDIC, the FTC or HUD; 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 item (1) or (2) or assist or facilitate transactions.

This prohibition applies 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.

63 Pa. Cons. Stat. Ann. [§456.504\(a\)](#).