WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #3

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2003 JUL 15 A 9:09

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: West Virginia Division of Banking TITLE NUMBER: 106

CITE AUTHORITY: W.Va. Code 31-17-3 & 31-17-11(a)

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ___

TITLE OF RULE BEING AMENDED: ___

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Authorized Signature

$13.00

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 14, 2003

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) West Virginia Division of Banking
1900 Kanawha Blvd., East
Building 3, Room 311
Charleston, WV 25305-0240

LEGISLATIVE RULE TITLE:
Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

1. Authorizing statute(s) citation
W.Va. Code 31-17-3 and 31-17-11(a)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

May 29, 2003

b. What other notice, including advertising, did you give of the hearing?

The proposed Rule, with a brief summary was placed on our website. We sent notices to interested parties, including all licensed brokers and lenders impacted by the proposed rule, Mountain State Justice, AARP, and the Consumer Protection Division of the Attorney General's Office.

c. Date of Public Hearing(s) ***or*** Public Comment Period ended:

June 30, 2003

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached See Attachment A No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

JULY 15, 2003

f. **Name, title, address and <u>phone/fax/e-mail numbers</u>** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Larry A. Stark, Commissioner (l.stark@wvdob.org)
Robert J. Lamont, General Counsel (blamont@wvdob.org)
1900 Kanawha Blvd., East
Building 3, Room 311
Charleston, WV 25305-0240
Phone: 558-2294
Fax: 558-0442

g. **<u>IF DIFFERENT</u> FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable

b. Date of hearing or comment period:

_____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

_____

d. Attach findings and determinations and reasons:

Attached _____

ATTACHMENT A

LRMRC QUESTIONNAIRE (Question 2.d.)

The Division of Banking received comments from the following organizations:

Capitol Mortgage Services, Inc.

West Virginia Association of Mortgage Brokers

AARP West Virginia

Principal Residential Mortgage, Inc.

Title/Appraisal Vendor Management Association (TAVMA)

Real Estate Service Providers Council, Inc. (RESPRO)

LandSafe, Inc. (subsidiary of Countrywide)

Cendant Corporation

Sunset Mortgage Company

Copies of all of the comment letters are attached along with copies of the letters of response sent by the Division of Banking.

The Division of Banking has proposed three (3) amendments to the proposed rule following the comment period. They are summarized as follows:

1.) and 2.) In response to comments from Principal Residential Mortgage, Inc., the Division has amended subsections 3.1.o and 6.1.m of the proposed rule by adding the phrase "if applicable" at the end of both subsections. These two amendments reflect an understanding that A.) An appraisal of mortgaged real estate is not always required and not always obtained by either the initial lender or broker, and B.) That some entities routinely provide a copy of the appraisal and thus are not required by federal law to provide the form disclosing the borrower's right to receive a copy; and therefore in such cases the Division does not expect the licensee to provide and then retain a copy of the disclosure of the right to receive an appraisal.

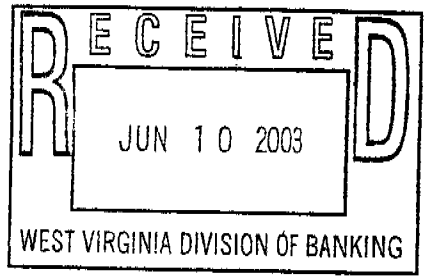
3.) The Division, on its own initiative, has amended subsection 6.1.u, at the second line, by striking the word "lender" and inserting in lieu thereof the word "broker". This corrects a typo in the original proposed rule.

CAPITAL MORTGAGE SERVICES, INC.

P.O.Box 238
Rt. 14 South & I-77
Mineral Wells, WV 26150

Phone: 304.489.3101
Fax: 304.489.3129

Your Home Loan Specialists



June 9, 2003

West Virginia Division of Banking
1900 Kanawha Blvd., East
State Capitol Complex, Building 3, Room 311
Charleston, WV 25305-0240

Re: Notice of Proposed Legislative Rule

If we include "unrelated third party" costs within the overall cap on fees, the brokers and lenders will stop making small loans.

Also, brokers like ourselves, who don't now charge maximum allowable charges will raise their fees on larger loans to compensate for not making smaller loans. Business' have to make a profit!

I really don't understand how this part of the proposed legislation is supposed to help anyone. Most of all, it will hurt the consumer. Isn't that contrary to what regulation is all about?

Best Regards,

Larry W. Sullivan
Capital Mortgage Services, Inc.

WEST VIRGINIA DIVISION OF BANKING
1900 KANAWHA BLVD., EAST
STATE CAPITOL COMPLEX, BUILDING 3, ROOM 311
CHARLESTON, WEST VIRGINIA 25305-0240

(304) 558-2294
Fax: (304) 558-0442
www.wvdob.org

June 30, 2003

Mr. Larry W. Sullivan
Capital Mortgage Services, Inc.
P.O. Box 238
Mineral Wells, WV 26150

Re: Title 106, Series 5 - Proposed Legislative Rule
Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

Dear Mr. Sullivan:

Thank you for your recent comment on the above-referenced Proposed Rule. You note your concern over the possibility of including "unrelated third party" costs within the overall cap on fees which could lead to brokers and lenders no longer making small loans.

Such a result is not the intent of the proposal. I believe you may have misconstrued the language of the proposed rule. Section 14.1 essentially quotes the existing law at W.Va. Code § 31-17-8(m)(4) which provides, in relevant part, that "...reasonable closing costs...payable to unrelated third parties may not be included within [the overall cap on points and fees]..." The proposal, at section 14.2, merely provides a definition (lacking in the current law) of "unrelated third party" tied to the Real Estate Settlement Procedures Act's treatment of "affiliated business arrangement". If the rule passes as proposed, payments to an "unrelated third party" would **not** be considered to fall within the overall cap on fees.

I hope this letter clarifies the rule and allays your concern.

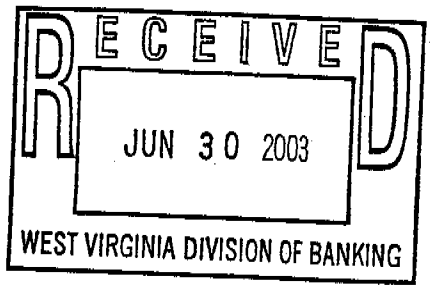
Sincerely,

Robert J. Lamont
General Counsel

C: Larry A. Stark, Commissioner

West Virginia Association of Mortgage Brokers

115 Aikens Center, Suite 20-B. Martinsburg, WV 25401 (304) 267-9093



June 27, 2003

West Virginia Division of Banking
1900 Kanawha Blvd., East
State Capitol Complex, Building 3, Room 311
Charleston, West Virginia 25305-0240
Attn: Tracy Hudson

Dear Tracy:

Thank you for forwarding me a copy of the Proposed Legislative Rules.

After careful review, I am in agreement with most of the Rule's provisions. However, in my opinion some areas may be difficult to enforce. Please find below my comments for specific sections.

Records that must be maintained by licensed residential mortgage brokers.

6.1.y. Retention of Rate Sheets.

As an alternative to the retention of all rate sheets for a period of 3 years, I suggest the following: Each loan file, including those closed, denied or withdrawn, shall contain the specific rate sheet used to price that loan. This would assist regulators during examinations and eliminate storage problems.

106-5-9. Use of Non-local Appraisers. (9.1)

I fully understand the need, purpose and intent of this section; however, I believe this section will do nothing to prevent collusion between lenders/brokers and appraisers. I am not suggesting this section be eliminated from the rules; I am suggesting tougher penalties for violators when apprehended. Moreover, the names of these violators and their punishments need to be made public. Publication will act as a deterrent.

As per our recent phone conversation, please find enclosed a copy of the National Association of Mortgage Broker's (NAMB) "Model State Statute Initiative". I would

appreciate meeting with the DOB as soon as possible, to discuss how we could incorporate these provisions into our existing law.

Thank you for inviting my comments on these important issues.

Sincerely,

Marc S. Savitt, President
West Virginia Association of Mortgage Brokers

CC: Board Members

WEST VIRGINIA DIVISION OF BANKING
1900 KANAWHA BLVD., EAST
STATE CAPITOL COMPLEX, BUILDING 3, ROOM 311
CHARLESTON, WEST VIRGINIA 25305-0240

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July 1, 2003

Mr. Marc S. Savitt, President
West Virginia Association of Mortgage Brokers
115 Aikens Center, Suite 20-B
Martinsburg, WV 25401

Re: Title 106, Series 5 - Proposed Legislative Rule
Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

Dear Mr. Savitt:

Thank you for your recent comments on the above-referenced Proposed Rule. You suggest, as an alternative to the proposed Section 6.1y requiring the retention of all rate sheets for a 3-year period, that each loan file contain instead a copy of the specific rate sheet used to price that loan. We do not believe that suggestion will aid examiners or protect borrowers. As proposed, the rule is intended to make it easier for an examiner or borrower to document whether more favorable loan rates may have been available but not offered to a particular borrower at the time the loan was brokered. It would be much more difficult to make such a determination if only the single rate sheet used to price the loan is retained in that loan file.

You also commented on Section 9.1 regarding the use of non-local appraisers. While you do not suggest that the proposal be eliminated, you also indicated a desire that penalties for violators be strengthened. The Commissioner's enforcement authority to revoke or suspend a license and/or impose a civil administrative penalty is set by statute. Consequently, the legislative rule-making process is not the appropriate forum in which to amend that authority. The proposed rule reflects our concern that brokers or lenders may choose the services of more "compliant" appraisers, even when an ample supply of local appraisers, who would presumably have more familiarity with the local market, are available. The proposed rule does not forbid the use of non-local appraisers. Rather it merely requires licensees to provide a written rationale for using such individuals.

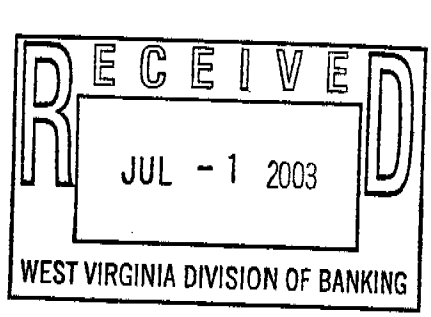
I hope this letter clarifies our intention with the afore-mentioned sections of the rule and eases your concern. Again, thank you for your comments. We look forward to working with you in the future to improve existing law.

Sincerely,

Robert J. Lamont
General Counsel

C: Larry A. Stark, Commissioner

AARP West Virginia



June 27, 2003

Larry Stark, Commissioner
West Virginia Division of Banking
Bldg. 3, Room 311
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Proposed Title 106, Series 5, Rule Pertaining to Residential Mortgage Lenders, Brokers, and Loan Originators

Dear Commissioner Stark:

AARP West Virginia appreciates the opportunity to comment on the above referenced proposed rule to implement West Virginia Code Section 31-17-3 *et seq.*, the "West Virginia Residential Mortgage Lender, Broker, and Servicer Act." Our nonprofit organization represents approximately 271,000 members 50 years of age and older in the state of West Virginia. AARP seeks through education, advocacy, and service to enhance the quality of life of all by promoting independence, dignity, and purpose.

We commend the Division of Banking for showing the concern and leadership that is reflected in the proposed comments, and AARP West Virginia supports the proposal as drafted. Though the provisions of this Section of the Code are adequate in the broader sense, until now they lacked the specificity required to protect consumers, in the most important and valuable transaction they will make, from inadequate record keeping and a lack of accountability on the part of those engaged in the extension of credit and services rendered thereafter. As you are aware from previous interaction, AARP West Virginia is committed to protecting the interests of its members and those of all consumers in West Virginia, against the potential for fraud and other inequitable behavior that could result in overpayment by unsuspecting borrowers or the loss of a home due to foreclosure. Accurate and extensive record keeping over a considerable period of time lessens the likelihood of fraud or inadvertent loss of data, and provides the borrower with a paper trail of evidence should it be needed to raise a claim or defense.

Specifically, AARP West Virginia appreciates the comprehensive nature of the proposed rules, in that they methodically include each potential licensee in any given transaction, mandate the retention of a detailed array of documentation, and require that each successor in interest maintain the most important documents from the underlying transaction. Although AARP West Virginia would prefer that documentation be kept in

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Esther "Tess" Canja, President | William D. Novelli, Executive Director and CEO | www.aarp.org

excess of the 36 month minimum requirement, that provision in the proposal adequately fills a gap that is not currently addressed in the statute. We also commend the Division for including provisions mandating documentation of the borrower's ability to pay, precluding improper coercion of appraisers, and requiring justification for the use of a non-local appraiser. All of these provisions provide necessary protections to current and potential homeowners in West Virginia, and will hopefully lessen the unfortunately high rate of foreclosure that exists in this state.

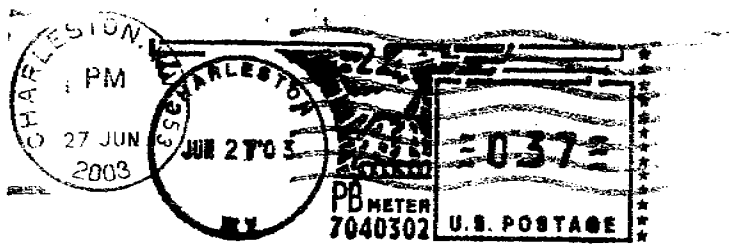
Though the Proposed Rule expands and defines the statute in ways that benefit the consumer and put reasonable requirements on brokers, lenders, assignees, and servicers, the underlying flaw is that the statute itself contains so many exemptions that the good work of your Division will apply to few licensees, and benefit only a small segment of the borrowing public. AARP West Virginia is committed to broadening the protections afforded to borrowers, and increasing the number of borrowers impacted by favorable provisions of the law. We anticipate your support in future endeavors in this regard, and thank you for your efforts on behalf of the consumers in West Virginia.

Respectfully Submitted,

E. Frank Bellinetti
State Director

AARP West Virginia

300 Summers Street, Suite 400 | Charleston, WV 25301



Larry Stark, Commissioner
West Virginia Division of Banking
Bldg. 3, Room 311
1900 Kanawha Boulevard, East
Charleston, WV 25305

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July 8, 2003

E. Frank Bellinetti
State Director
AARP West Virginia
300 Summers St., Suite 400
Charleston, WV 25301

Re: Title 106, Series 5 - Proposed Legislative Rule
Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

Dear Mr. Bellinetti:

Thank you for your recent comments regarding the above-referenced proposed rule. Although the letter was received on July 1, 2003, we noted that it was postmarked June 27, which should have been ample time for the postal service to deliver it on June 30.

We appreciate your statement of support for the proposed rule and the efforts of the Division of Banking generally. We agree that specific, detailed recordkeeping requirements should go a long way toward reducing the level of fraud in residential mortgage lending and brokering.

You noted that AARP West Virginia would have preferred a longer period of record keeping than the 36 months contained in the proposed rule. In fact, this time frame was set by statute at W.Va. Code § 31-17-9(e). While you correctly point out that W.Va. Code § 31-17-1, *et seq.* does exempt certain entities from its provisions, such as banks and insurance companies, it is our experience that such exemptions are not unusual throughout the country.

We look forward to working with you in the future on legislative initiatives of common interest.

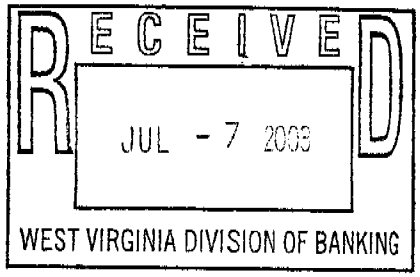
Sincerely,

Robert J. Lamont
General Counsel

C: Larry A. Stark, Commissioner

Principal
Residential
Mortgage, Inc.
A member of the Principal
Financial Group

WE UNDERSTAND WHAT YOU'RE WORKING FOR℠



DELIVERED VIA FAXIMILE
(304) 558-0442

June 30, 2003

West Virginia Division of Banking
1900 Kanawha Blvd. East
State Capitol Complex, Building 3, Room 311
Charleston, West Virginia 25305-0240

RE: Proposed Title 106, Series 5, Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

Thank you for the opportunity to comment on this proposed rule. Principal Residential Mortgage, Inc. ("Principal Residential") is a full-service residential mortgage lender headquartered in Des Moines, Iowa, and is a member of the Principal Financial Group. Principal Residential currently specializes in A-paper mortgage loans, originating both first and second lien loans, as well as acquiring such loans from brokers and correspondents nationwide. Principal Residential also services residential first mortgage loans nationwide.

Time Frames for Record Keeping

The proposed rule appears to contain inconsistencies in this area. For example, subsection 2.1 under Section 106-5-2 requires that documents be kept for the specified period of time tolling from the date of the borrower's application. However, subsection 2.3, related to a residential mortgage broker, bases the timing on a number of potential events. Both consumers and the industry would be better served with a consistent approach in these subsections.

Please consider standardizing this aspect of the rule to use the date action is taken on the application, as defined in the federal Home Mortgage Disclosure Act ("HMDA") as the tolling date for the document retention period(s) in this rule. The HMDA "action taken date" covers every potential disposition of an application including denial, withdrawal by the applicant, or closing of the loan.

Using the date of the loan application as the tolling date for a document retention requirement may be too early in the process to assure an adequate document retention period, as some applications do not reach a conclusion for several weeks (or perhaps months, in the case involving construction of a dwelling). Other tolling dates used in subsection 2.3, such as the "date of the latest...credit document [or] required disclosure..." are ill-defined and leave far too much room for uncertainty on the part of consumers as well as regulated entities. In addition, such dates generally are not easily determined or readily identifiable in the various automated loan origination systems used by the industry, and do not accurately mirror the industry standard established by HMDA relative to the "action taken date," which is used and understood by residential mortgage lenders nationwide.

Records that Must Be Maintained

Proposed Section 106-5-3 and related sections require that certain documents be maintained. The proposed rule requires documents to be retained that may, in fact, not be required on certain transactions. For example, a preliminary Truth in Lending Act disclosure of APR and related terms is required to be retained under proposed subsection 3.1.f. of Section 106-5-3 (and 6.1.g. of 106-5-6). Note that not all transactions require such a disclosure, and this rule should not require the retention of a disclosure that is not required under applicable law. Please consider appending language at the end of the heading of Sections 106-5-3, 106-5-4, 106-4-5, and 106-5-6, as follows: "if the record or disclosure is required for a given transaction under applicable state or federal laws or regulations."

Subsection 3.1.f. and 3.1.g. are redundant, as are 6.1.g.and 6.1.h. We suggest that the Department delete subsections 3.1.g. and 6.1.h.

Subsection 3.1.k. of proposed Section 106-5-3 (also 4.1.c. of 106-5-4, and 5.1.c. of 106-5-5, and 6.1.j. of 106-5-6) requires that a "signed" HUD-1 or HUD-1A be retained, if applicable. Please note that the HUD-1 and HUD-1A are required by the federal Real Estate Settlement Procedures Act and implementing Regulation X, and the federal law does not require signatures on those forms. Further, it is not standard practice for the lender or the closing agent to sign those forms. Thus, it appears that the Department is attempting to impose substantive additional signature requirements at a state level, on top of the federal law and regulations governing the HUD-1 and HUD-1A. We fail to see why that is necessary in West Virginia (or any other state) and strongly recommend that the Department remove all references to having the HUD-1 or HUD-1A signed by either lenders, borrowers, and/or closing agents.

Subsection 3.1.o. of proposed Section 106-5-3 (and 6.1.m. of 106-5-6) requires that a "Right to Receive Appraisal Disclosure" be retained. The federal Equal Credit Opportunity Act requires that a borrower have the right to receive a copy of the appraisal of the property securing their loan if certain other conditions are met. However, the borrower need not be given a written disclosure if a creditor sets up standard operating procedure to always provide the customer with a copy of the appraisal. That is the procedure Principal Residential follows, and as such we do not use a disclosure for this purpose. This point reinforces the need to make the change noted in the first paragraph of this section; that any required records or disclosures are to be maintained only if such records or disclosures are required for a given transaction under applicable laws or regulations.

Subsection 3.1.v. of proposed Section 106-5-3 (and 6.1.m. of 106-5-6) is redundant and should be deleted. An adjustable rate mortgage (ARM) disclosure is required by the federal Truth in Lending Act. Thus, the disclosure is already addressed in subsection 3.1.f. (and 6.1.g.). However, if the Department thinks it is necessary or appropriate to mention this disclosure separately, consider deleting the semicolon and appending the following wording onto the end of subsections 3.1.f. and 6.1.g.: "including the Adjustable Rate Mortgage Disclosure, if applicable;"

Records Required of Licensees that Purchase or Take Assignment of Mortgage Loans, or that Service Such Loans

Subsection 4.1.g. of proposed Section 106-5-4 (also 5.1.j. of 106-5-5) requires that the licensee retain a telephone log reflecting the date and substance of telephone conversations with borrowers. It is not reasonable or appropriate for loan servicers to log every single contact with borrowers, which most frequently involve routine loan servicing matters, and routine questions and answers. Implementing a "log" of some sort to track all such contacts would create a new layer of very expensive and time-consuming compliance demands on the industry and, in our opinion, would non-productive from a public policy standpoint. The real issue should be the speed and accuracy with which a servicer handles complaints, not how well they "log" every routine telephone call or inquiry. Record

for complaints is addressed at subsection 4.1.j. (and 5.1.m.). Those subsections should suffice to provide meaningful records regarding a loan servicer's activities and interactions with their customers. We strongly recommend that the Department delete subsection 4.1.g. and 5.1.j.

Conclusion

We do not that this comment letter represents a comprehensive listing of the issues that need to be considered and addressed in the proposed rule; it is the result of a brief analysis by the undersigned. We anticipate that other interested parties will also submit comments to assist the Department in crafting a meaningful and effective final rule. Thank you in advance for your thoughtful consideration of these issues. Please do not hesitate to contact me if you have questions or wish to discuss any of these matters.

Sincerely,

Alan W. Jackson
Vice President, Compliance and Government Issues
Principal Residential Mortgage, Inc.
711 High Street
Des Moines, Iowa 50392-0700
Phone 515-247-6972
E-mail: jackson.al@principal.com

WEST VIRGINIA DIVISION OF BANKING
1900 KANAWHA BLVD., EAST
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July 7, 2003

Alan W. Jackson
Vice President, Compliance and Government Issues
Principal Residential Mortgage, Inc.
711 High Street
Des Moines, IA 50392-0700

Re: Title 106, Series 5 - Proposed Legislative Rule
Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

Dear Mr. Jackson:

Thank you for your recent comments regarding the above-referenced proposed rule. You raised several points which I will address in turn.

First, with regard to the time-frame for record keeping for brokers proposed at subsection 2.3, you suggest that the rule use the Home Mortgage Disclosure Act ("HMDA") standard of "action taken date." West Virginia law, at W.Va. Code § 31-17-9(e), requires licensee to keep records for a period of thirty-six months "after the date of final entry." Section 2 of the proposed rule is an attempt to provide guidance in various fact situations, particularly when the loan does not close. In reality, "the date of final entry" is synonymous with "final action taken". The phrases used in subsection 2.3 are intended to assure an adequate documentation period since, as you recognized, using only the application date could result in too short a retention period if the loan fails to close.

Your comments regarding the Early Truth in Lending Act disclosures as used in subsections 3.1.f and 6.1.g are well taken. However, our use of the word "Required" in both subsections is intended to recognize that early disclosures are not always required by Regulation Z. We do not agree that subsections 3.1.g and 6.1.h are redundant with the subsections that come before them. Our experience has been that licensees often provide such statements even though they are not required. If a licensee elects to provide a borrower with such a document, we expect it to be retained and made available to examiners for the appropriate period.

We disagree that subsections 3.1.k, 4.1.c, 5.1.c, and 6.1.j are attempts to impose additional substantive signature requirements at a state level. West Virginia Code § 31-17-9(a) requires a "detailed closing statement" to be "signed by the broker, lender or closing representative..." It also provides that the HUD 1 or HUD 1A settlement statement that provides the disclosures "as required by this subsection" will be considered to meet state law requirements. Indeed, many licensees expressed a concern that not allowing the HUD 1 or HUD 1A to meet this state law requirement would only result in yet another form added to the stack of settlement documents that would, except for the signature, be truly redundant. As you know, both the HUD 1 and HUD 1A settlement statements contain a line for signature by the closing representative. While federal law does not require they be signed, we do not believe it to be a hardship to do so in order to avoid creating another document that would be signed to comply with W.Va. Code § 31-17-9(a). Furthermore, we believe that this requirement will aid examiners in determining what precise disclosures were given to a borrower at closing.

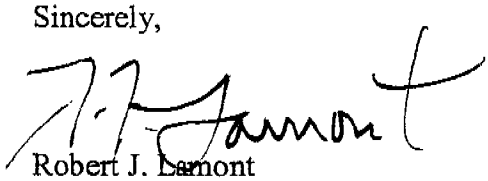
Your comment about subsections 3.1.o and 6.1.m are well taken. We will propose that the phrase "if applicable" be added to the end of both subsections in recognition of the fact that appraisals are not required and not always obtained. Further, we recognize that if a licensee routinely provides a copy of the appraisal then the right to receive form is not necessary.

We disagree with your assertion that subsection 3.1.v, relating to the Adjustable Rate Mortgage Disclosure, is redundant. Section 226.19 of Regulation Z is a separate section relating to disclosures for ARMs and it imposes significant additional disclosure requirements which we believe are deserving of special emphasis at subsection 3.1.v. We understand your reference to subsection 6.1.m on this issue is a typo since section 6 does not contain a recordkeeping requirement for ARM disclosures.

Finally, we disagree with your assertion that the requirements of subsections 4.1.g and 5.1.j regarding telephone logs of contact with borrowers is a hardship. In our experience, many licensees routinely maintain a log that documents contact with borrowers in some abbreviated format, particularly in the area of collections. Such a log can serve as protection for the licensee as well as the borrower. There have been increasing reports in both national and state news regarding improper debt collection practices by loan servicers. Our proposal is designed to help examiners document contacts with borrowers regarding their loans.

Again, thank you for your comments. I hope this letter provides an explanation of the Division's intentions behind the sections of the rule you addressed in your letter.

Sincerely,



Robert J. Lamont
General Counsel

C: Larry A. Stark
Commissioner

WEST VIRGINIA DIVISION OF BANKING
1900 KANAWHA BLVD., EAST
STATE CAPITOL COMPLEX, BUILDING 3, ROOM 311
CHARLESTON, WEST VIRGINIA 25305-0240

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July 7, 2003

Jeff Schurman
Executive Director
Title/Appraisal Vendor Management Association
700 Cherrington Parkway
Coraopolis, PA 15108

Re: Title 106, Series 5 - Proposed Legislative Rule
Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

Dear Mr. Schurman:

Thank you for your recent comment regarding the above-referenced proposed rule. Your letter requests that the Division rescind the rule which "would only allow for unrelated third party fees to be excluded from the points and fees cap. We do not believe we can do this.

Current statutory law, at W.Va. Code § 31-17-8(m)(4), explicitly provides that "...reasonable closing costs...payable to **unrelated** third parties may **not** be included within [the overall cap on points and fees]..." (emphasis added) The proposed rule, at section 14.2, is simply intended to provide a definition of "unrelated third party" that is lacking in the current statute. The proposed definition is tied to the Real Estate Settlement Procedures Act's ("RESPA") treatment of "affiliated business arrangement". This is consistent with an interpretation the Division and its examiners have taken since this law was enacted. We also believe it is a concept most lenders and brokers would be familiar with since they have had to comply with RESPA for some time.

We do not believe that the Division has the authority to repeal existing legislation through an exercise of its rule-making power. It is our understanding that when it enacted the proviso in W.Va. Code § 31-17-8(m)(4) quoted above, the Legislature intended to discourage the use of "related" third parties, i.e. businesses with some affiliation to the lender or broker, for settlement services related to mortgage loans. We understand that the motivation was to prevent lenders and brokers from taking advantage of their position wherein they can influence the choice of a particular settlement service provider by steering borrowers to specific businesses in which they have a financial interest. Therefore, we must decline to make any change to the proposal.

By separate communication, I have requested a copy of the Department of Justice statement cited in your comment. We are less impressed with the 1994 and 1996 studies you also cited since they are somewhat dated. In West Virginia the public policy concerns over "predatory" mortgage lending have only surfaced in the last 5-6 years.

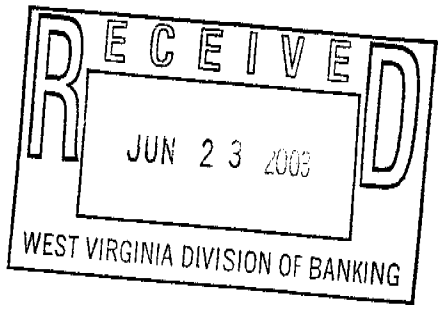
I hope this letter provides an explanation of the Division's intentions behind the sections of the rule you addressed in your letter. Again, I thank you for your comments on behalf of the Title/Appraisal Vendor Association.

Sincerely,

Robert J. Lamont
General Counsel

C: Larry A. Stark
Commissioner

TAVMA
Title/Appraisal Vendor Management Association



June 20, 2003

General Counsel Robert J. Lamont
West Virginia Division of Banking
State Capitol Complex
Building 3, Room 311
1900 Kanawha Boulevard East
Charleston, West Virginia 25305-0240

Re: West Virginia Banking Department Proposed Rules

Dear Mr. Lamont:

The Title and Appraisal Vendor Management Association (TAVMA) is a national non-profit trade association of providers and consumers of real estate title reporting, title insurance, appraisal and evaluation services, and closing management services. Our members include real estate information companies, title underwriters and agents, and mortgage lenders (a membership roster is attached). Our core belief is that all settlement service providers should be free to compete on a level playing field and to conduct business based on the normal forces of the market.

On behalf of TAVMA members engaged in affiliated business arrangements, I would like to comment on proposed rules by the West Virginia (WV) Banking Department which would only allow for unrelated third party fees to be excluded from the points and fees cap. For the reasons discussed below, we respectfully request that these proposed discriminatory rules be rescinded.

The Issue

TAVMA is against "predatory" lending and agrees that true predatory lending practices hurt consumers and the reputation of the mortgage industry. TAVMA agrees that true predatory lending practices must be closely monitored and guarded against. However, TAVMA opposes the portion of the West Virginia Banking Department Proposed Rule that discriminates against affiliated settlement service providers.

The proposed rules would only allow for unrelated third party fees to be excluded from the points and fees cap. Quoting from section 14.1 of the proposed rule, "**only payments of closing costs to unrelated third parties may not be included in the overall cap on fees, compensation, yield spread premium or points that a borrower is required to pay a licensee.**"

In section 14.2, the proposed rule goes on to say, "**in order to qualify as an 'unrelated third part' the individual or entity providing services many not be an 'affiliated business arrangement' as that term is defined by the Real Estate Settlement Procedures Act,....and attendant regulations.**"

It is important to understand what these anti-affiliation provisions do. These provisions presume that lenders will use affiliated settlement services companies to charge abusive fees to consumers, and penalizes lenders that use affiliates by requiring them to include the fees charged by the affiliates in the calculation of whether the loan should be treated as a high cost loan. This puts lenders that use affiliates at a significant disadvantage as the fees of the affiliate, which may be reasonable and competitive in every respect, can subject the lender to the bill's additional burdens while allowing *non-affiliated* competitors to avoid these same burdens.

The Case for Affiliates

There are very legitimate reasons for lenders to use affiliates. For example, having a settlement services affiliate that tailors its process to the lender can add operational efficiency and better quality control and reduces regulatory and compliance risk for the lender. These soft cost savings to the lender can also benefit the consumer in lower fees and costs. The lender also has the opportunity through an affiliate to share in profits on ancillary settlement services. The presumption that the lender would take these benefits and try to leverage them in a predatory way is completely unsubstantiated. In fact, studies of affiliated businesses suggest that the presence of affiliates in the marketplace may actually serve to lower costs for consumers by increasing the number of competitors. *See, e.g., HUD Economic Analysis of Affiliated Businesses (Jan. 1, 1996); Lexecon, Inc. Economic Study Of Title/Closing Prices of Affiliated Businesses (Jan. 3, 1995).*

Affiliated businesses in the mortgage marketplace have consistently proven to potentially increase competition and lower costs for homebuyers and owners. Legislation should seek to ensure the reasonableness of fees, as opposed to restricting mortgage loans merely because the mortgage originator also offers closing services. For example, a $1,000 charge for title insurance and $300 charge for an appraisal in a particular loan transaction by an *unaffiliated* settlement service provider would *not* be counted as "points and fees". However, a similar or even lower charge by an *affiliated* settlement service provider (say, $750 for title insurance and $250 for an appraisal) *would* count as "points and fees".

In a Regulatory Analysis accompanying a 1996 final Real Estate Settlement Procedures Act (RESPA) regulation, the Department of Housing and Urban Development (HUD) stated, "[T]here is some reason to expect that referrals among affiliated firms may reduce costs to businesses and consumers. Business may benefit from lower marketing costs and the ability to share information on the home purchase or refinancing among settlement service providers. In the long run, any cost savings should be passed on to consumers in most cases. Consumers may benefit additionally from reduced shopping time and related hassles."

The Department of Justice (DOJ) expressed a similar opinion in its last statement regarding affiliated businesses. "...[A]rrangements among providers of different goods or services who do

not compete with one another—including diversification by a single firm into the provision additional complementary services—may benefit consumers in a variety of ways. Regulatory efforts to interfere with such arrangement should not be undertaken in the absence of a strong showing that they are economically harmful to consumers."

We do not believe that the proponents of this discrimination can demonstrate that affiliates are harmful to West Virginia consumers by the mere fact of affiliation with a lender. Given that discrimination against affiliated companies will lead to fewer such companies and thus less competition, the proponents of this discrimination should be required to demonstrate that there is actual harm to West Virginia consumers caused by affiliation.

TAVMA's Position

By increasing the likelihood that fees charged by affiliated companies will cause a loan to become a high cost loan, anti-affiliation legislation discourages lenders from using affiliates even though the fees may be reasonable and competitive. Once a loan is declared to be "high cost", the lender will be at a disadvantage in selling the loan to the secondary market, as occurred in the State of Georgia. Lenders won't use affiliates if these are the consequences even if use of the affiliate would otherwise benefit the lender and its customer. Given the benefits of affiliation and the absence of evidence of abuse through affiliation, anti-affiliation provisions should be rejected.

We believe that the discriminatory treatment contained in the proposed rules is unfair and anti-competitive, and does not serve consumers in West Virginia. It does not reflect the lower costs that affiliated businesses provide consumers and it does not reflect the costs of the regulated loan. We respectfully request that the rules be rescinded.

I hope these comments are helpful. If you have any questions or would like to obtain additional background information, please contact me at 412-299-4081.

Sincerely,

Jeff Schurman
Executive Director

Celebrating Our 10th Anniversary - 1993-2003

RESPRO®
Real Estate Services Providers Council, Inc.

1090 VERMONT AVENUE NW, SUITE 800 • WASHINGTON, DC 20005
TEL (202) 408-7038 FAX (202) 408-0948
E-MAIL INFO@RESPRO.ORG WEB WWW.RESPRO.ORG

June 26, 2003

Commissioner Larry A. Stark
West Virginia Division of Banking
State Capitol Complex
Building 3, Room 311
1900 Kanawha Boulevard East
Charlestown, West Virginia 25305-0240

Re: Proposed Title 106, Series 5, Rule Pertaining to Residential Mortgage Lenders, Brokers, and Loan Originators

Dear Commissioner Stark:

On behalf of the Real Estate Services Providers Council, Inc. (RESPRO®), I would like to comment on proposed rules by the West Virginia Banking Department which would only allow for unrelated third party fees to be excluded from the rule's "points and fees" cap. We respectfully request that these proposed rules be deleted, since they discriminate against affiliated business arrangements for no justifiable reason.

Background on RESPRO®

RESPRO® is a national non-profit trade association of affiliated settlement service businesses from all segments of the industry. Our membership includes mortgage lenders and brokers, real estate brokers, homebuilders, and title underwriters and agents (see attached Membership List).

The common interest of RESPRO® members is their ability to cost-efficiently offer mortgage loans to consumers in a variety of affiliated business structures with other settlement service providers. Therefore, our comments about the proposed rules relate solely to that interest.

Proposed Rules

The proposed rules would only allow for unrelated third party fees to be excluded from the "points and fees" cap. Quoting from section 14.1 of the proposed rule, "**only payments of closing costs to unrelated third parties may not be included in the overall cap on fees, compensation, yield spread premium or points that a borrower is required to pay a licensee.**" In section 14.2, the proposed rule goes on to say, "**in order to qualify as an 'unrelated third party' the individual or entity providing services may not be an 'affiliated business arrangement' as that term is defined by the Real Estate Settlement Procedures Act,....and attendant regulations.**"

Protecting consumers from truly abusive mortgage practices is a laudatory objective. However, RESPRO® is concerned about the disparate and inexplicable discriminatory manner in which the proposed rules treat affiliated business arrangements, which have consistently been proven to potentially increase competition and lower costs for home-buyers and owners.

In 1994, RESPRO® commissioned a study by Lexecon, Inc., a national economic consulting firm, which clearly shows the benefits of affiliated businesses. The firm analyzed the title and closing costs of over 1000 home purchase transactions—affiliated and unaffiliated—during a one-week period in September 1994. The study concluded that title services for transactions involving affiliated title/closing businesses not only are competitive with those provided by unaffiliated title/closing companies, but actually result in a two percent (2%) savings.

In a Regulatory Analysis accompanying a 1996 final Real Estate Settlement Procedures Act (RESPA) regulation, the Department of Housing and Urban Development (HUD) stated, "[T]here is some reason to expect that referrals among affiliated firms may reduce costs to businesses and consumers. Business may benefit from lower marketing costs and the ability to share information on the home purchase or refinancing among settlement service providers. In the long run, any cost savings should be passed on to consumers in most cases. Consumers may benefit additionally from reduced shopping time and related hassles."

The Department of Justice (DOJ) expressed a similar opinion in its last statement regarding affiliated businesses. "...[A]rrangements among providers of different goods or services who do not compete with one another—including diversification by a single firm into the provision additional complementary services—may benefit consumers in a variety of ways. Regulatory efforts to interfere with such arrangement should not be undertaken in the absence of a strong showing that they are economically harmful to consumers."

Not only do the proposed rules unnecessarily restrict loans offered by providers who potentially offer consumers lower cost loans, but they totally ignore whether the fees paid in any particular loan transaction are reasonable. For example, a $1,000 charge for title insurance and $300 charge for an appraisal in a particular loan transaction by an unaffiliated settlement service provider would not be counted as 'points and fees', while

similar or even lower charges by an affiliated settlement service provider (e.g., $750 for title insurance and $250 for an appraisal) would count as 'points and fees'.

In summary, we believe that the discriminatory treatment contained in the proposed rules is simply wrong. It does not reflect the lower costs that affiliated businesses provide consumers and it does not reflect the costs of the regulated loan. We respectfully request that this portion of the rules be deleted.

Thank you for your consideration. If you have any questions or would like to obtain additional background information, please feel free to contact me at 202-408-7038 or to e-mail me at sjohnson@respro.org

Sincerely,

Susan E. Johnson, Esq.
Executive Director

Membership

RESPRO
Real Estate Services Providers Council, Inc.

Board Members

American Pioneer Title Insurance Company
ATM Corporation of America
Atlantic Assurance Group
Baird & Warner, Inc
Cendant Corporation
Chase Manhattan Mortgage Corp.
Chesapeake Appraisal
Countrywide Home Loans
Express Financial Services
F.C. Tucker Company, Inc.
Fidelity National Financial, Inc.
First American Corporation
GE Mortgage Insurance
General American Corporation
GMAC Home Services
HomeServices of America, Inc.
HomeFocus Services, LLC
Houlihan/Lawrence, Inc.
Howard Hanna Financial Services
Investors Title Insurance Company
John L. Scott Real Estate
LandAmerica Financial Corporation
LandSafe Appraisal Services
Long & Foster Real Estate, Inc.
Metropolitan Title Company
National Real Estate Information Services
North American Title Group
Old Republic Home Protection Co., Inc.
Old Republic National Title Insurance
Pacific Alaska Mortgage
Prudential California Realty
Prudential Real Estate & Relocation Services
Pulte Corporation
Real Living, Inc.
RE/MAX of California & Hawaii, Inc.
Service Link
Shorewest Realtors
Shelter Mortgage Corporation
Sibcy-Cline Realtors
Smythe, Cramer Co.
Stewart Title Guaranty Company
Title Alliance, Ltd.
The Detrick Companies
The Fountainhead Title Group Corp.
The Trident Group
Title Insurance Company of America
Weichert Realtors
Wells Fargo Mortgage

General Members

Access National Settlement Services
Affiliated Flood Group
Affiliated Title Management, LLC
Allen Tate Mortgage Services, Inc.
Allied Mortgage Capitol Corporation
AmPro Financial Services, Inc.
American Residential Mortgage Corp.
Ameristar Information Network
ATI Title Company
Avalar Network
Axis Mortgage
Bell Mortgage, LLC
Beltway/Network Settlement
BNY Mortgage Company
Cablish, Gentile & Gay CPAs
CH Mortgage
Century 21 All Islands
Coastal Title Agency
Coldwell Banker HomeSale Services Group
Coldwell Banker Legacy
Coldwell Banker Pacific Properties
Coldwell Banker Sammis
Coldwell Banker Success Realty
Colonial Valley Abstract Company
Consumer Title Company
Coquicom, LLC
Cressy & Everett/GMAC
Cumberland Title Company
Desert Document Services
Deutch & Greenberg
Devon Title Company
Dominion Mortgage Corporation
Edward Surovell Realtors
Equity Title & Closing Services, Inc.
Expert Title Insurance Agency, LLC
Fairway Consulting
Family Lending Services, Inc.
Financial 2000, Inc.
Title Group
Fonville Morisey Realtors
Frank Howard Allen Realtors
Gambino Realtors/GMAC
Georgia Mortgage Services, Inc.
Gilpin Mortgage Company
Graham & Boles Properties
Greenlink, LLC
Greenridge Realty, Inc.
Harry Norman Realtors
Home Closure, LLC
Home Network Online
HomeBuyers Resale Warranty Corp.
HomeFirst Mortgage
Homeowners Club of America
HomeSouth Mortgage Corp.
Homestead Communities
HouseMaster
Howard Perry & Walston Realty, Inc.
HSA Home Warranty
Hubbard and Quinn, PA
Hunt Real Estate Corporation
Integrated Loan Services
Irwin Home Equity Corporation
Irwin Mortgage Corporation
Jack Conway & Company
John R. Woods, Inc. Realtors
K. Hovnanian Title Division
L&G Mortgage
Land Title Insurance Corporation
Latter & Blum/CJ Brown
Lyon Associates
McColly GMAC Real Estate
McMillin Realty & Mortgage Co.
Market Street Settlement Group
Metrociti Mortgage LLC
Michael J. Aheron, PLC
Morreale Real Estate Services
Morris & Schneider, P.C.
NFRES, LLC
National City Insurance Agency of PA
National Flood Research, Inc.
National Homefinders Signature Properties
North Coast Mortgage Company
Northwood Realty Services
Nova Star Financial
Orange Coast Title Company
PCFS Mortgage Resources, LLC
Personal Lines Insurance Brokerage, Inc.
Preferred Empire Mortgage Company
Preferred Title
Premier Title Company, Ltd.
Professional Home Mortgage Lenders
Professional Real Estate Title
Prudential Carolina Real Estate
Prudential Gardner, Realtors
Prudential Long Island Realty
Prudential Preferred Realty
Prudential Slater James Rive
Public Abstract Corp.
RE/MAX Achievers
RE/MAX American Dream
RE/MAX Central Realty
RE/MAX International
RE/MAX One
RE/MAX Properties
RE/MAX Unlimited
Real Estate One
REALINK.COM
Realty Center
Realty Executives of Tucson
RELO
Relocation Resources International, Inc.
Rose & Womble Realty Company, LLC
Rudy Title & Escrow
SAFECO Land & Title of Dallas
Security First Title Affiliates, Inc.
Security Title Services
SHEA Mortgage
Southern Title
Southern Title Services, LLC
Starck & Co., Realtors
Surety Title Corporation
Taylor, Bean, & Whitaker Mortgage Corp.
The Agent Owned Realty Co.
The Danberry Company
The Keyes Company
The Laughlin Companies
The Title Company of Jersey
The Vaughan Company Realtors
Title Clearance Services, Inc.
Title First Agency, Inc.
Title Midwest
Title Underwriters Agency
Titleco, Inc.
Titleserv
Tomie Raines
Towne Bank Mortgage
Troese Title Group, Inc.
Unified Solutions Group, LLC
Union Title Company
United One Resources, Inc.

Over

United Pacific Mortgage
United Title of Louisiana
Valu Tree Real Estate Services, LLC
Vanguard National Mortgage & Title, Inc.
Volunteer Trust Mortgage Corporation
Watson Mortgage Corporation
Weidel Realtors
Westcor Land Title Insurance Co.
White Horse Mortgage Services
William Raveis Real Estate

Associate Members

Akin, Gump, Strauss,Hauer & Feld, LLP
Blank Rome Comisky & McCauley LLP
DataQuick
Employee Relocation Council
Greatland Corp.
Kansas Association of Realtors
Larrabee, Cunningham, & McGowan P.C.
Leadership Solutions Intl.
LendingTree, Inc.
Leonard, Street, & Deinard
Nebraska Realtors Association
Ohio Association of Realtors
Peirson & Patterson, LLC
Reed Smith, LLP
Solomon & Mitchell
Weiner, Brodsky, Sidman, Kider PC
Weston Edwards & Associates
WHR Group Inc.

State Affiliate Members

Allied Escrow and Title, LLC
American Home Title and Escrow Company
Bray & Company
Chicago Title of Colorado
Colorado Association of Realtors
Commerce Title
Empire Title & Escrow
First American Heritage Title Co.
First National Title Services
Frontier, Title, LLC
Mortgage Quote Services, Inc.
Mountain States Title Corp.
Oakwood Homes, LLC
RE/MAX Alliance
Realty Executives of Texas
Realty World , John Horton & Association
Universal Land Title of Colorado

WEST VIRGINIA DIVISION OF BANKING
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July 3, 2003

Susan E. Johnson, Esq.
Executive Director
RESPRO
1090 Vermont Ave., NW, Suite 800
Washington, DC 20005

Re: Title 106, Series 5 - Proposed Legislative Rule
Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

Dear Ms. Johnson:

Thank you for your recent comment on the above-referenced Proposed Rule. On behalf of the Real Estate Services Providers Council ("RESPRO"), you express concern over the "disparate and inexplicable discriminatory manner in which the proposed rules treat affiliated business arrangements..."

Current statutory law, at W.Va. Code § 31-17-8(m)(4), is the basis for section 14 of the proposed rule. That law explicitly provides that "...reasonable closing costs...payable to **unrelated** third parties may **not** be included within [the overall cap on points and fees]..." (emphasis added) The proposed rule, at section 14.2, is simply intended to provide a definition of "unrelated third party" that is lacking in the current statute. The proposed definition is tied to the Real Estate Settlement Procedures Act's ("RESPA") treatment of "affiliated business arrangement". This is consistent with an interpretation the Division and its examiners have taken since this law was enacted. We also believe it is a concept most lenders and brokers would be familiar with since they have had to comply with RESPA for some time.

We do not believe that the Division has the authority to repeal existing legislation through an exercise of its rule-making power. It is our understanding that when it enacted the proviso in W.Va. Code § 31-17-8(m)(4) quoted above, the Legislature intended to discourage the use of "related" third parties, i.e. businesses with some affiliation to the lender or broker, for settlement services related to mortgage loans. We understand that the motivation was to prevent lenders and brokers from taking advantage of their position wherein they can influence the choice of a particular settlement service provider by steering borrowers to specific businesses in which they have a financial interest.

Current law provides for an overall cap of 6% in fees and other compensation to licensed brokers and lenders. We feel that that leaves sufficient room for licensees to obtain adequate compensation. Indeed, most consumer advocates have consistently argued that the current cap is too high and should be reduced further. Moreover, if a broker uses an exempt lender, the latter's fee is not subject to the cap and thus the broker could collect the full 6%. This would seem to be more than ample room for fair compensation for the services provided by such a licensee.

By separate communication, I have requested a copy of the Department of Justice statement cited in your comment. We are less impressed with the 1994 and 1996 studies you also cited since they are somewhat dated. In West Virginia the public policy concerns over "predatory" mortgage lending have only surfaced in the last 5-6 years.

I hope this letter provides an explanation of the Division's intentions behind the section of the rule you addressed in your letter.

Sincerely,

Robert J. Lamont
General Counsel

C: Larry A. Stark
Commissioner

Countrywide®

NATIONAL HEADQUARTERS
CORPORATE BUILDING
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CALABASAS, CALIFORNIA 91302-1613
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(818) 225-4028 FAX

June 26, 2003

Division of Banking
State of West Virginia
1900 Kanawha Boulevard East
Building # 3. Rm 311
Charleston, WV 25305-0240

RE: Proposed West Virginia Legislative Rules; Title 106, Series 5.

Gentlemen:

As counsel to LandSafe, Inc. ("LandSafe"), I am writing you provide information for your consideration in the above referenced proposed rule amendments. LandSafe is an appraisal management company and a subsidiary of Countrywide Financial Corporation. LandSafe is also a member of the Title and Appraisal Vendor Management Association ("TAVMA") and, therefore, we have followed this issue closely, as well as related issues in West Virginia.

We feel that the proposal would cause adverse differential treatment for firms such as LandSafe which have an affiliated business relationship with a mortgage lender. As proposed, any fee paid to a firm that has an affiliated business relationship would have to be included within the maximum allowable fee paid by the borrower to the originating lender, whereas the same fee paid for the same service to a firm that does not have such an affiliated business relationship would be considered 'outside' the cap. The differential treatment of fees by an affiliated services provider is unfair given that the only rationale appears to be that use of an affiliated relationship could encourage some lenders to hide fee and points under an affiliate relationship.

Further, that portion addressed in 106-5-9.1 stating that the use of an appraiser whose main office is more than 75 miles from the subject property creates some problems for a firm such as LandSafe, which is a national appraisal services vendor using local, state licensed appraisers who are members of our fee panel.

- If the definition of appraiser defines LandSafe as the 'appraiser', it would limit the use of LandSafe because our office is more than 75 miles from the property.
- If this is not the case and the issue only becomes one of justifying the use of an appraiser who is on our fee panel whose 'main' office is not within 75 miles of the property. Such an explanation is feasible because of the rural nature of some portions of the State of West Virginia.
- This mileage limitation may be a concern to local appraisal firms who utilize 'outstationed' appraisers that are affiliated with a main office located in one of the larger cities. Given the rural nature of much of the state, there may be such instances of outstationed staff.

As stated above, additional clarification is needed of the definition of an "unrelated third party" for purposes of the inclusion of the total appraisal fee within the overall cap on fees for licensed brokers and lenders. Title 106-14.1 Pursuant to W.Va. Code □-17-8(m)(4), only payments of closing costs to unrelated third parties may not be included in the overall cap on fees, compensation, yield spread premium or points that a borrower is required to pay a licensee.

- The inclusion of all fees paid to related (or affiliated) third parties in the fees will unreasonably impact the LandSafe business relationships with the Countrywide companies.

- Several states, including Arkansas most recently, have included language to allow the exclusion from the fee cap if the fees paid to related companies are "comparable to those charged by non-affiliated parties." We urge West Virginia to include such language in the proposed legislation. Otherwise, reasonable and fair fees, charged by legitimate affiliate servicers, would be unfairly discriminated against.

Finally, the issue of coercing or influencing an appraiser must be clarified. Title 106-5-10, dealing with improper influence of appraisers, addresses the issue of 'implied' threats to an appraiser without clearly defining that terminology. The concern is the threat may be implied and how that will be interpreted. As proposed, simply ordering the appraisal and noting the loan amount could be perceived as a threat that if the value is not "hit. Therefore, this section should use more explicit and well-understood terms, such as a prohibition of "coercion" or "undue influence". In fact, these words have been used recently in other states to address the same issue.

Thank you for your consideration. Please contact me at the below phone number if you wish to discuss this matter further.

Sincerely,

Donald H. Blanchard
General Counsel
LandSafe, Inc.
(972) 526-6630

cc: Michael Faine
Greg Dennis
Susan Kelsey
Sid Miller
Jimmie Williams
Jim Adams

WEST VIRGINIA DIVISION OF BANKING
1900 KANAWHA BLVD., EAST
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July 3, 2003

Donald H. Blanchard, Esq.
General Counsel
LandSafe, Inc.
Countrywide
4500 Park Granada, MS CH-11
Calabasas, CA 91302-1613

Re: Title 106, Series 5 - Proposed Legislative Rule
Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

Dear Mr. Blanchard:

Thank you for your recent comments regarding the above-referenced proposed rule. You raised three points which I will address in turn.

First, you are concerned about the impact of proposed section 9 which would require a written documentation why a non-local appraiser was used. If I understand LandSafe's role as an "appraisal management" company correctly, it would not be the "appraiser" covered by section 9. Rather, that section is intended to cover the West Virginia-licensed or certified appraiser who performs and signs the appraisal form. As you point out, in such cases the explanation required by the proposed rule would be feasible because of the rural nature of some portions of West Virginia. You should also keep in mind that no provision of West Virginia law requires an appraisal.

Second, you are concerned that since LandSafe is a subsidiary of Countrywide, the proposed section 14.2 definition of an "unrelated third party" "will unreasonably impact the LandSafe business relationships with Countrywide companies." As you know, current statutory law, at W.Va. Code § 31-17-8(m)(4), explicitly provides that "...reasonable closing costs...payable to **unrelated** third parties may **not** be included within [the overall cap on points and fees]..." (emphasis added) The proposed rule, at section 14.2, is simply intended to provide a definition of "unrelated third party" that is lacking in the current statute. The proposed definition is tied to the Real Estate Settlement Procedures Act's ("RESPA") treatment of "affiliated business arrangement". This is consistent with an interpretation the Division and its examiners have taken since this law was enacted. We also believe it is a concept most lenders and brokers would be familiar with since they have had to comply with RESPA for some time.

We do not believe that the Division has the authority to repeal existing legislation through an exercise of its rule-making power. It is our understanding that when it enacted the proviso in W.Va. Code § 31-17-8(m)(4) quoted above, the Legislature intended to discourage the use of "related" third parties, i.e. businesses with some affiliation to the lender or broker, for settlement services related to mortgage loans. We understand that the motivation was to prevent lenders and brokers from taking advantage of their position wherein they can influence the choice of a particular settlement service provider by steering borrowers to specific businesses in which they have a financial interest. Therefore, we decline to make any change to the proposal.

Finally, you seek clarification of proposed section 10 which deals with the improper influence of appraisers because it covers "implied" written or oral threats. The Division's position is that interpretation of that term is best left to the facts of each case, should a controversy arise. Use of the phrase "undue influence", in our view, does not provide any greater degree of certainty to situations that are inevitably driven by the specific facts.

I hope this letter provides an explanation of the Division's intentions behind the sections of the rule you addressed in your letter.

Sincerely,

Robert J. Lamont
General Counsel

C: Larry A. Stark
Commissioner

F. Steven DiMasi
Director
State Government Relations

CENDANT

June 27, 2003

Commissioner Larry A. Stark
West Virginia Division of Banking
State Capitol Complex
Building 3, Room 311
1900 Kanawha Boulevard East
Charleston, West Virginia 25305-0240

Re: West Virginia Division of Banking Proposed Rules

Dear Commissioner Stark:

Cendant Corporation appreciates the opportunity to submit comments on the proposed Division of Banking rules pertaining to residential mortgage lenders- Proposed Title 106, Series 5, Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators.

CENDANT OVERVIEW

Cendant Corporation is a diversified global provider of business and consumer services within the hospitality, real estate, vehicle, financial and travel sectors.

Cendant's hospitality division is the world's leading franchisor of hotels through ownership of brand names that include Ramada®, Days Inn®, Howard Johnson®, Travelodge®, Knights Inn®, Super 8 Motel®, Wingate Inn®, Villager Lodge/Premier® and AmeriHost®, a leading operator of branded time share resorts (Fairfield®) and Trendwest® and the world's leading time share exchange service (RCI®).

Cendant is also the leader in franchised residential real estate brokerage operations through its CENTURY 21®, Coldwell Banker® and ERA® brands, a leading residential mortgage company (Cendant Mortgage) and provider of employee relocation services (Cendant Mobility).

In vehicle services, Cendant owns AVIS® and Budget® car rental systems. Other Cendant subsidiaries provide vehicle fleet management services (PHH Arval and Wright Express).

Cendant's financial services division helps financial institutions enhance existing consumer products. This division includes Progeny Marketing Innovations Inc.

(Progeny). Progeny creates and offers insurance and loyalty marketing programs to financial institutions. The division also includes Jackson Hewitt Inc., the second largest tax preparation franchisor.

Cendant provides services to the travel industry through its Galileo®, Wizcom reservations global travel ticket distribution services as well as its on-line (Trip.com and Cheaptickets.com) and off-line (Cendant and Cheap Tickets) travel agencies.

In West Virginia, we have 121 franchisees in total. In the franchised residential real estate brokerage operations there are 31 Century 21, 9 Coldwell Banker and 13 ERA franchises. In the franchised hospitality operations there are 3 Amerihost, 15 Days Inn, 1 Howard Johnson, 6 Knights Inn, 8 Ramada, 16 Super 8, 3 Travelodge and 1 Wingate. Lastly, there are 15 Jackson Hewitt franchises operating in the state.

CENDANT MORTGAGE OVERVIEW

Cendant Mortgage, a prime lender, is the largest mortgage originator by phone in the United States and the 6th largest retail mortgage lender originator in the country. We originate mortgage loans on an outsource basis in the names of very noteworthy private-label clients such as Fleet Bank, Merrill Lynch, Banco Popular, and our own brands, Coldwell Banker Mortgage, Century 21 Mortgage and ERA Mortgage.

CENDANT SETTLEMENT SERVICES GROUP OVERVIEW

Cendant Settlement Services Group (CSSG), a subsidiary of Cendant Corporation, is a full-service title, settlement, and vendor management services company serving real estate companies, affinity groups, corporations, and financial institutions.

I. §106-5-9. USE OF NON-LOCAL APPRAISERS

We would recommend that the Division rescind Section 106-5-9. Providing an explanation in every file when the appraiser is more than 75 miles away would require a very manual, labor-intensive process with little benefit to the consumer or lender.

In addition, technology is now allowing many independent appraisers to grow their businesses. By leveraging Electronic Data Interface and Web capabilities, appraisers are able to create a virtual office and expand their coverage area.

Many appraisal firms now employ appraisers who operate in counties that were once considered outside an appraisers coverage area. These remote appraisers live in counties where they perform appraisals. They are able to receive orders from the central appraisal firm and transmit the completed appraisal back to the office without ever entering the main office to receive their work.

Therefore, for the above stated reasons we would strongly recommend the Division rescind this proposed rule.

II. §106-5-14. PAYMENTS TO UNRELATED THIRD PARTIES

We would strongly recommend that the Division rescind or amend Section 106-5-14 to allow for the exclusion of closing cost fees paid to an affiliated company from the "cap on fees."

Section 106-5-14.1 states "*only payments of closing costs to unrelated third parties may not be included in the overall cap on fees...*"

In addition, Section 106-5-14.2 of the proposed rule states that *"in order to qualify as an "unrelated third party" the individual or entity providing services may not be an "affiliated business arrangement" as that term is defined by the Real Estate Settlement Procedures Act, 12 U.S.C. § 2602, and attendant regulations."*

The proposed rule only allows "unrelated third party" fees to be excluded from the points and fees cap, which we would argue is discriminatory, anti-competitive and anti-consumer.

We oppose any state lending proposal that discriminates against affiliated settlement service providers. All empirical studies performed to date on the subject of affiliated businesses in the mortgage marketplace have consistently been proven to potentially increase competition and lower costs for homebuyers and owners.

In addition, these proposals restrict mortgage loans merely because the mortgage originator also offers closing services, as opposed to the reasonableness of the fees. For example, a $1,000 charge for title insurance and $300 charge for an appraisal in a particular loan transaction by an *unaffiliated* settlement service provider would *not* be counted as "points and fees", while similar or even lower charges by an *affiliated* settlement service provider (e.g., $750 for title insurance and $250 for an appraisal) *would* count as "points and fees".

We believe that state predatory lending proposals should not count reasonable fees paid to affiliated *or* unaffiliated settlement service providers towards the "points and fees" threshold. As an alternative, if a state chooses to include fees paid to affiliated *and* unaffiliated providers towards the threshold, then the threshold should be lifted by an amount that reflects the cost of reasonable points and fees in that state.

This rule as introduced would create a loophole by creating a different standard for different business models. Lenders who use affiliated settlement service providers are held to a higher standard than those who use non-affiliated services. Is consumer protection as good as it could be if a non-affiliated service provider can charge more for the very same service and still not be subject to the points and fees test?

To best protect the consumer, all settlement service providers should be held to the same standard. Companies chose their structures and business models for a variety of reasons and the State should create fair and equal laws that treat all businesses equally. The

State should focus on preventing abuses, and not create preferences for a particular way of conducting business.

This rule would also inadvertently create incentives for lenders to choose a particular way to due business, ultimately this will limit competition and consumer's options.

Lastly, if this rule were to go into effect it would create de facto price controls. The reality is that ever more restrictive loan terms, triggered by certain interest rate or fee thresholds, act as the functional equivalent of usury ceilings or price caps that have long since been abandoned because they cut off credit to many people who need it the most. Policy makers are at risk of doing the same thing when, however well intentioned, they impose further restrictions on mortgage terms, tied to interest rate and fee levels.

Therefore, for the above state reasons we would respectfully request that this proposed rule be rescinded or amended to allow for the exclusion of affiliate fees from the points and fees test.

CONCLUSION

We encourage the Division of Banking to take steps to minimize the burden of complying with unnecessary regulations and to create a level playing field between affiliated and unaffiliated businesses.

Thank you for considering our comments. If you have any questions or would like to obtain additional background information, please feel free to contact me at (973) 496-4219.

Sincerely,

F. Steven DiMasi OB

F. Steven DiMasi
Director of State Government Relations
Cendant Corporation
6 Sylvan Way
Parsippany, New Jersey 07054

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July 3, 2003

F. Steven DiMasi
Director of State Governmental Relations
Cendant Corporation
6 Sylvan Way
Parsippany, NJ 07054

Re: Title 106, Series 5 - Proposed Legislative Rule
Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

Dear Mr. DiMasi:

Thank you for your recent comments regarding the above-referenced proposed rule. You raised two points which I will address in turn.

First, you recommend that the Division rescind section 9 which requires a written justification for using a non-local appraiser. This proposed section is intended to help prevent the practice whereby brokers or lenders ignore local appraisers and elect to use individuals from outside their market because the non-local appraisers are more "compliant" and willing to conform their appraisal to the expectations of the broker. I hasten to point out that the proposed rule does not prohibit use of a non-local appraiser, but rather simply requires the broker to explain why such a broker is being used in a particular case. Current law has a prohibition against loans which exceed 100% of fair market value (W.VA. Code § 31-17-8(m)(8) and another provision against attempting to compensate, coerce or intimidate appraisers for the purpose of influencing their judgment (W.Va. Code § 31-17-8((m)(2). These provisions were passed based upon recognition by the Legislature that "predatory" lending often induces borrowers to take out loans in excess of the value of their homes thereby allowing brokers, whose fees are based in large part on the size of the loan, to earn more income. The Division believes that requiring an explanation for the use of, rather than an outright ban on non-local appraisers, is a prudent attempt to prevent an area that has been subject to abuse.

Second, you urge the Division to rescind section 14 and allow for the exclusion of closing cost fees to an affiliated company from the statutory cap on fees. The Division's position is that such a rescission would be tantamount to repealing the existing law at W.Va. Code § 31-17-8(m)(4). We do not believe that the rule making process gives the Division the authority to legislate by rule-making. That statutory provision, which is the basis for section 14, explicitly provides that "...reasonable closing costs...payable to **unrelated**

third parties may not be included within [the overall cap on points and fees]..." (emphasis added) The proposed rule, at section 14.2, merely provides a definition (lacking in the current law) of "unrelated third party" that is tied to the Real Estate Settlement Procedures Act's treatment of "affiliated business arrangement". This is consistent with an interpretation the Division and its examiners have taken since this law was enacted.

I hope this letter provides an explanation of the Division's intentions behind the sections of the rule you addressed in your letter.

Sincerely,

Robert J. Lamont
General Counsel

C: Larry A. Stark
Commissioner

MORTGAGE COMPANY

Mail Drop 3000 • 1408 West Baltimore Pike • Franklin Center, PA 19091-0001
Phone: (610) 558-2720 • Fax: (610) 558-2721

June 27, 2003

VIA OVERNIGHT MAIL
Hon. Larry A. Stark
Commissioner
West Virginia Division of Banking
1900 Kanawha Boulevard East
Building 3, Room 311
Charleston, WV 25305-0240

RE: West Virginia Division of Banking Proposed Title 106, Series 5; Rule pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

Dear Commissioner Stark:

In consultation with Stuart Levy, the manager of this company's branch office in Wheeling, we would like to offer the following official comments of Sunset Mortgage Company, L.P. to the above proposed Rule.

First, with respect to 106-5-3, 3.1r and 3.1s, which would require that copies of deeds of trust and notes be kept at the branch office level by originators, it is our information and experience that title companies operating in West Virginia already keep copies of these documents for 25 years. Accordingly, requiring similar recordkeeping on the part of originators and brokers seems to be an unnecessary, burdensome duplication, and, to be frank, a waste of paper and resources.

Proposed Rule 3.1.y, which would require keeping rate sheets for a three-year period, will create a similar undue waste of paper, time and storage space. Assuming that our branch office (or that of another company) currently receives rates from ten lenders per day, which rates generate ten sheets of paper per lender per day, the office would have to keep over 50 reams of paper per year in storage. The cost of this would be enormous, and could well have the unintended and deleterious consequence of forcing brokers/originators not to search as diligently as they now do for the best pricing for a client, due to cost efficiency. The client's interests would therefore be hurt.

With respect to proposed Rule 3.1.cc, we are unclear as to whether or not "keeping the general ledger" means that the ledger has to appear in each file. As you know, our office is already required to file tax returns each year with the State, and must

provide similar types of information each year to the State's licensing board. This also therefore seems to be a considerable duplication, and an unfortunate waste of paper of resources.

Proposed Rule 11.2 states that if a borrower's income to debt ratio exceeds 50%, originators will need to maintain a new form as a record of the transaction. Because of this additional recordkeeping requirement, and the burden that it will entail, this proposed Rule will also quite possibly prevent a lender from assisting people who need help in reducing their debt, thus eliminating the need for them to go into foreclosure or bankruptcy. Again, the unintended consequences of this provision could have a substantial negative impact on such borrowers.

Finally, proposed Rule 11.3 places agencies in an unfair position to businesses, permitting agencies to make this type of loan, but not permitting businesses to do the same. This seems inequitable.

We greatly appreciate the opportunity to offer comments on the provisions of the proposed Rule, and I would be happy to answer any questions that you might have. Please don't hesitate to contact me directly in that regard. Thank you very much for your time.

Sincerely,

Matthew J. Norris
General Counsel

MJN/st
cc: Hon. Joe Manchin III (via overnight mail)
Secretary of State
1900 Kanawha Boulevard, East
Building 1 Suite 157-K
Charleston, WV 25305-0770

Mr. Stuart Levy

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1900 KANAWHA BLVD., EAST
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July 2, 2003

Matthew J. Norris, Esq.
General Counsel
Sunset Mortgage Company
Mail Drop 3000
1408 West Baltimore Pike
Franklin Center, PA 19091-0001

Re: Title 106, Series 5 - Proposed Legislative Rule
Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

Dear Mr. Norris:

Thank you for your recent comments regarding the above-referenced proposed rule. I will respond in the order you raised them in your letter.

First, you are opposed to sections 3.1.r and 3.1.s which require the initial lender to keep copies of the deeds of trust and notes because title companies already keep such documents for up to 25 years. However, the Division of Banking has no jurisdiction over title companies and would not be able to conveniently obtain such documents when preparing for a compliance examination of licensees it supervises pursuant to W.Va. Code § 31-17-1, *et seq.* (i.e., mortgage brokers, lenders and servicers). In order to properly examine lenders, our staff will need ready access to the deeds of trust and notes for each loan.

Second, you object to the requirement in proposed section 3.1.y that lenders keep copies of all rate sheets used during a three-year period because the costs of such record keeping and may have the consequence of "forcing brokers/originators not to search as diligently as they do now for the best pricing for a client, due to cost efficiency." This provision, and the one like it in section 6.1.y, is intended to help examiners and borrowers determine whether a broker or lender obtained an interest rate that was appropriate to the borrowers circumstances. It is designed to prevent the sort of activity often complained of by consumer advocates that brokers will steer borrowers to a higher interest rate product in order to obtain a higher fee in the form of a yield spread premium from the lender.

Third, your concern regarding section 3.1.cc is unfounded. We would expect the licensed lender's general ledger to be kept in one location and not in every loan file.

Fourth, you object to the provision of proposed section 11.2 requiring a broker and initial lender to document, in writing, an assessment of the borrower's ability to repay the loan if the household debt-to-income ratio, upon the extension of that loan, will exceed 50%. You raise this objection because it could "...possibly prevent a lender from assisting people who need help in reducing their debt...." Please note that this provision does **not** impose an absolute ban on loans which will result in exceeding a 50% debt-to-income ratio. As you know, current law, at W.Va. Code § 31-17-8(m)(3), prohibits brokers and lenders from making or assisting with a mortgage loan "with the intent that the loan will not be repaid and that the lender will obtain title to the property through foreclosure..." This provision is undoubtedly an attempt to address concerns that much "predatory" mortgage lending is the result of a failure to take into account the ability of the borrower to actually repay a loan. The proposed rule simply requires the lender and broker to take the time to explain, in the limited number of loans with that debt-to-income ratio, their understanding of the borrower's ability to repay the loan. This requirement may very well serve to protect these licensees from a subsequent claim that they made or arranged the loan with the "intent" that it would not be repaid.

Finally, you object to the provision in subsection 11.3 which exempts loans that qualify under guidelines of the Housing Development Fund, FannieMae, GinnieMae, FreddieMac, or other government or non-profit housing providers from the requirements of subsection 11.2 discussed above. The Division has elected to exempt those entities since their programs are often tailored to protect low to moderate income borrowers. I emphasize again that subsection 11.2 does not prevent any loan from being made. Rather, it merely requires the borrower and lender, in certain limited cases, to reflect an assessment of the borrower's ability to repay the loan being offered.

I hope these comments explain our rationale in proposing the rule in the current form.

Sincerely,

Robert J. Lamont
General Counsel

C: Larry A. Stark
Commissioner

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Proposed Title 106, Series 5, Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

SUMMARY OF THE PROPOSED RULE

The proposed rule provides specific guidance as to what records, including advertising, which must be kept by various licensees and the length of time and acceptable format for such record keeping. It also seeks to clarify existing protections for consumers in the enabling legislation by: 1.) requiring documentation for the reason a non-local appraiser is used; 2.) preventing improper coercion of appraisers; 3.) requiring written documentation of ability to repay loans where the resulting debt to income ratio will exceed fifty percent (50%); and 4.) requiring notice to the borrower of any counteroffer that changes the terms or fees of a loan in response to an application from a borrower.

The proposed rule also gives the Commissioner discretion to ignore criminal convictions that occurred more than twenty (20) years prior to the filing of a license application. It also clarifies what an "unrelated third party" in order to determine whether certain payments for closing costs should fall within the overall cap on fees for licensed brokers and lenders.

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Proposed Title 106, Series 5, Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

STATEMENT OF CIRCUMSTANCES REQUIRING THIS RULE

The West Virginia Division of Banking ("the Division") proposes a new legislative rule, Series 5 Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators. This rule is proposed because the Division has received inquiries regarding record keeping requirements and, after having experience examining licensed entities, has found that clear, uniform guidelines would help aid administration and enforcement of the law. Further, the Division has received allegations that predatory lending often involves appraisal fraud, bait and switch tactics, and failure to consider the ability to repay a loan without foreclosure. The rule is intended to provide borrowers with protections from these practices as intended by the enabling legislation.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency: West Virginia Division of Banking

Address: 1900 Kanawha Boulevard, East
Building 3, Room 311
Charleston, WV 25305-0240

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:
The proposed rule is not expected to cause an increase in the number of inquiries received from licensees. There may be some minimal costs associated with informing and educating licensees as to their responsibilities under the rule.

3. Objectives of These Rules:
The rule is intended to clarify various provisions of the law, W.Va. Code 31-17-1, et seq., especially with regard to recordkeeping by licensees and to provide protection to borrowers from appraisal fraud and bait and switch tactics.

Rule Title: Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators

4. Explanation of Overall Economic Impact of Proposed Rule:

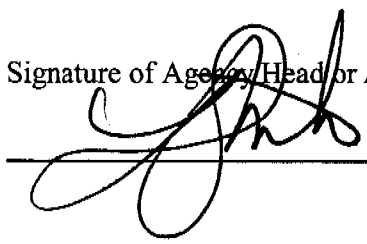
   A. Economic Impact on State Government:
   None

   B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: The licensees covered by the rule should benefit from greater clarity regarding their responsibilities under various provisions of the law such as record keeping and the use of appraisers. There will be some initial costs associated with ensuring compliance with the specific requirements of the rule.

   C. Economic Impact on Citizens/Public at Large.
   The public should benefit from the greater protection from predatory lending practices when shopping for and obtaining a residential mortgage loan.

Date: July 9, 2003

Signature of Agency Head or Authorized Representative:



106CSR5

TITLE 106
LEGISLATIVE RULES
COMMISSIONER OF BANKING

SERIES 5
RULE PERTAINING TO RESIDENTIAL MORTGAGE LENDERS, BROKERS, AND LOAN ORIGINATORS

§106-5-1. General.

1.1 Scope. -- This rule establishes the general method for implementing West Virginia Code § 31-17-1, *et seq.*; it applies to all licensees under that statute.

1.2 Authority. -- W.Va. Code §§31-17-3 and 31-17-11(a)

1.3 Filing Date. --

1.4 Effective Date. --

§106-5-2. Time Frames for Record keeping by Licensees.

2.1 A residential mortgage lender who acts as the original lender providing the initial funding for a mortgage loan to a borrower must maintain records related to that loan for a period of thirty-six months from the date the loan closes. In cases where the loan does not close, for any reason, that residential mortgage lender must maintain records related to the proposed loan for a period of thirty-six months from the date of the borrower's loan application.

2.2 A residential mortgage lender that does not provide the initial funds for a loan but only purchases, takes assignment of, or services the loan, must maintain records related to that loan for a period of thirty-six months from the date of last entry on the books of that lender.

2.3 A residential mortgage broker must retain records related to mortgage loans for a period of thirty-six months from the date the loan closes. In cases where the loan does not close, for any reason, the residential mortgage broker must maintain records related to the loan proposed for a period of thirty-six months from the date of the latest application, credit document, required disclosure or request by consumer to terminate the transaction.

§106-5-3. Records that must be maintained by licensed residential mortgage lenders who provide the initial funding for a loan.

3.1 The lender that provides the initial funding for a loan must maintain the following records:

3.1.a. Loan application, signed and dated by the borrower;

3.1.b. Initial Good Faith Estimate provided, whether by broker of lender;

3.1.c. Subsequent Good Faith Estimates provided by lender;

3.1.d. Required Provider List;

3.1.e. Verification of borrower income and employment as required by the lender;

3.1.f. Required early Truth in Lending Act disclosure;

3.1.g. Any early Truth in Lending Act disclosure provided;

3.1.h. Final Truth in Lending Act disclosure;

3.1.i. Credit report, if obtained;

3.1.j. All written and electronic correspondence, including fax transmissions, between the lender and broker;

3.1.k. HUD-1 or HUD 1A Settlement Statement signed by borrowers and lender or settlement agent, if applicable;

3.1.l. Affiliated Business Arrangement Disclosure Statement, if applicable;

3.1.m. Servicing Transfer Disclosure Statement signed by borrower;

3.1.n. Notice of Servicing Transfer provided by transferee, if applicable;

3.1.o. Right to Receive Appraisal Disclosure, if applicable;

3.1.p. Right of Rescission Notice, if applicable;

3.1.q. Tangible Net Benefit Worksheet, if applicable;

3.1.r. Deed of Trust;

3.1.s. Note or other instrument of indebtedness;

3.1.t. Any appraisal of the property, if applicable;

3.1.u. Home Ownership Equity Protection Act disclosure required by 12 C.F.R. § 226.32, if applicable;

3.1.v. Adjustable Rate Mortgage Disclosure, if applicable;

3.1.w. A written justification for using a non-local appraiser, if applicable;

3.1.x. Any commitment or rate lock-in agreements, if applicable;

3.1.y. Copies of all rate sheets used on specific dates and times for the prior three-year period;

3.1.z. A record of all cash, checks, or other monetary instruments received in connection with each residential mortgage loan showing the identity of the payor, the date received, the amount, and purpose;

3.1.aa. A record of all monies disbursed relating to the licensee's business as a mortgage lender including, but not limited to, refunds to borrowers and all disbursements of funds on behalf of borrowers, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which the payment relates, if any;

3.1.bb. Copies of all written complaints received from customers and written records of the disposition of those complaints;

3.1.cc. A general ledger and subsidiary records sufficient to produce an accurate statement of assets and liabilities and profit and loss statement on a monthly basis;

3.1.dd. A record of all charges or fees assessed to the borrower's account reflecting the amount of the charge or fee, the purpose, and the date imposed; and

3.1.ee. A copy of the escrow account detail provided to the borrower annually, if applicable.

§106-5-4. Records that must be maintained by licensed residential mortgage lenders that purchase or take assignment of a residential mortgage loan.

4.1 A lender that, after closing, subsequently purchases or takes assignment of a loan subject to the provisions of W.Va. Code § 31-17-1, *et seq.* must maintain the following records:

4.1.a. The Final Truth in Lending Act Disclosure;

4.1.b. All written correspondence, including fax transmissions, between that lender and the previous lender that held or serviced the loan;

4.1.c. HUD-1 or HUD 1-A Settlement Statement, signed by borrower(s) and initial lender or settlement agent, if applicable;

4.1.d. Notice of Servicing Transfer provided by transferee, if applicable;

4.1.e. The Note or other instrument of indebtedness;

4.1.f. All written and electronic correspondence between that purchaser or assignee and the borrower including e-mails and facsimile transmissions;

4.1.g. A telephone log reflecting the date and substance of telephone conversations with borrowers;

4.1.h. A record of all cash, checks, or other monetary instruments received in connection with a residential mortgage loan showing the identity of the payor, the date received, the amount, and purpose and a description of how funds were applied;

4.1.i. A record of all monies disbursed relating to the licensee's business as a mortgage lender including, but not limited to, refunds to borrowers and all disbursements of funds on behalf of borrowers, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which the payment relates, if any;

4.1.j. Copies of all written complaints received from customers and written records of the disposition of those complaints;

4.1.k. A general ledger and subsidiary records sufficient to produce an accurate statement of assets and liabilities and profit and loss statement on a monthly basis; and

4.1.l. A record of all charges or fees assessed to the borrower's account reflecting the amount of the charge or fee, the purpose, and the date imposed.

§106-5-5. Records that must be maintained by licensed residential mortgage servicers.

5.1 A lender that, after closing, subsequently services a loan subject to the provisions of W.Va. Code § 31-17-1, *et seq.* must maintain the following records:

5.1.a. The Final Truth in Lending Act Disclosure;

5.1.b. All written correspondence, including fax transmissions, between that lender and the previous lender that held or serviced the loan;

5.1.c. HUD-1 or HUD 1-A Settlement Statement, signed by borrower(s) and initial lender or settlement agent, if applicable;

5.1.d. A signed Servicing Transfer Disclosure statement;

5.1.e. The Deed of Trust;

5.1.f. Note or other instrument of indebtedness;

5.1.g. Legal instrument(s) assigning the note and deed of trust to purchaser or assignee;

5.1.h. Any appraisals of the property, if applicable;

5.1.i All written and electronic correspondence between the servicer and the borrower including e-mails and facsimile transmissions;

5.1.j. A telephone log reflecting the date and substance of telephone conversations with borrowers;

5.1.k A record of all cash, checks, or other monetary instruments received in connection with a residential mortgage loan showing the identity of the payor, the date received, the amount, and purpose and description of how funds were applied;

5.1.l. A record of all monies disbursed relating to the licensee's business as a mortgage lender including, but not limited to, refunds to borrowers and all disbursements of funds on behalf of borrowers, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which the payment relates, if any;

5.1.m. Copies of all written complaints received from customers and written records of the disposition of those complaints;

5.1.n. A general ledger and subsidiary records sufficient to produce an accurate statement of assets and liabilities and profit and loss statement on a monthly basis; and

5.1.o A record of all charges or fees assessed to the borrower's account reflecting the amount of the charge or fee, the purpose, and the date imposed.

§106-5-6. Records that must be maintained by licensed residential mortgage brokers.

6.1 A licensed residential mortgage broker must maintain the following records:

6.1.a. Initial loan application, signed and dated by the loan officer;

6.1.b. Contract or agreement between the broker and the borrower;

6.1.c. Initial and subsequent Good Faith Estimate(s) provided by the broker;

6.1.d. Required Provider List;

6.1.e. Credit report, if obtained;

6.1.f. Verification of borrower income and employment as required by the initial lender;

6.1.g. Required early Truth in Lending Act disclosure;

6.1.h. Early Truth in Lending Act disclosure provided but not required;

6.1.i. All written and electronic correspondence, including fax transmissions, between the broker and the lender;

6.1.j. HUD-1 or HUD 1A Settlement Statement signed by borrower(s) and initial lender or settlement agent, if applicable;

6.1.k Affiliated Business Arrangement Disclosure Statements provided to the borrower;

6.1.l. Servicing Transfer Disclosure statement;

6.1.m. Right to Receive Appraisal Disclosure, if applicable;

6.1.n. Right of Rescission Notice, if applicable;

6.1.o. Tangible Net Benefit Worksheet, if applicable;

6.1.p. Appraisal(s)f the property obtained by the broker;

6.1.q. A written justification for using a non-local appraiser, if applicable;

6.1.r. Any commitment or rate lock-in agreements, if applicable;

6.1.s. Copies of all notes or electronic correspondence, including fax transmissions with borrowers, third party settlement service providers including appraisers, title agents and credit reporting agencies;

6.1.t. A record of all cash, checks, or other monetary instruments received in connection with a loan application showing the identity of the payor, the date received, the amount, and purpose;

6.1.u. A record of all monies disbursed relating to the licensee's business as a mortgage ~~lender~~ broker including, but not limited to, refunds to borrowers and all disbursements of funds on behalf of borrowers, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which the payment relates, if any;

6.1.v. Copies of all written complaints received from customers and written records of the disposition of those complaints;

6.1.w. A general ledger and subsidiary records sufficient to produce an accurate statement of assets and liabilities and profit and loss statement on a monthly basis;

6.1.x. A record of all charges or fees assessed to the borrower's account reflecting the amount of the charge or fee, the purpose, and the date imposed; and

6.1.y. Copies of all rate sheets used on specific dates and times for the prior three-year period.

§106-5-7. Form and location of records.

7.1 All records that licensees must maintain under this rule or W.Va. Code §§31-17-1, *et seq.* may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium that is readily convertible by the licensee into legible, tangible documents as required by the Commissioner.

7.2 All records that licensees must maintain under this rule or W.Va. Code §§31-17-1, *et seq.* shall be secured against unauthorized access or damage in a licensed location. However, if a licensee maintains a centralized out-of-state storage facility for such records from multiple states, it may request the Commissioner to approve its storage of such records in that out-of-state location. The Commissioner shall grant approval provided that:

7.2.a. The Commissioner determines that the proposed storage will ensure that the records are secured against unauthorized access or damage; and

7.2.b. The licensee agrees, in writing, to make available at its expense for inspection and copying upon request of the Commissioner or his or her designees copies of all requested records in a form which satisfies the requirements of subsection (1) of this section.

7.3 A licensee shall notify the Commissioner promptly of any proposed change in the location of its books and records.

§106-5-8. Advertising.

8.1 Every licensed lender and broker shall maintain and keep available for inspection by representatives of the West Virginia Division of Banking one copy of all advertising material used during the prior three years.

8.2 If the advertising media is a radio or television broadcast, then a licensee may comply with this requirement by maintaining a copy of the transcript of the advertising.

§106-5-9. Use of Non-local Appraisers.

9.1 If a licensed broker or lender employs an appraiser whose main office is more than seventy-five miles from the property to be appraised, that lender or broker must document, in writing, the reason(s) why such an appraiser was used instead of an appraiser with a main office closer to the property being appraised.

§106-5-10. Improper influence of appraisers.

10.1 Any threat, oral or written, direct or implied, by a lender or broker to withhold payment of an appraiser's fee constitutes an attempt to coerce or intimidate an appraiser for the purpose of influencing his or her independent judgment in violation of W.Va. Code § 31-17-8(m)(2).

10.2 Any threat, oral or written, direct or implied, by a lender or broker to cease using the services of an appraiser in the future if that appraiser does not provide an appraisal amount in accordance with the expectations of that lender or broker constitutes an attempt to coerce or intimidate an appraiser for the purpose of influencing his or her independent judgment in violation of W.Va. Code § 31-17-8(m)(2).

§106-5-11. Documentation of ability to repay.

11.1 No lender should make a loan unless the lender reasonably believes at the time the loan is closed that the borrower(s) will be able to make the scheduled payments to repay the loan. This reasonable belief must be based upon a consideration of the income of the borrower(s), current debt, employment status and history, and other financial resources other than equity in the dwelling that will secure the loan.

11.2 If a borrower's household debt-to-income ratio will exceed fifty percent upon the extension of new residential mortgage loan as determined from a credit report, credit application, financial statement, then the broker and initial lender must document, in writing, an assessment of the borrower's ability to repay the loan according to its terms. Such assessment must be signed by the lender or the lender's representative and the borrower(s) and must consider the household's current debt obligations, the term of

the loan, and the borrower(s) circumstances along with their current and projected income and assets, other than a security interest in the real estate taken to secure the loan.

11.3 The requirement of subsection (2) of this section shall not apply if the loan obtained qualifies under guidelines established by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, West Virginia Housing Development Fund, or other state government or federal government chartered housing provider, or a non-profit housing provider.

§106-5-12. Notice of changes in loans that are in process.

12.1 If a lender or broker determines that a borrower does not qualify for the loan amount, terms, or program for which he or she applied and that another loan product is available that would materially differ from the terms requested by the borrower(s) in the initial application, the lender or broker shall decline the loan initially requested, providing the proper notice and disclosure, and then offer new terms and disclosures related to the alternative loan product.

§106-5-13. Criminal background checks.

13.1 When evaluating a license applicant for financial responsibility, character, reputation or general fitness, the Commissioner may elect to ignore criminal convictions that occurred more than twenty years prior to the filing date of the license application.

§106-5-14. Payments to unrelated third parties.

14.1 Pursuant to W.Va. Code §31-17-8(m)(4), only payments of closing costs to unrelated third parties may not be included in the overall cap on fees, compensation, yield spread premium or points that a borrower is required to pay a licensee.

14.2 In order to qualify as an "unrelated third party" the individual or entity providing services may not be an "affiliated business arrangement" as that term is defined by the Real Estate Settlement Procedures Act, 12 U.S.C. § 2602, and attendant regulations.