

*Press Release*  
*Banking Board Adopts Revisions to Part 41*

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May 6, 2003

New York, N.Y.: Acting Superintendent of Banks Barbara Kent announced that the New York State Banking Board adopted an emergency regulatory action to revise Part 41 of the General Regulations of the Banking Board- Restrictions and Limitations on High Cost Home Loans.

"I am pleased that the Banking Board approved the revisions to Part 41," Acting Superintendent Kent said. "Part 41 is now consistent with the requirements and standards established in the new predatory lending law that became effective on April 7, 2003. The revisions clarify definitions and standards identified in the law to provide additional guidance to the industry."

The major amendments to Part 41 include four revisions; the first of which includes additions to the definition of the term "points and fees":

- Part 41 now includes charges, such as title examination fees, that previously were excluded from the calculation of points and fees, if the lender or an affiliate of the lender receives any direct or indirect compensation from such fees.
- All compensation paid to a broker which includes any yield-spread-premiums, not otherwise included in the charges, now falls within the definition of points and fees.
- The regulation maintains a threshold in excess of 5 percent for points and fees for loan amounts of \$50,000 or more and adds a new threshold in excess of 6 percent or \$1500, whichever is greater, for loan amounts less than \$50,000. In addition, a threshold in excess of 6 percent is also added for VA and FHA loans of \$50,000 or more.

Second, the limit upon the maximum amount of points and fees that may be financed as part of a high cost home loan was reduced from 5 percent to 3 percent.

Third, a lender that makes a high cost home loan is now prohibited from charging any points and fees, even on additional proceeds, if the lender refinances the high cost home loan with another high cost loan. The existing two-year restriction upon the charging of points and fees in a refinancing of a high cost home loan, except upon additional proceeds, will apply only to loans originated by other non-affiliated lenders that utilize mortgage brokers.

Fourth, the statute requires a lender to use the VA residual income guidelines in addition to a debt to income ratio to determine whether a borrower has the ability to repay the

loan, if the lender wishes to have the benefit of a rebuttal presumption that the loan is affordable.

The revisions provide additional regulatory guidance to the mortgage lending community by defining terms used in the law such as "independent verification of" repayment ability, and in determining whether a loan has a "tangible net benefit" to the borrower. The revisions to Part 41 can be viewed on the Department's website by going to the following link: <http://www.banking.state.ny.us/41c626amd.htm>.

The New York State Banking Department is the regulator for all state-chartered banking institutions, including nine of the State's ten largest banks, and virtually all of the United States offices of international banking institutions. The Department licenses and registers all of the State's mortgage brokers and mortgage bankers. The aggregate assets of the companies and institutions supervised by the Banking Department are nearly \$2 trillion.

## *Adopted Regulations*

### *Summary of Proposed Amendments to Parts 41 of the General Regulations of the Banking Board of Title 3 of NYCRR.*

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May 5, 2003

Section 41.1(a) is amended to revise the definition of a lender subject to part 41.

Section 41.1(b) is amended to revise the definition of an affiliate.

Section 41.1(c) is amended to make technical revisions.

Section 41.1(d) is amended to revise the definition of a bona fide loan discount point.

Section 41.1(e) is amended to revise the definition of a high cost home loan in regard to the points and fees threshold for determining such loans and limiting the exclusion of certain discount points in the computation of points and fees.

Section 41.1(f) is amended to revise the definition of loan amount.

Section 41.1(h) is amended to revise the definition of points and fees.

Section 41.1(j) is amended to make certain technical revisions.

Section 41.2(a) is amended to clarify the exceptions to the prohibition upon accelerating the indebtedness of high cost home loans.

Section 41.2(b) is amended to increase the term of a balloon mortgage to fifteen years.

Section 41.2(g), relating to modification and deferral fees, is repealed and then added as a new paragraph 2 to section 41.3(d), relating to refinancing of high cost home loans.

Section 41.3(a) is amended by adding a new disclosure requirement.

Section 41.3(b) is amended to revise requirements relating to the residual income guidelines and the presumption of affordability and to add certain conditions in order to determine that repayment ability has been “corroborated by independent verification.”

Section 41.3(c) is amended to revise the percentage of points and fees that may be financed in making a high cost home loan, and to revise the charges that may be excluded from such financed points and fees.

Section 41.3(d) is re-titled and amended to revise the limitations upon points and fees that may be charged by particular lenders when refinancing high cost home loans and to add a previously repealed paragraph (see revisions to section 41.2(g)) relating to modification of an existing high cost home loan.

Section 41.3(f) is amended to delete a reference to median family income.

Section 41.3(g) is added to prohibit the refinancing of special mortgages, except under certain conditions.

Section 41.5(a) is amended to clarify deceptive acts relating to splitting or dividing loan transactions.

Section 41.5(b)(2) is amended to clarify retention of fees by lenders and brokers in relation to unfair, deceptive or unconscionable practices.

Section 41.5(b)(4) is amended to revise the definition of loan flipping, as an unfair or deceptive practice, and to add conditions to determine whether a loan has a net tangible benefit to the borrower.

Section 41.5(b)(6) is amended to clarify the standards to determine that recommending or

encouraging default of a home loan or other debt is an unfair or deceptive practice. Section 41.7 is amended to revise the legend that appears on a high cost home loan mortgage.

Section 41.8 is amended to delete VA and FHA mortgage loans from the definition of exempt products.

Section 41.9 is amended to repeal the current provisions relating to correction of errors and to add new provisions.

Section 41.11, relating to prohibiting the financing of single premium insurance, is re-titled and amended to include other insurance premiums or payments for any cancellation or suspension contract or agreement