BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Mortgages

Relaxation of Loan-to-Value Limitation

Proposed New Rule: N.J.A.C. 3:10-8.1

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-15e and 17: 9A-64.1

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-94

Submit comments by May 14 , 2004 to:

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The agency proposal follows:

Summary

N.J.S.A. 17:9A-64.1 provides that banks and savings banks may originate or acquire mortgage loans secured by a mortgage constituting a lien upon real property so long as the bank or savings bank observes prudent banking practices. The value of any mortgage loan shall not exceed 90 percent of the appraised value of the mortgaged property, except for a mortgage loan that is less than $100,000 or as permitted by the Commissioner of Banking and Insurance by regulation. Pursuant to this statutory authority, the Department is proposing a new rule that will

allow banks and savings banks to make loans that exceed the 90 percent loan-to-value ratio. The proposed new rule will increase access to credit for low and moderate-income earners and certain first-time homebuyers. The proposed new rules are consistent with the public policy to encourage home ownership for both low and moderate-income earners and for first-time homebuyers who would not otherwise qualify for conventional mortgages. The maximum loan amount is tied to the annual lending loan limits established by the Federal Housing Authority.

Proposed N.J.AC. 3:10-8.1 sets forth the conditions under which banks or savings banks may originate or acquire mortgage loans up to 100 percent of the appraised value of the property, provided that the following conditions are met:

a. The applicant has insufficient resources to make a down payment of 10 percent or more; and

b. The loan does not exceed the lending limits for FHA loans by county (published at www.fha.com);

c. The aggregate amount of all such loans originated or acquired shall not exceed 5 percent of the capital funds of the bank or savings bank without the prior approval of the Commissioner; and

d. Any one or more of the following conditions are met:

   1. The loan is made to an individual or family of low or moderate income who will occupy the property as a primary residence;

   2. The loan is made to a first-time homebuyer who will occupy the property as a primary residence;

   3. The loan is made to an individual or family who resides in a low or moderate income census tract, who will occupy the property as a primary residence; or

4. The loan is made to an individual or family who is seeking a loan in connection with any state or Federal agency affordable housing construction, purchase or refinancing program.

This rule proposal provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a) 5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed new rule will have a positive social impact on New Jersey consumers by increasing the availability of credit to low and moderate income individuals and to certain first-time home buyers who might otherwise not have access to such loans. The new rule is consistent with the general goals of the Federal Community Reinvestment Act in encouraging financial institutions to make innovative loans while remaining prudent. The rule is also consistent with the goals of the New Jersey Home Mortgage Finance Authority to encourage first-time home ownership.

Economic Impact

The proposed new rule will positively impact banks and savings banks by enabling them to, with proper underwriting, make loans that they would not otherwise be able to make. However, the Department is aware of the increased risk attendant upon the default of a loan in an amount that exceeds 90 percent of the appraised value of the mortgaged property. The Department has therefore limited the percentage of such loans to five percent of the capital funds of a bank or savings bank. Prior approval of the Commissioner is required if the aggregate amount of loans made pursuant to this new rule will exceed five percent of the capital funds of the bank or savings bank. The new rule will also have a positive impact on the public because the new rule will stimulate the growth of homeownership in general, and facilitate the construction and rehabilitation of affordable housing.

Federal Standards Statement

A Federal standards analysis is required when any State agency proposes to adopt, readopt or amend State regulation that exceed any Federal standards or requirements, and must include in the rulemaking document a comparison of Federal law. The are no applicable Federal standards requirement for the proposed new rule.

Jobs Impact

It is possible that some jobs may be generated as a result of the proposed new rule and their effect upon the availability of affordable housing in New Jersey. The Department invites interested persons to submit any data or studies about the jobs impact of the proposed new rule with their written comments.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed new rule.

Regulatory Flexibility Analysis

The proposed new rule will apply to “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule allows banks and savings banks to make some mortgage loans up to 100 percent of the appraised value of the mortgaged property. The proposed new rule imposes no additional compliance costs on banks and savings banks. All businesses should be able to comply with the proposed new rule utilizing existing staff or resources. No outside professional services will be required as a result of the proposed new rule. The proposed new rule does not impose additional recordkeeping requirements. The Department does not believe that the compliance requirements are unduly burdensome and finds that they are consistent with prudent banking practices. Accordingly, no differentiation based on business size is provided.

Smart Growth Impact

The proposed new rule will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows:

SUBCHAPTER 8. APPRAISAL VALUE RELAXED FOR CERTAIN LOANS

3:10-8.1 Appraisal ratio relaxed for certain loans

(a) A bank or savings bank may originate or acquire mortgage loans up to 100 percent of the appraised value of the property, provided that:

1. The applicant has insufficient resources to make a downpayment of 10 percent or more;

2. The loan does not exceed the lending limits for FHA loans by county (published at www.fha.com);

3. The aggregate amount of loans originated or acquired pursuant to this section shall not exceed five percent of the capital funds of the bank or savings bank as defined in N.J.S.A. 17:9A-60 without prior approval of the Commissioner; and

4. One or more of the following conditions are met:

i. The mortgage loan is made to an individual or family of low or moderate income, as defined by 12 U.S.C. § 2901, who will occupy the property as a primary residence;

ii. The mortgage loan is made to a first-time homebuyer who will occupy the property as a primary residence;

iii. The mortgage loan is made to an individual or family who currently resides, or who will reside, in a low or moderate income census tract as defined by 12 U.S.C. § 2901, and who will occupy the property to be mortgaged as a primary residence; or

iv. The mortgage loan is made to an individual or family who is seeking a loan in connection with any state or Federal agency affordable housing construction, purchase or refinancing program.

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