

CHAPTER 13. LOANS**GENERAL PROVISIONS**

- Sec.
13.1. Definitions.

PARTICIPATIONS

- 13.2. Participations in evidences of indebtedness and agreements for the payment of money.
13.3. Participations in pools of evidences of indebtedness or agreements for the payment of money.

LIMITS ON INDEBTEDNESS

- 13.11. Limits on indebtedness of one customer.
13.12. Standby letters of credit.
13.13. Guarantees.

INSTALLMENT LOANS

- 13.21. Disclosure of revolving credit rates.
13.22. Disclosure of total charge on other installment loans.
13.23. Discount of installment loans.
13.24. Computation of rebates on installment loans.

REAL ESTATE LOANS

- 13.31. Reappraisals of lien properties.
13.32. Renegotiable rate or rollover mortgage loans.
13.33. Protective provisions with respect to certain renegotiable rate or rollover mortgage loans.

CORPORATE STOCK AND CAPITAL SECURITIES

- 13.41. Collateral loans.
13.42. Loans for carrying shares and capital securities.

**SIMPLIFICATION AND AVAILABILITY
OF BANK CREDIT—STATEMENT OF POLICY**

- 13.51. Application of the Simplification and Availability of Bank Credit Act (SABCA)—Statement of Policy.

**EXCEPTION TO DEFINITION OF
“BRANCH”—STATEMENT OF POLICY**

- Sec.
- 13.61. Definitions.
- 13.62. Application.
- 13.63. Permissible activities.
- 13.64. Impermissible activities.
- 13.65. Information required.
- 13.66. Designation as a limited purpose banking office.
- 13.67. Authority of the Department.
- 13.68. Application of other Pennsylvania laws.

Authority

The provisions of this Chapter 13 issued under sections 305, 306 and 309 of the Banking Code of 1965 (7 P. S. §§ 305, 306 and 309), unless otherwise noted.

GENERAL PROVISIONS

§ 13.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Banking Code of 1965 (7 P. S. §§ 101—2204).

Indebtedness limitation—The specific limitation as applied under section 306(a) of the act (7 P. S. § 306(a)).

Nonperishable staples—Staples handled or stored to assure their protection against spoilage for the period of the loan.

Readily marketable frozen or refrigerated staples—Readily marketable staples as defined in this section, but which are stored or handled to assure their protection against spoilage for the period of the loan.

Readily marketable staples—Articles of commerce, agriculture or industry which are the subject of dealings in a ready market with sufficiently frequent price quotations to make the price easily ascertainable with reasonable definiteness. The term includes primarily basic commodities, such as wheat, other grains, sugar, cotton, wool, basic metals and similar products. The term does not include fabricated commodities.

Authority

The provisions of this § 13.1 amended under section 306 of the Banking Code of 1965 (7 P. S. § 306).

Source

The provisions of this § 13.1 amended November 6, 1987, effective November 7, 1987, 17 Pa.B. 4553. Immediately preceding text appears at serial page (113838).

PARTICIPATIONS**§ 13.2. Participations in evidences of indebtedness and agreements for the payment of money.**

Institutions may purchase and sell participations in one or more evidences of indebtedness or agreements for the payment of money, without retaining a specific interest therein. The participation may be acquired from or sold to a financial institution or other corporation.

Source

The provisions of this § 13.2 adopted February 24, 1970; amended January 2, 1998, effective January 3, 1998, 28 Pa.B. 14. Immediately preceding text appears at serial page (223173).

§ 13.3. Participations in pools of evidences of indebtedness or agreements for the payment of money.

Institutions may purchase from and sell to other institutions, National banks or similar banking companies existing under the laws of any other state, and may sell to other corporations, participations or undivided interests in pools of evidences of indebtedness or agreements for the payment of money, if:

- (1) The originating institution, national bank or other banking company retains an undivided interest of at least 25% of the pool.
- (2) Evidence of indebtedness or agreement which is included in, or added to, the pool shall be clearly identified in the records of the originating institution, National bank or other banking company as being a part of the pool.
- (3) An institution which sells a participation in a pool, may not directly or indirectly guarantee the payment of principal or interest of any evidence of indebtedness or agreement included in the pool. An institution may, however, agree to pay, solely from the earnings of the pool, a fixed rate of return on any participation therein.

Source

The provisions of this § 13.3 amended January 2, 1998, effective January 3, 1998, 28 Pa.B. 14. Immediately preceding text appears at serial pages (223173) to (223174).

LIMITS ON INDEBTEDNESS**§ 13.11. Limits on indebtedness of one customer.**

(a) Under section 306(c)(vi)(B) of the act (7 P. S. § 306(c)(vi)(B)), loans which are secured by documents of title covering readily marketable, nonperishable staples for a period of not more than 10 months from the date of the document of title are excluded from the indebtedness of one customer to which the indebtedness limitation applies.

(b) Under section 306(c)(vi)(C) of the act (7 P. S. § 306(c)(vi)(C)), loans which are secured by documents of title covering readily marketable frozen or refrigerated staples for a period of not more than 6 months from the date of the document of title are excluded from the indebtedness of one customer to which the indebtedness limitation applies.

(c) Under section 306(c)(ix)(B) of the act (7 P. S. § 306(c)(ix)(B)), loans which are secured by collateral which has a market value of not less than 120% of the amount of the obligations secured thereby are partially excluded from the indebtedness of one customer to which the indebtedness limitation applies. The loans are excluded from the limitation to the extent of 15% of the aggregate of the capital accounts of the institution. To qualify for this exclusion, the collateral shall be readily marketable so that:

- (1) The price may be easily and definitely ascertainable.
- (2) The collateral may be realized by sale.

(d) The following forms of collateral shall be considered to have a market value, within the context of this section, to qualify for the exclusion described in subsection (c):

- (1) Collateral in the form of stocks, bonds and other securities, if the collateral is listed for trading on a recognized exchange registered under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78(a)—79kk (1971)).
- (2) Collateral in the form of new automobiles in the hands of dealers.
- (3) Collateral in the form of equity securities of the following:
 - (i) Banks or bank and trust companies incorporated under the laws of the Commonwealth.
 - (ii) National banks having a place of business in this Commonwealth.

(e) Collateral in the form of manufactured or fabricated articles, such as appliances in the hands of dealers, does not qualify for the exclusion described in subsection (c).

Authority

The provisions of this § 13.11 amended under section 306 of the Banking Code of 1965 (7 P. S. § 306).

Source

The provisions of this § 13.11 amended November 6, 1987, effective November 7, 1987, 17 Pa.B. 4553. Immediately preceding text appears at serial pages (1987) and (23464).

§ 13.12. Standby letters of credit.

(a) *Definition.* As used in this section, the term “standby letter of credit” means a letter of credit, or similar arrangement however named or described, which represents an obligation to the beneficiary on the part of the issuing institution to repay money borrowed by or advanced to or for the account of the account party, or to make payment on account of an indebtedness undertaken by the account party, or to make payment on account of a default (including a statement of default) by the account party in the performance of an obligation. The term does not include commercial letters of credit and similar instruments where the issuing institution expects the beneficiary to draw upon the institution, which do not guaranty payment of a money obligation of the account party and which do not provide that payment is occasioned by default on the part of the account party.

(b) *Restriction.* A standby letter of credit issued by an institution shall be combined with other standby letters of credit and loans for purposes of applying the legal limitations on loans of the institution under section 306 of the act (7 P. S. § 306). Where the standby letter of credit is subject to a nonrecourse participation agreement with other institutions or banks, this section applies to the issuing institution and each other participant which is an institution in the same manner as in the case of a participated loan.

(c) *Exceptions.* Standby letters of credit shall be subject to subsection (b) except where one of the following conditions exist:

(1) Prior to or at the time of issuance, the issuing institution is paid an amount equal to the institution’s maximum liability under the letter of credit.

(2) Prior to or at the time of issuance, the issuing institution has set aside sufficient funds in a segregated deposit account, clearly earmarked for that purpose, to cover the institution’s maximum liability under the standby letter of credit.

(d) *Disclosure.* Each institution shall maintain adequate control and subsidiary records of its standby letters of credit comparable to the records maintained in connection with the institution’s direct loans, so that the institution’s potential liability thereunder and the institution’s compliance with this section may be readily determined. In addition, standby letters of credit shall be adequately reflected on the institution’s published financial statements.

Source

The provisions of this § 13.12 adopted October 24, 1975, effective October 25, 1975, 5 Pa.B. 2841.

§ 13.13. Guarantees.

Institutions, subject to the prior approval of the Department, may give guarantees in connection with transactions providing for the sale or sale and repurchase of an institution's outstanding securities portfolio or in connection with borrowings by the institution, secured by the institution's outstanding securities portfolio.

Authority

The provisions of this § 13.13 issued under sections 313(a)(iv) and 502(f) of the Banking Code of 1965 (7 P. S. §§ 313(a)(iv) and 502(f)).

Source

The provisions of this § 13.13 adopted September 30, 1983, effective October 1, 1983, 13 Pa.B. 2967.

INSTALLMENT LOANS**§ 13.21. Disclosure of revolving credit rates.**

In the event a borrower is not advised of the monthly rate of charge for a loan under a revolving credit plan by a statement contained in the agreement entered into in connection with the loan, the borrower shall be advised of the monthly rate of charge in a written statement delivered to the borrower within 10 days after the revolving credit plan agreement has been executed.

Source

The provisions of this § 13.21 adopted January 14, 1969.

§ 13.22. Disclosure of total charge on other installment loans.

In the event a borrower is not advised of the dollar amount of the total loan charge on an installment loan, other than a loan under a revolving credit plan, by a statement contained in the evidence of indebtedness, the borrower shall be advised of the dollar amount in one of the following two ways:

- (1) By a statement, setting forth and identifying the charge, contained in the disbursement check or other instrument delivered to or required to be signed by the borrower.
- (2) By a statement contained in the coupon book or payment book of the borrower, or written communication which shall be delivered to the borrower within 10 days after the evidence of indebtedness has been executed.

§ 13.23. Discount of installment loans.

(a) It was not the intent of the Banking Law Commission to make a change in the installment lending provisions of the prior Banking Code (No. 112 (1933) Pa.L. 624 (repealed 1965)) nor to change the industry's custom of calculating interest on a discount basis. It was the purpose of the act to clarify the prior law and the practices followed under it.

(b) It is a banking practice, in calculating discount at a \$6 per \$100 per annum rate, to deduct the 6% (equivalent to the \$6 charge) from 100%, thus arriving at a remainder of 94%. By dividing 94% into the maximum loan of \$5,000, the face amount becomes \$5,319.14 resulting in discount of \$319.14. The following should illustrate clearly the results of calculating interest on a discount basis versus interest on an add-on basis:

(1) *Discount basis.*

<i>Principal</i>	\$5,000
Plus Interest at 6% for 1 year on a discount basis	319.14
Plus Costs	150
<i>Face</i> amount of note	\$5,469.14
Less Interest and Costs	469.14
<i>Net proceeds</i> to borrower	\$5,000

(2) *Add-on basis.*

<i>Principal</i>	\$5,000
Plus Interest at 6% for 1 year	300
Plus Costs	150
<i>Face</i> amount of note	\$5,450
Less Interest and Costs	450
<i>Net proceeds</i> to borrower	\$5,000

(c) The Department interprets the law to mean that the maximum principal amount or net proceeds of an installment loan, computed either on an add-on basis or a discount basis, may not exceed \$5,000 to a borrower.

Source

The provisions of this § 13.23 adopted by Secretary's Letter "M," dated March 21, 1968.

§ 13.24. Computation of rebates on installment loans.

(a) The term of an extended loan shall be increased by the number of monthly extensions granted; the expired time of the loan contract will similarly take into consideration the number of months of extension granted; and the total finance charge will be increased by the extension charges.

(b) As an example, a 36-month note for \$1,000 of which 26 months have expired but 4 months of which were extensions, the rebate would be on the basis of 26/40. The original finance charge of \$180 would be increased by total extension charges of \$18.36 to \$198.36 and by using the rule of 78, the percentage of rebate would be 12.80% or \$25.39.

Source

The provisions of this § 13.24 adopted August 8, 1975, effective August 9, 1975, 5 Pa.B. 2026.

REAL ESTATE LOANS

§ 13.31. Reappraisals of lien properties.

(a) If the payments of interest on regularly amortizing real estate obligations are in arrears for 90 days, the institution shall file a current certificate of inspection to support the delinquent debt, unless an appraisal or inspection has been made within 1 year of the delinquency and the proper certification is on file.

(b) Loans not subject to a regular amortization schedule shall be supported by reappraisals made once within every 3 year cycle.

(c) If obligations are increased for any reason or if new instruments are written to cover the same lien premises, other than in connection with rollover or renegotiated rate mortgages, a current appraisal of the property shall be on file.

Source

The provisions of this § 13.31 adopted by Secretary's Letter "B", dated May 25, 1965, and amended by Secretary's Letter "E", dated February 28, 1966; amended through December 5, 1980, effective December 6, 1980, 10 Pa.B. 4592. Immediately preceding text appears at serial page (23468).

§ 13.32. Renegotiable rate or rollover mortgage loans.

A savings bank may make, purchase or participate in renegotiable rate or rollover mortgages. The interval between the making of the loan and the first renegotiation of the loan shall be deemed the term of the loan, and each subsequent renewal of the loan shall be deemed a separate term. Requirements of section 505(a)(i)(B) of the act (7 P. S. § 505(a)(i)(B)) that "the terms of the loan require payments which are substantially equal except for the last payment" is satisfied with respect to such renegotiable rate or rollover mortgages if the payments during each term are substantially equal, except for the final payment, even though the payments during one such term are different from those during other such terms.

Source

The provisions of this § 13.32 adopted December 5, 1980, effective December 6, 1980, 10 Pa.B. 4592.

§ 13.33. Protective provisions with respect to certain renegotiable rate or rollover mortgage loans.

(a) *Applicability.* Mortgage loan documents containing provisions for rollover or renegotiation of the mortgage which pertain to loans secured by a lien on real property located within this Commonwealth containing not more than two residential units or on which not more than two residential units are to be constructed, including residential condominium units, shall be subject to the provisions of this section.

(b) *Description.* The renegotiable rate or rollover mortgage loan shall be issued for a term of 3, 4 or 5 years, secured by a long-term mortgage of up to 30 years and automatically renewable at equal intervals except as provided in subsection (c)(1). During each term the loan shall be repayable in equal monthly installments of principal and interest in an amount at least sufficient to amortize a loan with the same principal balance at the then effective interest rate over the remaining term of the long-term mortgage. At renewal, no change other than in the interest rate may be made in the terms or conditions of the initial loan, except as provided in subsection (c)(1). Prepayment in full or on part of the loan balance secured by the mortgage may be made without penalty at any time on those loans which meet the definition of a "residential mortgage" in section 101 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 101).

(c) *Interest rate changes at renewal.* Interest rate changes at renewal shall include the following:

(1) The interest rate offered at renewal shall reflect the movement, in reference to the date of the original loan, of the contract interest rate on the purchase of previously occupied homes in the most recent monthly national average mortgage rate index of the Federal Home Loan Bank Board for major lenders; provided that the lender may alter the initial term of loans originated within a 6-month period so that they mature on the same date, 3, 4 or 5 years after the end of that period, in which case the interest rate offered at renewal shall reflect the movement of the index from the end of that period, that is, as though all loans in the group had originated at the end of the period.

(2) The maximum rate increase or decrease at each renewal shall be .5% per year multiplied by the number of years in each loan term, with a maximum increase or decrease of 5% over the life of the mortgage. Lenders may offer a borrower a renegotiable rate or rollover mortgage loan with maximum annual and total interest rate decreases smaller than the maximum set out in this paragraph; provided, however, that the maximum annual and total interest rate increases offered may not exceed the maximum annual and total decreases set out in the loan contract.

(3) Interest rate decreases from the previous loan term shall be mandatory. Interest rate increases shall be optional with the lender, but the lender may obligate itself to a third party to take the maximum increase permitted by this subsection.

(d) *Cost of renewal.* Charges in connection with the loan shall be collected when the loan is initiated. At the time of a renewal of the loan, the borrower may not be charged costs or fees in connection with the renewal.

(e) *Renewal notice.* At least 90 days before the due date of the loan, the lender shall send written notification in the following form to the borrower:

NOTICE

Your loan with _____ secured by a (mortgage/deed of trust) on property located at (address), is due and payable on (90 days from date of notice).

If you do not pay by that date, your loan will be renewed automatically for _____ years, upon the same terms and conditions as the current loan, except that the interest rate will be ____%. (See accompanying Truth-in-Lending statement for further credit information. The foregoing reference to Truth-in-Lending may be omitted from the notice if under applicable Federal laws the lender will not be giving a Truth-in-Lending statement.)

Your monthly payment, based on that rate, will be \$ _____ beginning with the payment due on _____, 19 _____.

You may pay off the entire loan or a part of it without penalty at any time.

If you have questions about this notice, please contact (title and telephone number of mutual savings bank employe).

(f) *Application disclosure.* An applicant for a renegotiable rate mortgage loan shall be given, at the time he requests an application, a disclosure notice in the following form:

INFORMATION ABOUT THE RENEGOTIABLE-RATE MORTGAGE

You have received an application form for a renegotiable-rate mortgage (“RRM”) loan. The RRM differs from the fixed-rate mortgage loan with which you may be familiar. In the fixed-rate mortgage loan, the length of the loan and the length of the underlying mortgage are the same, but in the RRM the loan is short-term (3—5 years) and is automatically renewable for a period equal to the mortgage (up to 30 years). Therefore, instead of having an interest rate that is set at the beginning of the mortgage and remains the same, the RRM has an interest rate that may increase or decrease at each renewal of the short-term loan. This means that the amount of your monthly payment may also increase or decrease.

The term of the RRM loan is _____ years, and the length of the underlying mortgage is _____ years. The initial loan term may be up to 6 months longer than later terms.

The lender must offer to renew the loan, and the only loan provision that may be changed at renewal is the interest rate. The interest rate offered at renewal is based on changes in an index rate. The index used is computed monthly by the Federal Home Loan Bank Board, an agency of the Federal government. The index is based on the national average contract rate for all major lenders for the purchase of previously-occupied, single-family homes.

At renewal, if the index has moved higher than it was at the beginning of the mortgage, the lender has the right to offer a renewal of the loan at an interest rate equalling the original interest rate plus the increase in the index rate. This is the maximum increase permitted to the lender. Although taking such an increase is optional with the lender, you should be aware that the lender has this right and may become contractually obligated to exercise it.

If the index has moved down, the lender must at renewal reduce the original interest rate by the decrease in the index rate no matter how much the index rate increases or decreases. THE LENDER, AT RENEWAL, MAY NOT INCREASE OR DECREASE THE INTEREST RATE ON YOUR RRM LOAN BY AN AMOUNT GREATER THAN _____ OF ONE PERCENTAGE POINT PER YEAR OF THE LOAN AND THE TOTAL INCREASE OR DECREASE OVER THE LIFE OF THE MORTGAGE MAY NOT BE MORE THAN _____ PERCENTAGE POINTS.

As the borrower, you have the right to decline the lender's offer of renewal. If you decide not to renew, you will, of course, have to pay off the remaining balance of the mortgage. Even if you decide to renew, you have the right to prepay the loan in part or in full without penalty at any time. To give you enough time to make this decision, the lender, ninety (90) days before renewal, will send a notice stating the due date of the loan, the new interest rate and the monthly payment amount. If you do not respond to the notice, the loan will be automatically renewed at the new rate. You will not have to pay any fees or charges at renewal time.

The maximum interest rate increase at the first renewal is _____ percentage points. On a \$50,000 mortgage with an original term of _____ years and an original interest rate of (lender's current commitment rate) _____ percent, this rate change would increase the monthly payment (principal and interest) from \$ _____ to \$ _____. Using the same example, the highest interest rate you might have to pay over the life of the mortgage would be _____ percent, and the lowest would be _____ percent.

Source

The provisions of this § 13.33 adopted December 5, 1980, effective December 6, 1980, 10 Pa.B. 4592.

CORPORATE STOCK AND CAPITAL SECURITIES**§ 13.41. Collateral loans.**

To the same extent that an institution is prohibited from taking pledges of stock or capital securities of the institution itself as collateral security for a loan, under sections 202(h) and 311(c) of the act (7 P. S. §§ 202(h) and 311(c)), it may not take pledges of stock or capital securities of its affiliates or the corporation which owns or controls the capital stock of the institution.

Authority

The provisions of this § 13.41 issued under section 103(a)(viii) of the Banking Code of 1965 (7 P. S. § 103(a)(viii)).

Source

The provisions of this § 13.41 adopted August 18, 1970, effective August 19, 1970, 1 Pa.B. 213.

§ 13.42. Loans for carrying shares and capital securities.

To the same extent that an institution is prohibited from extending credit for the purpose of enabling a customer to acquire or hold shares or capital securities of the institution, under the provisions of section 311(e) of the act (7 P. S. § 311(e)), it may not extend credit to acquire or hold stock or capital securities of its affiliates or the corporation which owns or controls the capital stock of the institution.

Authority

The provisions of this § 13.42 issued under section 103(a)(viii) of the Banking Code of 1965 (7 P. S. § 103(a)(viii)).

Source

The provisions of this § 13.42 adopted August 18, 1970, effective August 19, 1970, 1 Pa.B. 213.

**SIMPLIFICATION AND AVAILABILITY
OF BANK CREDIT—STATEMENT OF POLICY****§ 13.51. Application of the Simplification and Availability of Bank Credit Act (SABCA)—Statement of Policy.****(a) Coverage of the SABCA.**

(1) The SABCA, enacted December 28, 1994, with an effective date of March 28, 1995, amended Chapter 3 of the act by adding a new section 322 (7 P. S. § 322). Chapter 3 of the act (7 P. S. §§ 301—321) contains a number of individual sections which provide institutions to which it applies the authority to make loans subject to specific restrictions. The enactment of successive sec-

tions of Chapter 3 over time, and amendments to them, have been designed to afford institutions the maximum amount of flexibility in designing credit products to meet the convenience and needs of the financial services marketplace.

(2) Individual sections of Chapter 3 of the act which deal with lending powers and charges are alternative bases for extensions of credit and have been consistently interpreted as such by the Department. Section 322 is an optional basis for lending authority since section 322(d) is explicitly permissive with respect to an institution's extension of credit under section 322. It is the position of the Department that section 6 of the SABCA (7 P. S. § 322 note) repealing acts and parts of acts which are inconsistent with section 322 is not intended to repeal the individual sections of Chapter 3 of the act which deal with lending powers and charges, including section 319 of the act (7 P. S. § 319).

(3) While section 322(b) provides that section 322 "shall govern" (See subsection (c)(1)) all direct and indirect extensions of credit by an institution, subject to enumerated exceptions, the Department finds that the section was designed to make it clear that institutions are authorized (not compelled) to use section 322, despite other statutes that might otherwise be deemed to apply. Thus, section 322(b) confirms that courts are not to apply Pennsylvania installment sales laws (such as the Goods and Services Installment Sales Act (69 P. S. §§ 1101—2303) or the Home Improvement Finance Act (73 P. S. §§ 500-101—500-602)) to invalidate seller-assisted loans made under the authority of section 322 (See subsection (c)(2)). An interpretation to the effect that section 322(b) exclusively governs all extensions of credit would conflict directly with paramount Federal law. Section 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C.A. § 1831d) and section 85 of the National Bank Act (12 U.S.C.A. § 85) authorize Pennsylvania-chartered institutions and National banks to "borrow" the periodic interest rates and other interest charges permitted by Pennsylvania law to other borrowers, such as licensees under the Consumer Discount Company Act (7 P. S. §§ 6201—6219) and the Secondary Mortgage Loan Act (7 P. S. §§ 6601—6626).

(4) The new section 322 does not purport to be applicable to extensions of credit or agreements to extend credit under open-end plans which are in effect prior to March 28, 1995. If, however, a creditor has the specific ability to change the terms of an agreement in existence prior to March 28, 1995, and the creditor elects to comply with section 322, then section 322 will be applicable to that existing credit by virtue of that election.

(b) *Agreements for the extension of credit.*

(1) *Formal requirements.*

(i) Section 322(d), which provides that an institution may extend credit under a written agreement fully completed prior to any signature by the customer, is designed to ensure that customers are fully advised of their legal commitments before becoming obligated to the issuer. It does not change

current law or require a change in current practices as to which documents must be signed. Thus, the term “agreement” need not be set forth in a single document and will be deemed to include a promissory note or credit line agreement and all related documentation, such as mortgages, other security agreements and credit insurance certificates.

(ii) With respect to credit cards, the typical procedure is for consumers to sign a credit application, and then receive an agreement, together with written information concerning the customer’s credit limit, at a subsequent date. The customer is then advised to sign the credit card to provide an authorized signature and is usually advised that the use of the card is governed by the terms of the cardholder agreement. The customer is thus given all cardholder contract information and Truth in Lending disclosures prior to using the credit card. The Department finds that this industry practice meets the requirements of an agreement under section 322(d).

(2) *Form and contents.*

(i) *Amounts of available credit.* Providing a customer with timely written information setting forth the “credit limit” satisfies section 322(d)’s requirement that a credit agreement disclose the amounts of available credit and the procedure or means by which it may be obtained. This requirement does not impose upon an institution the duty to disclose to a customer the institution’s practice of allowing customers to exceed stated credit limits where this practice exists, but an institution should disclose any applicable fee relating to this practice. This requirement does not prohibit the institution from adjusting the credit limit (upwards or downwards) with notice to the customer as is otherwise required.

(ii) *Interest rate limitations.* The interest rate limitation based upon Treasury Note yields will be established on the first business day in the quarter. Each quarter that this rate exceeds the NCUA rate, the Department will announce this rate and then publish it in the *Pennsylvania Bulletin*. Lenders are authorized to rely upon the rate limitation announced by the Department, recognizing that there will be a lag time between the calculation and publication of the rate. Section 322(d) includes a nonexclusive list of the types of fees and charges which an institution may impose in addition to periodic interest. Among the types of charges which this subsection does not explicitly list are charges typically referred to as “application fees, commitment fees, points.” The Department finds that these charges, while not specifically enumerated, are authorized to be made by institutions under the additional fee authority provided by section 322(d). The SABCA indicates that these charges are in addition to periodic interest charges and will not be included in any calculation of the maximum rate of interest under section 322(d)(iii) above.

(iii) *Default rights.* The Department also finds that section 322(d)(vi)’s prohibition against acceleration of a loan or repossession of collateral unless

there is a default pursuant to the credit agreement does not preclude an institution's use of "demand notes." This section's reference to "extension charges" in section 322(d)(v) does not impose on an institution a requirement that it disclose or declare the amount of that charge at the time an agreement is entered unless the charge will be imposed automatically without the customer's consent at the time of the extension.

(iv) *Balloon payments.* On loans requiring amortization of principal, the SABCA prohibits lenders from requiring a final payment more than double the regularly scheduled installment payment, exclusive of overdue or extended payments. There is no requirement under the SABCA for level payments or for any amortization of principal.

(3) *Changes in terms.*

(i) Section 322(f)(iv) provides for the option of the customer to agree to increases in periodic interest or charges on open end credit plans by incurring additional indebtedness but does not preclude other, more direct methods of customer consent, such as explicit written consent signed by the customer.

(ii) Section 322(f) states that no change may be made in a fixed rate of interest or other charges payable with respect to the outstanding balance of indebtedness or in the amount or due dates of required installment payments on closed-end credit unless there is a written consent of the customer at the time of the change except for an extension of any due date or an option granted by the institution to the customer to omit payments and except as may be otherwise provided in an agreement for an extension of credit which is not for personal, family or household purposes. This prohibition applies solely to closed-end credit. The payment schedule on a variable-rate closed-end loan for personal, family or household purposes may be modified in accordance with changes in the interest rate and a methodology disclosed in the loan documentation.

(4) *Extensions of credit through intermediaries.*

(i) In addition to the normal requirements of section 322, section 322(i) imposes specific requirements on closed end motor vehicle loans made through intermediaries. It does not restrict lenders from making other types of loans through intermediaries.

(ii) The SABCA does not preclude an institution licensed as a sales finance company from purchasing from a dealer an installment sale contract (when the contract finances a motor vehicle and other related goods or services) so long as the contract is pursuant to the Motor Vehicle Sales Finance Act. Essentially, an institution financing the purchase of goods or services through the seller may elect, at its option, to structure the credit extension as a direct loan under the SABCA (or any other applicable provision of law) or as the purchase of an installment sale contract under the Motor Vehicle Sales

Finance Act (69 P. S. §§ 601—637), Goods and Services Installment Sales Act or the Home Improvement Finance Act.

(c) *Case law.*

(1) In construing the language of a statute, there is a presumption that the drafters did not intend a result that is absurd, impossible of execution or unreasonable (1 Pa.C.S. § 1922) (relating to presumptions in ascertaining legislative intent). In interpreting statutes, Pennsylvania appellate courts have declined to construe “shall” as mandatory and “may” as discretionary. *Commonwealth v. Ferguson*, 514 Pa. Super. 84, 552 A.2d 1075, 1079 (1988). Rather, the courts will look to the intention of the Legislature:

[I]t has long been the rule in Pennsylvania that the word “shall,” although usually mandatory or imperative when used in a statute, may nonetheless be directory or permissive, depending upon the Legislature’s intent; we ascertain this intent after reviewing the entire act, its nature, object and purpose, the respective consequences of various constructions of the particular statute, and after determining whether the action allegedly mandated by the statute is the essence of the thing to be done pursuant to it. *Tyler v. King*, 344 Pa. Super. 78, 496 A.2d 16 (1985)

(2) *See, for example, Anderson v. Automobile Fund*, 258 Pa. Super. 1, 391 A.2d 642 (1978) (court evenly divided on recharacterizing loan as installment sale contract subject to Motor Vehicle Sales Finance Act); *In re Brown*, 134 B. R. 134 (Bkrcty. E.D. Pa. 1991) (loan financing home improvement recharacterized as installment sale subject to Pennsylvania Home Improvement Finance Act.)

Source

The provisions of this § 13.51 adopted May 26, 1995, effective May 27, 1995, apply retroactively to March 28, 1995, 25 Pa.B. 2098.

EXCEPTION TO DEFINITION OF “BRANCH”—STATEMENT OF POLICY

Authority

The provisions of these §§ 13.61—13.68 issued under sections 102 and 103 of the Banking Code of 1965 (7 P. S. §§ 102 and 103); and sections 201 and 202 of the Department of Banking Code (71 P. S. §§ 733-201 and 733-202), unless otherwise noted.

Source

The provisions of these §§ 13.61—13.68 adopted December 13, 1996, effective December 14, 1996, 26 Pa.B. 5989, unless otherwise noted.

§ 13.61. Definitions.

The following words and terms, when used in this section and §§ 13.62—13.68, have the following meanings, unless the context clearly indicates otherwise:

Banking institution—

(i) A bank, bank and trust company, trust company and savings bank, chartered under the laws of the Commonwealth.

(ii) A National bank.

(iii) A bank, bank and trust company, trust company and savings bank which is not regulated by the Office of Thrift Supervision, chartered under the laws of another state or territory of the United States.

Limited purpose banking office—An office of a banking institution which performs limited activities, such as those in § 13.63 (relating to permissible activities), on behalf of the banking institution but which does not:

(i) Accept or pay out deposits.

(ii) Make loans.

(iii) Pay checks.

(iv) Accept or administer any type of accounts, including trust or other fiduciary accounts.

Non-Pennsylvania banking institution—A banking institution chartered under the laws of the United States, Puerto Rico or a state or territory of the United States other than the Commonwealth.

Pennsylvania banking institution—A banking institution chartered under the laws of the Commonwealth.

Cross References

This section cited in 10 Pa. Code § 13.62 (relating to application); 10 Pa. Code § 13.63 (relating to permissible activities); 10 Pa. Code § 13.65 (relating to information required); 10 Pa. Code § 13.66 (relating to designation as a limited purpose banking office); and 10 Pa. Code § 13.67 (relating to authority of the Department).

§ 13.62. Application.

Sections 13.61, 13.63—13.68 and this section address limited purpose banking offices located in this Commonwealth which are established by Commonwealth and non-Pennsylvania banking institutions, as defined in § 13.61 (relating to definitions). In addition, these sections address Pennsylvania banking institutions locating limited purpose banking offices in other states. The establishment and maintenance of a limited purpose banking office located in this Commonwealth by a non-Pennsylvania banking institution and the establishment in another state of a limited purpose banking office by a Pennsylvania banking institution may not be in violation of, or otherwise contrary to, the laws of the other relevant state.

Cross References

This section cited in 10 Pa. Code § 13.61 (relating to definitions); 10 Pa. Code § 13.63 (relating to permissible activities); 10 Pa. Code § 13.65 (relating to information required); 10 Pa. Code § 13.66 (relating to designation as a limited purpose banking office); and 10 Pa. Code § 13.67 (relating to authority of the Department).

§ 13.63. Permissible activities.

(a) The following activities may be conducted at a limited purpose banking office of a banking institution, if, in instances where another state is involved, the performance of the activities at the limited purpose banking office does not violate, and is not otherwise contrary to, the laws of the other relevant state:

- (1) Loan production office activities, including:
 - (i) Soliciting loans, and, in connection therewith, assembling credit information.
 - (ii) Making property inspections and appraisals.
 - (iii) Securing title information.
 - (iv) Preparing applications for loans, including making recommendations with respect to action thereon.
 - (v) Soliciting investors to purchase loans from the banking institution.
 - (vi) Seeking to have the investors contract with the banking institution for the servicing of the loans.
 - (vii) Engaging in other similar agent-type activities.
- (2) Representative office activities, including: representational functions, such as soliciting banking and trust business, marketing services or acting as a liaison with customers on behalf of the banking institution:
 - (i) A banking institution may only solicit fiduciary business or other types of trust business at the limited purpose banking office if the banking institution is authorized to engage in fiduciary and trust activities under its laws of incorporation.
 - (ii) A banking institution which is chartered by or is headquartered in a state other than this Commonwealth may not act as a fiduciary or establish an office to conduct a fiduciary business in this Commonwealth, beyond the activities permitted in §§ 13.61, 13.62, 13.64—13.68 and this section, in contradiction of section 106(b) of the act (7 P. S. § 106(b)).
- (3) Clerical, back office type of activities of the banking institution.
- (4) Administrative activities related to the premises or personnel of the limited purpose banking office.
- (5) Other similar activities, subject to the Department written nonobjection.

(b) The activities in subsection (a)(1) represent those activities which may be conducted by a loan production office, under section 102 (h)(v) of the act (7 P. S. § 102(h)(v)), and are consistent with the regulations of the Federal Reserve Board in 12 CFR 250.141 (h) (relating to member bank purchase of stock of “operations subsidiaries”).

Cross References

This section cited in 10 Pa. Code § 13.61 (relating to definitions); 10 Pa. Code § 13.62 (relating to application); 10 Pa. Code § 13.63 (relating to permissible activities); 10 Pa. Code § 13.65 (relating to information required); 10 Pa. Code § 13.66 (relating to designation as a limited purpose banking office); and 10 Pa. Code § 13.67 (relating to authority of the Department).

§ 13.64. Impermissible activities.

A limited purpose banking office of a banking institution may not:

(1) Make final business decisions, other than decisions relating to the premises or personnel of the limited purpose banking office, for the account of the banking institution it represents, including contracting for or accepting any deposit or deposit-like liabilities on behalf of the banking institution.

(2) Disburse loan funds, transmit funds, post loan repayments or be responsible for making the final decisions to approve loans.

(3) With respect to a banking institution which possesses fiduciary powers under its laws of incorporation, a limited purpose banking office of such a banking institution may not do any of the following: make final decisions regarding fiduciary account applications such as accepting fiduciary or other trust accounts, accept deposits for fiduciary or other trust accounts or administer fiduciary accounts. In addition, a non-Pennsylvania banking institution shall continue to satisfy the reciprocity and other requirements imposed by the Department under section 106(b) of the act (7 P. S. § 106(b)) to act as a fiduciary in this Commonwealth.

Cross References

This section cited in 10 Pa. Code § 13.61 (relating to definitions); 10 Pa. Code § 13.62 (relating to application); 10 Pa. Code § 13.63 (relating to permissible activities); 10 Pa. Code § 13.65 (relating to information required); 10 Pa. Code § 13.66 (relating to designation as a limited purpose banking office); and 10 Pa. Code § 13.67 (relating to authority of the Department).

§ 13.65. Information required.

(a) A banking institution seeking to establish and maintain a limited purpose banking office under §§ 13.61—13.64, 13.66—13.68 and this section shall submit a prior notice to the Department's Manager of Corporate Applications in letter form. The Department may object to the establishment and maintenance of a limited purpose banking office within 20 business days of receiving the notice. If the Department objects to the notice, the banking institution may not establish or maintain the limited purpose banking office until the Department approves the action. The following information shall be included in the notice required under this section:

(1) The name and address of the principal office of the banking institution.

(2) The exact address and telephone number of the limited purpose banking office to be established.

- (3) The name of the banking institution's officer responsible for the activities of the limited purpose banking office.
- (4) A complete description of the activities to be performed at the proposed limited purpose banking office.
- (5) With respect to a non-Pennsylvania banking institution seeking to establish a limited purpose banking office in this Commonwealth or a Pennsylvania banking institution seeking to establish a limited purpose banking office in another state, a legal opinion providing that the establishment and maintenance of the proposed limited purpose banking office does not violate, and is not otherwise contrary to, the laws of the other relevant state, including reference to the applicable statutory or regulatory authority, or both, of the other state.
- (6) A statement providing that the banking institution has obtained the regulatory approvals required to establish and maintain the proposed limited purpose banking office.
- (7) Other information which is deemed necessary by the Department.
- (b) Changes in the information submitted to the Department shall be promptly reported to the Department.

Cross References

This section cited in 10 Pa. Code § 13.61 (relating to definitions); 10 Pa. Code § 13.62 (relating to application); 10 Pa. Code § 13.63 (relating to permissible activities); 10 Pa. Code § 13.66 (relating to designation as a limited purpose banking office); and 10 Pa. Code § 13.67 (relating to authority of the Department).

§ 13.66. Designation as a limited purpose banking office.

Office signs, stationery, telephone listings or print advertisements related to a limited purpose banking office established under §§ 13.61—13.65, 13.67, 13.68 and this section shall clearly indicate that the office is a representative type of office and is not a branch of the banking institution.

Cross References

This section cited in 10 Pa. Code § 13.61 (relating to definitions); 10 Pa. Code § 13.62 (relating to application); 10 Pa. Code § 13.63 (relating to permissible activities); 10 Pa. Code § 13.65 (relating to information required); 10 Pa. Code § 13.66 (relating to designation as a limited purpose banking office); and 10 Pa. Code § 13.67 (relating to authority of the Department).

§ 13.67. Authority of the Department.

(a) When deemed necessary by the Department, a limited purpose banking office established and maintained under §§ 13.61—13.66, 13.68 and this section shall be subject to supervision, regulation, examination and orders issued by the Department. The Department has determined not to assess a fee associated with the establishment or maintenance of a limited purpose banking office. The Department reserves the right to assess a fee associated with the establishment,

examination, supervision or regulation of a limited purpose banking office established under §§ 13.61—13.66, 13.68 and this section when deemed appropriate by the Department.

(b) Failure of a banking institution to comply with §§ 13.61—13.66, 13.68 and this section may cause the limited purpose banking office to be viewed by the Department as a branch, causing the office to be subject to the requirements related to bank branch offices contained in the act. Accordingly, the Department may take any enforcement action it deems appropriate under these circumstances.

§ 13.68. Application of other Pennsylvania laws.

A non-Pennsylvania banking institution may be required to register with the Department of State to do business in this Commonwealth under 15 Pa.C.S. Chapter 41 (relating to foreign business corporations). The Department recommends that a non-Pennsylvania banking institution seeking to establish a limited purpose banking office in this Commonwealth contact the Department of State to determine whether the banking institution must register with that agency to do business in this Commonwealth.

Cross References

This section cited in 10 Pa. Code § 13.61 (relating to definitions); 10 Pa. Code § 13.62 (relating to application); 10 Pa. Code § 13.63 (relating to permissible activities); 10 Pa. Code § 13.65 (relating to information required); 10 Pa. Code § 13.66 (relating to designation as a limited purpose banking office); and 10 Pa. Code § 13.67 (relating to authority of the Department).

[Next page is 14-1.]

13-22

(223192) No. 267 Feb. 97

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