

DEPARTMENT OF STATE
OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 **Del.C.** §121(b))
5 **DE Admin. Code** §2108/2209; §2302 and §3402

PROPOSED

PUBLIC NOTICE

Summary

The State Bank Commissioner proposes to adopt new Regulations 2108/2209 (“Statement on Subprime Mortgage Lending”), new Regulation 2302 (“Exemptions”), and new Regulation 3402 (“Surety Bond or Irrevocable Letter of Credit”).

Proposed new Regulation 2108/2209 parallels a Statement jointly issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration, and is being adopted to provide regulatory consistency between mortgage brokers and mortgage lenders regulated under Chapters 21 and 22 respectively of Title 5 of the Delaware Code that are not affiliated with a bank holding company or an insured financial institution, and the financial institutions that are subject to that federal Statement.

Proposed new Regulation 2302 implements §2304(c) of Title 5 of the Delaware Code by establishing criteria and procedures relating to exemptions from Chapter 23 of Title 5.

Proposed New Regulation 3402 implements §3411 of Title 5 of the Delaware Code by establishing criteria for determining the amount of surety bonds or irrevocable letters of credit required by §3411.

The State Bank Commissioner would adopt the proposed new regulations on or after October 2, 2007. Other regulations issued by the State Bank Commissioner are not affected by these proposals. The State Bank Commissioner is issuing these regulations in accordance with Title 5 of the Delaware Code.

Comments

Copies of the proposed new regulations are published in the *Delaware Register of Regulations*. Copies are also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and are available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed new regulations should be adopted, rejected or modified. Written materials submitted will be available for inspection at the above address. Comments must be received at or before the public hearing scheduled for 10:00 a.m. October 2, 2007.

Public Hearing

A public hearing on the proposed regulation will be held in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 on Tuesday, October 2, 2007, commencing at 10:00 a.m. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the **Delaware Code**.

2108/2209 Statement on Subprime Mortgage Lending
5 Del.C. §2110(a), §2210(a)

Effective Date [Proposed]

1.0 Introduction and Background

1.1 On June 29, 2007, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies) publicly released the Statement on Subprime Mortgage Lending (Subprime Statement).

1.1.1 The Agencies developed the Subprime Statement to address emerging risks associated with certain subprime mortgage products and lending practices. In particular, the Agencies are concerned about the growing use of adjustable rate mortgage (ARM) products¹ that provide low initial payments based on a fixed introductory rate that expires after a short period, and then adjusts to a variable rate plus a margin for the remaining term of the loan. These products could result in payment shock to the borrower. The Agencies are concerned that these products, typically offered to subprime borrowers, present heightened risks to lenders and borrowers. Often, these products have additional characteristics that increase risk. These include qualifying borrowers based on limited or no documentation of income or imposing substantial prepayment penalties or prepayment penalty periods that extend beyond the initial fixed interest rate period. In addition, borrowers may not be adequately informed of product features and risks, including their responsibility to pay taxes and insurance, which might be separate from their mortgage payments.

1.1.2 These products originally were extended to customers primarily as a temporary credit accommodation in anticipation of early sale of the property or in expectation of future earnings growth. However, these loans have more recently been offered to subprime borrowers as “credit repair” or “affordability” products. The Agencies are concerned that many subprime borrowers may not have sufficient financial capacity to service a higher debt load, especially if they were qualified based on a low introductory payment. The Agencies are also concerned that subprime borrowers may not fully understand the risks and consequences of obtaining this type of ARM loan. Borrowers who obtain these loans may face unaffordable monthly payments after the initial rate adjustment, difficulty in paying real estate taxes and insurance that were not escrowed, or expensive refinancing fees, any of which could cause borrowers to default and potentially lose their homes.

1.2 Like the interagency Guidance on Nontraditional Mortgage Product Risks that was published in the *Federal Register* on October 4, 2006 (Volume 71, Number 192, Page 58609-58618), the interagency Subprime Statement applies to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions.

1.3 Recognizing that the interagency Subprime Statement does not apply to subprime loan originations of independent mortgage lenders and mortgage brokers, the Delaware State Bank Commissioner (Commissioner) is adopting this parallel Statement. The Commissioner strongly supports the purpose of the Subprime Statement and is committed to promoting uniform application of the Statement’s origination and underwriting standards for all mortgage brokers and lenders (herein referred to as providers).

1.4 The Subprime Statement identifies many important standards for subprime lending, and the Commissioner supports additional efforts to enhance subprime lending oversight. For instance, the Subprime Statement encourages depository institutions to consider a borrower’s housing-related expenses in the course of determining a borrower’s ability to repay the subprime mortgage loan. However, the Agencies did not explicitly encourage the consideration of total monthly debt obligations. Rather than create confusion or adopt a higher standard, the Commissioner has determined to mirror the interagency statement. The Commissioner will continue to work with the Agencies and other states to improve industry-wide mortgage lending practices.

1.5 The following Statement will assist in promoting consistent regulation in the mortgage market and clarify how providers can offer subprime loans in a safe and sound manner that clearly discloses the risks that borrowers may assume.

1.6 In order to maintain regulatory consistency, this Statement substantially mirrors the interagency Subprime Statement, except for the removal of sections not applicable to non-depository institutions.

1. For example, ARMs known as “2/28” loans feature a fixed rate for two years and then adjust to a variable rate for the remaining 28 years. The spread between the initial fixed interest rate and the fully indexed interest rate in effect at loan origination typically ranges from 300 to 600 basis points.

2.0 Subprime Mortgage Lending

2.1 The Commissioner is adopting this Statement on Subprime Mortgage Lending (Statement) to address emerging issues and questions relating to subprime mortgage lending practices. The term “subprime” refers to the credit characteristics of individual borrowers. Subprime borrowers typically have weakened credit histories that include payment delinquencies, and possibly more severe problems such as charge-offs, judgments, and bankruptcies. They may also display reduced repayment capacity as measured by credit scores, debt-to-income (DTI) ratios, or other criteria that may encompass borrowers with incomplete credit histories. “Subprime loans” are loans to borrowers displaying one or more of these characteristics at the time of origination or purchase. Such loans have a higher risk of default than loans to prime borrowers. Generally subprime borrowers will display a range of credit risk characteristics that may include one or more of the following:

2.1.1 Two or more 30-day delinquencies in the last 12 months, or one or more 60-day delinquencies in the last 24 months;

2.1.2 Judgment, foreclosure, repossession, or charge-off in the prior 24 months;

2.1.3 Bankruptcy in the last 5 years;

2.1.4 Relatively high default probability as evidenced by, for example, a credit bureau risk score (FICO) of 660 or below (depending on the product/collateral), or other bureau or proprietary scores with an equivalent default probability likelihood; and/or

2.1.5 Debt service-to-income ratio of 50% or greater, or otherwise limited ability to cover family living expenses after deducting total monthly debt-service requirements from monthly income.

2.2 This list is illustrative rather than exhaustive and is not meant to define specific parameters for all subprime borrowers. Additionally, this definition may not match all market or institution specific subprime definitions, but should be viewed as a starting point from which the Commissioner will expand examination efforts.²

2.3 The Commissioner is concerned that borrowers may not fully understand the risks and consequences of obtaining products that can cause payment shock.³ In particular, the Commissioner is concerned with certain adjustable-rate mortgage (ARM) products typically⁴ offered to subprime borrowers that have one or more of the following characteristics:

2.3.1 Low initial payments based on a fixed introductory rate that expires after a short period and then adjusts to a variable index rate plus a margin for the remaining term of the loan;⁵

2.3.2 Very high or no limits on how much the payment amount or the interest rate may increase (“payment or rate caps”) on reset dates;

2.3.3 Limited or no documentation of borrowers’ income;

2.3.4 Product features likely to result in frequent refinancing to maintain an affordable monthly payment; and/or

2.3.5 Substantial prepayment penalties and/or prepayment penalties that extend beyond the

2. “Subprime” and “subprime loans” are defined by the 2001 *Interagency Expanded Guidance for Subprime Lending Programs*. To promote consistency and uniformity, the Commissioner supports these definitions for the purposes of this Statement.

3. Payment shock refers to a significant increase in the amount of the monthly payment that generally occurs as the interest rate adjusts to a fully indexed basis. Products with a wide spread between the initial interest rate and the fully indexed rate that do not have payment caps or periodic interest rate caps, or that contain very high caps, can produce significant payment shock.

4. As noted by Agencies in the final statement, the Subprime Statement focuses on subprime borrowers; however, the statement applies to ARM products that have one or more characteristics that can cause payment shock. Providers should look to the principles of this statement when such ARM products are offered to non-subprime borrowers.

5. For example, ARMs known as “2/28” loans feature a fixed rate for two years and then adjust to a variable rate for the remaining 28 years. The spread between the initial fixed interest rate and the fully indexed interest rate in effect at loan origination typically ranges from 300 to 600 basis points.

initial fixed interest rate period.

2.4 Products with one or more of these features present substantial risks to both consumers and providers. These risks are increased if borrowers are not adequately informed of the product features and risks, including their responsibility for paying real estate taxes and insurance, which may be separate from their monthly mortgage payments. The consequences to borrowers could include: being unable to afford the monthly payments after the initial rate adjustment because of payment shock; experiencing difficulty in paying real estate taxes and insurance that were not escrowed; incurring expensive refinancing fees, frequently due to closing costs and prepayment penalties, especially if the prepayment penalty period extends beyond the rate adjustment date; and losing their homes. Consequences to providers may include unwarranted levels of credit, legal, compliance, reputation, and liquidity risks due to the elevated risks inherent in these products.

2.5 The Commissioner notes that many of these concerns are addressed in existing interagency guidance.⁶ The Commissioner recognizes that these guidance documents may not apply to state-supervised providers. However, the Commissioner believes these guidelines provide sound principles for mortgage lending as a reference for state-supervised providers.

2.6 While Regulation 2107/2208 *Guidance on Nontraditional Mortgage Product Risks* may not explicitly pertain to products with the characteristics addressed in this Statement, it outlines prudent underwriting and consumer protection principles that providers also should consider with regard to subprime mortgage lending. This Statement reiterates many of the principles addressed in existing guidance relating to prudent risk management practices and consumer protection laws.⁷

3.0 Risk Management Practices: Predatory Lending Considerations

3.1 Subprime lending is not synonymous with predatory lending, and loans with features described above are not necessarily predatory in nature. However, providers should ensure that they do not engage in the types of predatory lending practices discussed in the *Expanded Subprime Guidance*. Typically, predatory lending involves at least one of the following elements:

3.1.1 Making loans based predominantly on the foreclosure or liquidation value of a borrower's collateral rather than on the borrower's ability to repay the mortgage according to its terms;

3.1.2 Inducing a borrower to repeatedly refinance a loan in order to charge high points and fees each time the loan is refinanced ("loan flipping"); or

3.1.3 Engaging in fraud or deception to conceal the true nature of the mortgage loan obligation, or ancillary products, from an unsuspecting or unsophisticated borrower.

3.2 Loans to borrowers who do not demonstrate the capacity to repay the loan, as structured, from sources other than the collateral pledged may lack sufficient consumer protection safeguards and are generally considered unsafe and unsound. Examiners are instructed to criticize such lending practices in the Report of Examination. Further, examiners are instructed to refer any loans with the aforementioned characteristics to the Commissioner for additional review.

3.3 Providers offering mortgage loans such as these face an elevated risk that their conduct will violate Section 5 of the Federal Trade Commission Act (FTC Act) or other state laws, which prohibit unfair or deceptive acts or practices.

4.0 Risk Management Practices: Underwriting Standards

4.1 The 1993 interagency *Real Estate Guidelines* provide underwriting standards for all real estate loans and state that prudently underwritten real estate loans should reflect all relevant credit factors, including the capacity of the borrower to adequately service the debt. Providers should refer to Regulation 2107/2208, which

6. The most prominent are the 1993 *Interagency Guidelines for Real Estate Lending (Real Estate Guidelines)*, the 1999 *Interagency Guidance on Subprime Lending*, and the 2001 *Expanded Guidance for Subprime Lending Programs (Expanded Subprime Guidance)*.

7. As with the *Interagency Guidance on Nontraditional Mortgage Product Risks*, 71 FR 58609 (October 4, 2006), the interagency Subprime Statement applies to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions. This Statement is applicable to all state-supervised mortgage providers.

details similar criteria for qualifying borrowers for products that may result in payment shock.

4.2 Prudent qualifying standards recognize the potential effect of payment shock in evaluating a borrower's ability to service debt. A provider's analysis of a borrower's repayment capacity should include an evaluation of the borrower's ability to repay the debt by its final maturity at the fully indexed rate,⁸ assuming a fully amortizing repayment schedule.⁹

4.3 One widely accepted approach in the mortgage industry is to quantify a borrower's repayment capacity by a debt-to-income (DTI) ratio. A provider's DTI analysis should include, among other things, an assessment of a borrower's total monthly housing-related payments (e.g., principal, interest, taxes, and insurance, or what is commonly known as PITI) as a percentage of gross monthly income.¹⁰

4.4 This assessment is particularly important if the provider relies upon reduced documentation or allows other forms of risk layering. Risk-layering features in a subprime mortgage loan may significantly increase the risks to both the provider and the borrower. Therefore, a provider should have clear policies governing the use of risk-layering features, such as reduced documentation loans or simultaneous second lien mortgages. When risk-layering features are combined with a mortgage loan, a provider should demonstrate the existence of effective mitigating factors that support the underwriting decision and the borrower's repayment capacity.

4.5 Recognizing that loans to subprime borrowers present elevated credit risk, providers should verify and document the borrower's income (both source and amount), assets and liabilities. Stated income and reduced documentation loans to subprime borrowers should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. Reliance on such factors also should be documented. Typically, mitigating factors arise when a borrower with favorable payment performance seeks to refinance an existing mortgage with a new loan of a similar size and with similar terms, and the borrower's financial condition has not deteriorated. Other mitigating factors might include situations where a borrower has substantial liquid reserves or assets that demonstrate repayment capacity and can be verified and documented by the provider. However, a higher interest rate is not considered an acceptable mitigating factor.

5.0 Workout Arrangements

5.1 The Commissioner encourages providers to work constructively with residential borrowers who are in default or whose default is reasonably foreseeable.

5.2 Prudent workout arrangements that are consistent with safe and sound lending practices are generally in the long-term best interest of both the provider and the borrower.

5.3 Providers should follow prudent underwriting practices in determining whether to consider a loan modification or a workout arrangement.¹¹ Such arrangements can vary widely based on the borrower's financial capacity. For example, a provider might consider modifying loan terms, including converting loans with variable rates into fixed-rate products to provide financially stressed borrowers with predictable payment requirements.

5.4 The Commissioner will not criticize providers that pursue reasonable workout arrangements with borrowers. Further, existing supervisory guidance and applicable accounting standards do not require providers to

8. The fully indexed rate equals the index rate prevailing at origination plus the margin to be added to it after the expiration of an introductory interest rate. For example, assume that a loan with an initial fixed rate of 7% will reset to the six-month London Interbank Offered Rate (LIBOR) plus a margin of 6%. If the six-month LIBOR rate equals 5.5%, providers should qualify the borrower at 11.5% (5.5% + 6%), regardless of any interest rate caps that limit how quickly the fully indexed rate may be reached.

9. The fully amortizing payment schedule should be based on the term of the loan. For example, the amortizing payment for a "2/28" loan would be calculated based on a 30-year amortization schedule. For balloon mortgages that contain a borrower option for an extended amortization period, the fully amortizing payment schedule can be based on the full term the borrower may choose.

10. A prudent practice used by the industry is to include a borrower's total monthly debt obligations as a percentage of gross monthly income in the DTI analysis.

11. For those providers that portfolio loans, they may need to account for workout arrangements as troubled debt restructurings and should follow generally accepted accounting principles in accounting for these transactions.

immediately foreclose on the collateral underlying a loan when the borrower exhibits repayment difficulties. For those providers that portfolio loans, they should identify and report credit risk, maintain an adequate allowance for loan losses, and recognize credit losses in a timely manner.

6.0 Consumer Protection Principles

6.1 Fundamental consumer protection principles relevant to the underwriting and marketing of mortgage loans include:

6.1.1 Approving loans based on the borrower's ability to repay the loan according to its terms;
and

6.1.2 Providing information that enables consumers to understand material terms, costs, and risks of loan products at a time that will help the consumer select a product.

6.2 Communications with consumers, including advertisements, oral statements, and promotional materials, should provide clear and balanced information about the relative benefits and risks of the products. This information should be provided in a timely manner to assist consumers in the product selection process, not just upon submission of an application or at consummation of the loan. Providers should not use such communications to steer consumers to these products to the exclusion of other products offered by the provider for which the consumer may qualify.

6.3 Information provided to consumers should clearly explain the risk of payment shock and the ramifications of prepayment penalties, balloon payments, and the lack of escrow for taxes and insurance, as necessary. The applicability of prepayment penalties should not exceed the initial reset period. In general, borrowers should be provided a reasonable period of time (typically at least 60 days prior to the reset date) to refinance without penalty.

6.4 Similarly, if borrowers do not understand that their monthly mortgage payments do not include taxes and insurance, and they have not budgeted for these essential homeownership expenses, they may be faced with the need for significant additional funds on short notice.¹² Therefore, mortgage product descriptions and advertisements should provide clear, detailed information about the costs, terms, features, and risks of the loan to the borrower. Consumers should be informed of:

6.4.1 *Payment Shock.* Potential payment increases, including how the new payment will be calculated when the introductory fixed rate expires.¹³

6.4.2 *Prepayment Penalties.* The existence of any prepayment penalty, how it will be calculated, and when it may be imposed.

6.4.3 *Balloon Payments.* The existence of any balloon payment.

6.4.4 *Cost of Reduced Documentation Loans.* Whether there is a pricing premium attached to a reduced documentation or stated income loan program.

6.4.5 *Responsibility for Taxes and Insurance.* The requirement to make payments for real estate taxes and insurance in addition to their loan payments, if not escrowed, and the fact that taxes and insurance costs can be substantial.

7.0 Control Systems

7.1 Providers should develop strong control systems to monitor whether actual practices are consistent with their policies and procedures. Systems should address compliance and consumer information concerns, as well as safety and soundness, and encompass both institution personnel and applicable third parties.

12. Providers generally can address these concerns most directly by requiring borrowers to escrow funds for real estate taxes and insurance.

13. To illustrate: a borrower earning \$42,000 per year obtains a \$200,000 "2/28" mortgage loan. The loan's two-year introductory fixed interest rate of 7% requires a principal and interest payment of \$1,331. Escrowing \$200 per month for taxes and insurance results in a total monthly payment of \$1,531 (\$1,331 + \$200), representing a 44% DTI ratio. A fully indexed interest rate of 11.5% (based on a six-month LIBOR index rate of 5.5% plus a 6% margin) would cause the borrower's principal and interest payment to increase to \$1,956. The adjusted total monthly payment of \$2,156 (\$1,956 + \$200 for taxes and insurance) represents a 41% increase in the payment amount and results in a 62% DTI ratio.

such as mortgage brokers or correspondents.

7.2 Important controls include establishing appropriate criteria for hiring and training loan personnel, entering into and maintaining relationships with third parties, and conducting initial and ongoing due diligence on third parties. Providers also should design compensation programs that avoid providing incentives for originations inconsistent with sound underwriting and consumer protection principles, and that do not result in the steering of consumers to these products to the exclusion of other products for which the consumer may qualify.

7.3 Providers should have procedures and systems in place to monitor compliance with applicable laws and regulations, third-party agreements and internal policies. A provider's controls also should include appropriate corrective actions in the event of failure to comply with applicable laws, regulations, third-party agreements or internal policies. In addition, providers should initiate procedures to review consumer complaints to identify potential compliance problems or other negative trends.

8.0 Supervisory Review

The Commissioner will carefully review risk management and consumer compliance processes, policies, and procedures. The Commissioner will take action against providers that exhibit predatory lending practices, violate consumer protection laws or fair lending laws, engage in unfair or deceptive acts or practices, or otherwise engage in unsafe or unsound lending practices.

2302 Exemptions

5 Del.C. §2318

Effective Date: [Proposed]

1.0 Purpose

This regulation governs the procedures and requirements for exemptions pursuant to 5 Del.C. §2304(c).

2.0 Definitions

For the purpose of this regulation, the following definitions apply:

"Commissioner" means the State Bank Commissioner.

"Exempt person" means a person exempt from any of the requirements of the Statute pursuant to 5 Del.C. §2304(c) and this regulation.

"Person" means any individual, partnership, association, joint stock association or corporation, but does not include the United States government or the government of the State of Delaware.

"Statute" means 5 Del.C. Ch. 23.

3.0 General Exemption

3.1 Banks, trust companies, credit unions, building and loan associations and savings and loan associations, organized under the law of any state in the United States of America or the United States of America, which either are authorized to do business in the State of Delaware, or which act through a contractor or agent authorized to do business in this State are exempt from all requirements of the Statute. Nothing contained in this regulation shall be construed to enlarge or limit the rights that any of the persons listed in this Section 3.1 have under any existing law.

3.2 Agents of an exempt person are exempt from the Statute to the same extent as the exemption granted to their principal.

3.3 Persons exempt from the Statute pursuant to this section 3.0 are not subject to any other provisions of this regulation.

4.0 Grant of Exemptions

4.1 Upon finding the qualifications of Section 5.0 of this regulation have been met, the Commissioner may grant an exemption to:

4.1.1 any person whose operations and financial condition with respect to the transmission of money and/or the sale or issuance of checks are regularly examined, either separately or as part of an examination of an affiliate, by an agency of the State of Delaware, another state, or the United States of America; or

4.1.2 any other person whom the Commissioner determines to be inappropriate to include within the coverage of the Statute.

5.0 Qualifications for Exemption

5.1 An exempt person shall at all times maintain:

5.1.1 a net worth of at least \$100,000 computed in accordance with generally accepted accounting principles; and

5.1.2 such financial responsibility, financial condition, financial and business experience, character, and general fitness as reasonably to warrant the belief that its business will be conducted honestly, fairly, equitably, carefully, and efficiently.

5.2 The Commissioner may investigate and consider the qualifications of the applicant for the exemption, including principals, officers and directors of an applicant, in determining whether the qualifications for an exemption have been met.

6.0 Nature of Exemption

An exemption shall include at minimum an exemption from the licensing and surety bond requirements of the Statute. The Commissioner may also grant an exemption from any other provision of the Statute that the Commissioner deems appropriate.

7.0 Expiration

Except as otherwise provided in this regulation, exemptions shall expire one year from the date granted.

8.0 Application and Renewals

8.1 Any person who desires an exemption from the Statute shall apply to the Commissioner on such forms as the Commissioner may designate.

8.2 An exempt person shall apply for a renewal of the exemption at least 30 days before the expiration of the exemption on such forms as the Commissioner may designate.

9.0 Changed Information

Exempt persons shall notify the Commissioner within 30 days of any changes in the information contained in the application for its exemption or the renewal thereof.

10.0 Extensions on License Applications

An exempt person who applies for a license under the Statute before the expiration or revocation of its exemption shall have the exemption automatically extended until a final decision is made on the license application.

11.0 Suspension or Revocation

11.1 The Commissioner may suspend or revoke any exemption upon a finding that:

11.1.1 the exempt person has violated any statute, judicial order, administrative order, rule, regulation or other law of the State of Delaware, another state, or the United States of America;

11.1.2 any fact or condition exists, which if it had existed at the time of the application or renewal for the exemption, would have warranted the Commissioner in refusing to issue the exemption or its renewal; or

11.1.3 the exempt person has engaged in business activities or practices in connection with any business for which the exemption was granted, which could be deemed unfair or deceptive by nature of intent, including the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof, or otherwise create false expectations on the part of the consumer.

11.2 No exemption shall be suspended or revoked except in accordance with the procedures for suspending or revoking a license that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.

11.3 No suspension or revocation of an exemption shall impair or affect the obligation of any preexisting lawful contract between the exempt person and any other person.

12.0 Exemption Denials

12.1 If the Commissioner denies an exemption or the renewal of an exemption, the Commissioner shall promptly send the applicant or exempt person a written notice to that effect which states the grounds for the denial.

12.2 The applicant or exempt person may request that the Commissioner hold a hearing to reconsider that denial, in accordance with the procedures for requesting a hearing on the denial of a license application that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.

12.3 The Commissioner may extend the term of any exemption whose renewal has been denied until the final resolution of that hearing.

13.0 Fees

13.1 The investigation fee for an initial application for an exemption shall be \$250.00.

13.2 The investigation fee for renewal of an exemption shall be \$100.00. A renewal application must be submitted more than 30 days in advance of the exemption's expiration.

13.3 A renewal application submitted less than 30 days in advance of the exemption's expiration shall be treated as a new application for an exemption and shall be subject to the investigation fee of \$250.

3402 Surety Bond or Irrevocable Letter of Credit
5 Del.C. §3409

Effective Date: [Proposed]

1.0 A licensee shall file with the State Bank Commissioner (the "Commissioner") an original corporate surety bond or an irrevocable letter of credit in a form satisfactory to the Commissioner in accordance with 5 Del.C. §3411.

2.0 A licensee shall obtain a surety bond or irrevocable letter of credit in a minimum amount in accordance with the following table based upon the maximum dollar value of the trust funds it held as a trustee during the twelve month period ending October 31 that precedes the calendar year for which the bond or irrevocable letter of credit is effective:

<u>Maximum Dollar Value of Trust Funds Held by Licensee</u>	<u>Minimum Required Amount of Surety Bond or Irrevocable Letter of Credit</u>
<u>not more than \$50,000</u>	<u>\$50,000</u>
<u>\$50,001 - \$75,000</u>	<u>\$75,000</u>
<u>\$75,001 - \$100,000</u>	<u>\$100,000</u>
<u>\$100,001 - \$125,000</u>	<u>\$125,000</u>
<u>\$125,001 - \$150,000</u>	<u>\$150,000</u>
<u>\$150,001 - \$175,000</u>	<u>\$175,000</u>
<u>\$175,001 and over</u>	<u>\$200,000</u>

3.0 The Commissioner may require a licensee to obtain a larger surety bond or irrevocable letter of credit based upon the licensee's individual circumstances.

4.0 A licensee that obtains a surety bond or irrevocable letter of credit that is effective for more than one year shall review on November 1 of each year the dollar value of the trust funds it held during the previous twelve month period to ensure that the minimum required amount for its surety bond or irrevocable letter of credit is maintained for the following calendar year.