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# The New Hampshire BANKING DEPARTMENT NEWSLETTER

[www.nh.gov/banking](http://www.nh.gov/banking)

Issue 07-2

## NHBD Consumer Outreach Program

Peter C. Hildreth, Bank Commissioner

In August we launched a new public outreach program designed to educate residents with adjustable rate and nontraditional mortgages about the terms of their loan, and to estimate their future payments. Sessions have been held in Rochester, Keene, Nashua, Salem, Manchester, Berlin, Littleton, Portsmouth, Concord, and Laconia.

As I am sure you are aware, there is a national issue with sub-prime, adjustable rate mortgages. While slightly better than the national average, New Hampshire will experience what most other states will experience. In our case, the forecast is that somewhere around 2,000 of these mortgages will result in foreclosure during the next 12 to 18 months.

Because of this coming crisis, the Banking Department is holding consumer outreach sessions around the state. At these sessions, borrowers meet one on one with bank examiners or Department attorneys. The Department staff will review the mortgage documents and give the borrowers information on the provisions of the note and mortgage, including an estimate of the new monthly mortgage that will be imposed on the reset date. In addition, staff reviews the documents for indications of either fraud or violations of law or rules.



Jennifer McAllister and Jim Shepard from NHBD, and Terry Spires, Executive Director of the Housing Partnership in Portsmouth

In some cases, we are able to help the borrowers through investigations. In others, we can only give them the facts and offer alternatives. In one case, we are assisting a homeowner into the FHA Secure refinancing program. Unfortunately, few of the borrowers who have attended the sessions are in a position to remain in their home. But, it is better to have that knowledge now rather than in a year when the foreclosure notice appears. There are options but they need to be addressed in advance of default.

If you know someone that needs our help please encourage them to call us at 603-271-3561, or visit our office in Concord during normal business hours. For additional outreach locations, please visit [nh.gov/banking/outreach.html](http://nh.gov/banking/outreach.html) for updates to the schedule.

## Legislative Update

Mary L. Jurta – Director of Consumer Credit

It promises to be another busy year for legislation as the Commerce Committee takes up four bills that were introduced last year that deal with consumer credit statutes. It is still unclear what bills will be introduced this year but I think we can rest assured that the issues surrounding mortgages both here in New Hampshire and nationally are bound to drive some legislation in that area. We look forward to working with the legislature, industry, consumers and consumer representatives to improve the mortgage climate in this state.

## BANKING DIVISION NEWS

Todd A. Wells – Interim Chief Bank Examiner

### FDIC Financial Institution Letter on Requesting Law Enforcement to Keep Accounts Open

Maryam Torben-Desfosses, Staff Attorney

Guidance recently issued by FinCEN offers helpful tips for financial institutions when law enforcement agencies request them to maintain a particular account. Financial institutions should ask law enforcement for written requests by the supervisory agent or a U.S. or Department of Justice Attorney. Further, the duration for the request is not to exceed six months. For more detailed guidance and Bank Secrecy Act compliance-related matters, please refer to FIN-2007-G002 on the [www.fincen.gov website](http://www.fincen.gov).

### Key Questions Every Board Should Ask

Parker T. Howell, Bank Examiner

The Board of Directors is responsible for all activities of a financial institution, including Information Technology (IT) related activities. The Board should be asking pertinent questions of management about IT activities. Here is a list of questions that every board member should be asking of themselves and senior management.

- How will the IT environment change in the next 3-5 years?

- Do we have an up-to-date, formal IT Strategic plan?
- How much is spent on technology and how does it compare with our peers?
- Do we have the staff/expertise in place to align with our future IT plans?
- Have we formalized our project management process?
- Do all projects require a business case?
- Are risk management efforts (Items such as security, disaster recovery, vendor management, and change management) incorporated into project management?

The Board should have a very clear understanding of the answers to these questions. If you do not know, or are not comfortable with, the answers provided, then you should investigate further.

### Confidentiality Reminder

Todd A. Wells – Interim Chief Bank Examiner

Recent communications between the Department and FinCEN produced the following matters which are of interest to supervised institutions:

- \* 31CFR 103.18 addresses bank filings of Suspicious Activity Reports (SARs) and subsection (e) specifically addresses confidentiality by stating, in part, "No bank or other financial institution, and no director, officer, employee, or agent of any bank or other financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR, except where such disclosure is requested by FinCEN or an appropriate law enforcement or bank supervisory agency, shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto." As an example, a CPA

performing a financial statement audit should not receive access to SAR data.

- A party engaged by an institution to perform an independent review of Bank Secrecy Act/Anti-Money Laundering may request access to the institution's files/reports for SARs. In this instance, institution management should call FinCEN's Regulatory Helpline at 1-800-949-2732, leave a detailed message, including your situation/question, your name, the name of your financial institution, and your telephone number. A representative of FinCEN's Office of Regulatory Programs should return your call promptly.

### **FinCEN Section 314(a) Requirements**

*Robin Boman – Bank Examiner*

Section 314(a) of the USA PATRIOT Act of 2001 required the Secretary of the United States Department of the Treasury to adopt regulations to encourage information sharing between law enforcement authorities and financial institutions about individuals, entities and/or organizations engaged in, **or** reasonably suspected of engaging in, terrorist acts or money laundering. In September 2002, the final rule was issued by the Financial Crimes Enforcement Network (FinCEN) which outlined the 314(a) process.

Utilizing an expedited communication system, FinCEN's Section 314(a) process enables law enforcement to periodically canvass the nation's financial institutions for potential lead information that might otherwise never be uncovered. These financial institutions are required to query their records for data matches which, if found, are reported to FinCEN. This partnership between the financial community and law enforcement, as established under the USA Patriot Act, allows disparate bits of information to be identified, centralized and rapidly evaluated.

Financial institutions, as defined in 31 CFR Section 103.11 and 31 U.S.C. § 5312(a)(2), including New Hampshire state-chartered banks,

credit unions and non-depository trust companies are required to perform 314(a) reviews. To facilitate this, institutions must designate two (2) "points of contact" for responsibility and oversight of the 314(a) process. Information for a third and fourth contact may be provided at the institution's option.

New Hampshire institutions having a Federal functional regulator (such as: FDIC, NCUA or FRB) have been providing "point of contact" information on their quarterly call reports for some time. Most of these institutions are providing the name of their BSA/AML Compliance Officer and the name of a senior executive as the point of contact, but another may be named.

Any New Hampshire state-chartered institution (i.e., non-depository trust company) which does not have a Federal functional regulator and has not yet designated two (2) "points of contact" must do so. You must notify the New Hampshire Banking Department of these designations promptly in writing and acknowledged by the signature of an authorized officer; please provide the following information: name, title, company mailing address, e-mail address, phone number, and FAX number.

Any change in a state-chartered institution's point of contact must be provided via written notice to the New Hampshire Banking Department. The notification of change should be presented immediately upon designation of a new point of contact(s) and provide the information referenced above. Thereafter, the point of contact information is to be reported in the quarterly call report filing.

Once processed, the designated points of contact will begin receiving notices from FinCEN. 314(a) notifications are generated from FinCEN about every two (2) weeks; however, they may occur more frequently. The institution's point of contact will receive an e-mail notification that the 314(a) list is available for review. Within ten (10) days from the date of the notice, the institution must check the required records. The 314(a) list should be compared to

all account holders of record during the previous twelve (12) months. In addition, transactions involving non-account holders must be checked for the prior six (6) months. If a match occurs, the institution must promptly notify FinCEN.

The provisions of 314(a) are separate and distinct from the rules and regulations of the Office of Foreign Assets Control (OFAC). OFAC is a publicly available list of Specially Designated Nationals (SDN). The 314(a) list is a highly confidential list of individuals, entities and organizations whose information may not be divulged to unauthorized persons.

For clarification or information on the 314(a) process, contact this department or FinCEN at their web site: <http://www.fincen.gov>.

## CONSUMER CREDIT DIVISION NEWS

*Mary L. Jurta, Director of Consumer Credit*

### **Renewal Reminders from the Licensing Division**

*Celeste J. Couture, Licensing Supervisor*

It is once again the time of year to prepare for the renewal of your license(s) for the 2008 year.

We will continue the process that we instituted last year which will enable you to file for your renewals electronically and pay by credit card or check. We were encouraged by the success of the system last year and the number of you who chose to use it. We would encourage all of you to make use of the system this year. You should have already received and returned to us the contact information with any updates for the individual to whom the renewal instructions should be directed. These were sent out in September.

By mid-November, your renewal contact person will be receiving an email from the Department with the renewal instructions and the credentials to enable online filing. Please be on the alert for receipt of this email and do not delete it – it is not spam! There will also be renewal forms posted on our website for a short

period of time, and we will be mailing renewal information to a very limited segment of our licensees.

Of note is the fact that the format of the licenses may be changing this year. The former rather cumbersome letter-sized licenses may be replaced by licenses that will now be the size of a #10 envelope. This does not eliminate the requirement that you must continue to post the license on your wall – only that it will not take as much space for you to do so.

### **Money transmitter licensees please note:**

For those of you who were initially licensed at any time in the year 2006 as a result of our regulatory authority which became effective on August 18, 2006, you were granted an extended license which did not expire on December 31, 2006. This is to advise that all money transmitter licenses are due for renewal this year on or before December 31, 2007 and will subsequently be due for renewal by this date on an annual basis.

If you have any questions or experience any difficulties with the renewal process, you may call the Licensing Division at 603-271-8675. We hope you will find the instructions and the process itself to be quite straightforward and user friendly.

### **DoD Issues Final Rule for Military Members receiving Payday and Title Loans**

*James A. Shepard, Staff Attorney, Consumer Credit Division*

The United States Congress passed a bill last session calling for the Department of Defense (DoD) to establish federal rules relating to active duty military personnel and their families and payday and title loans. The same bill established what is now called a "Military Annual Percentage Rate" (MAPR). Though the DoD was called upon to define MAPR, Congress essentially declared that lenders may not charge more than 36% on title and payday loans to active duty military personnel and their dependants.

The final rule, which is available on the [Department's website](#), puts forth required disclosures and procedures with some degree of specificity. As noted in a recent mailing to small loan licensees, lenders should carefully study the rule as examination staff will be checking for compliance in our next regular examination.

### **Revision to Criminal Background Fees**

*Celeste Couture, Licensing Supervisor*

The Department was recently notified by the Criminal Records Division of the New Hampshire Department of Safety that the portion of the fees charged by the FBI for individuals subject to criminal background checks has increased.

The increase became effective October 1, 2007, and the Department was provided little time to make changes to the instructions on the forms appearing on our website. What this means to you is that if you have recently submitted a filing to us that included fees for a background check, and the background check was not processed prior to October 1, we will be returning the check you submitted and requesting a new check for the new amount. You might ask why you cannot just send another check to make up the difference. The reason is because the Criminal Records Division will only accept checks for the exact amount of the fee or a check for multiples of the exact fee.

The new fees are dependent on the method used to take fingerprints. The fee was formerly \$39.00. Now, the fee is \$45.25 for rolled fingerprints and \$34.25 for fingerprints done by liveness. The method used will be determined by the facility where you have your fingerprints taken.

It is still necessary to obtain fingerprint cards directly from the Licensing Division, and you may call us at 603-271-8675, email us at [licensing@banking.state.nh.us](mailto:licensing@banking.state.nh.us) or [click here to submit the form from our website](#).

Remember: you must submit your check (made payable to the "State of New Hampshire –

Criminal Records") and fingerprint card directly to us at the Department, and we will submit them to the Criminal Records Division.

### **Order of the Day**

**Brokering, Lending, and the Guidance**

*Lea Sabeau, Bank Examiner*

Today's business of originating and funding loans is vastly different from that of just a year ago. Over the past year the housing market has experienced depreciating property values, increasing interest rates, more stringent underwriting standards, and the demise of many lenders. The end result is that mortgage loans are no longer easily placed with lenders. So how do you manage your business while navigating through the realities of today's marketplace?

Obviously, the first step in the loan process is to speak with the consumer. In speaking with the consumer, spend the time to develop a rapport with the consumer and leave the conversation with a real understanding of the consumer's wants and needs. After you have determined the consumer's financial condition, explain to the consumer the different types of loan programs under which he/she will qualify. Qualified loans are those loans where the consumer meets lender's underwriting guidelines as well as the guidelines set forth in the [Commissioner's Order](#) that was issued on November 13, 2006.

What do the guidelines that are set forth in the Order mean? They mean, in no simpler terms, that the consumer must have the ability today to afford the payments that will repay the loan to its maturity. Demonstrate to the consumer the financial obligation that each loan program will have in such a way that he/she will be fully aware of how the loan payment will impact his/her financial resources. As a broker, you are a service provider to the consumer. Most consumers believe that a broker will act in the consumer's best interest and that trust must not be betrayed. Consumers do not fully understand all the interests that compete for a broker's business, including the different remuneration arrangements under various loan programs. When explaining the terms of the loan programs

that each consumer qualifies for, include the total amount of remuneration that you as the broker will receive, directly or indirectly, from each type of program.

The dynamics of today's marketplace suggest that brokers who serve their clients fairly and do, in fact, act in best interests of the consumer will be the ones who will persevere in this difficult lending climate. Those who persevere! Does that mean I cannot collect a fee for my services, you may ask. Absolutely not! It means, be truthful and ethical with your client. Provide them with an understanding of the information they have been given. Explain yield spread premiums and the impact that lender-paid compensation versus borrower-paid broker fees will have on rate and payment. Select a program that is best for the consumer's pocket. Provide consumers with information; information is knowledge and providing this knowledge is a valuable service you can provide to your clients. You have the ability to influence a consumer's decision on one of his/her most valuable assets. Use and do not abuse this ability to make a difference.

To summarize, spend the time to understand each consumer's needs, find the qualified program that best fits the consumer, and completely explain the program to the consumer. Again, a qualified program is the program that the consumer can afford throughout the life of the loan. Examples include the ability to repay an adjustable rate loan at its fully indexed rate and the ability to repay an interest only loan when its payment includes principal and interest. It also means performing "due diligence" to ensure a consumer can afford a fixed rate loan as well as ensure that a consumer who is placed into a "no documentation" or "low documentation" program can afford the loan and understands the increased interest rate incurred for such a product. Document your discussions and decisions. Remember, an informed consumer is a knowledgeable consumer and a knowledgeable consumer is a consumer who will remember and recommend your services to others.

## DEPARTMENT NEWS

Several new employees have joined the New Hampshire Banking Department. Rebekah L. Becker is the new Paralegal in the Banking Division, Richard P. Arcand is our new Informational Representative, Katryn A. Marks joined the staff in the position of Secretary, and Kathy L. Hildreth is a new Bank Examiner. All can be reached at 603-271-3561.



Deputy Commissioner Bob Fleury and Commissioner Peter Hildreth discuss Department issues just after Videographer Phil Vaughn interviewed the Commissioner for a foreclosure story which recently aired NH Public Outlook Television. To view the program please visit <http://www.nhptv.org/outlook> and search for



Mortgage Crisis.

### 2006 Annual Report

The 2006 Annual Report of the Bank Commissioner is now available.

[To view the complete Report please click here.](#)

