**Department of Financial Regulation**

**Comments on 7-19-2017 Draft of Proposed Revisions to Commitment Letter Regulation**

The Department appreciates the comments it received on the 7-19-2017 draft of the proposed changes to the Commitment Letter Regulation. After reviewing the comments, the Department has made further changes to the draft Regulation. The Department is circulating a new draft of the Regulation, dated 9-12-2017, for comment. The marked up 9-12-2017 draft shows all changes from current Regulation B-98-1.

Please provide any comments to the Department by October 6, 2017.

*Summary of Comments on 7-19-2017 Draft*

Short Form Commitment Letter Issued with the Closing Disclosure. The Department received several comments about the proposed Short Form Commitment Letter that may be used when a Closing Disclosure is required. Many commenters thought that the changes would require the lender to issue two commitment letters; one that complied with the regular commitment letter requirements and a second commitment letter when the Closing Disclosure was issued. It is not the Department’s intent to require lenders to issue two commitment letters. If a lender is required to issue a Closing Disclosure, the lender has two commitment letter options: (1) the lender may issue a regular commitment letter as it always has done; **or** (2) the lender may issue a short form commitment letter that ties into the Closing Disclosure. The lender is not required to do both. We have modified Section 4 of the draft Regulation to help clarify the lender’s commitment letter options when a Closing Disclosure is required.

We also learned from commenters that some lenders prefer to issue commitment letters early in the process, while others prefer to wait until closer to the closing. The Department believes that the proposed changes will accommodate either business model. Lenders that prefer to issue commitment letters early in the process will be able to continue issuing the same commitment letter they are currently issuing under Reg. B-98-1. Lenders that prefer to wait until closer to the closing will have the option of issuing the same commitment letter they are currently issuing under Regulation B-98-1 or issuing a commitment letter that ties into the Closing Disclosure.

Signed Commitment Letters. Some commenters inquired how commitment letters would be signed in electronic transactions. The Department has amended Section 4 to provide that commitment letters may be signed electronically pursuant to the Vermont Uniform Electronic Transactions Act, 9 V.S.A. §§270 – 290.

Delivery of Commitment Letter. Some commenters asked for clarification regarding delivery of the commitment letter. In response, the Department has amended Section 5 of the draft Regulation to clarify that delivery is when the borrower receives the commitment letter.

Some commenters inquired about electronic delivery of the commitment letter. The Department amended Section 5 to provide that commitment letters may be delivered electronically pursuant to the Vermont Uniform Electronic Transactions Act, 9 V.S.A. §§270 – 290.

The 7-19-2017 draft Regulation includes a provision that the borrower is presumed to have received the commitment letter three business days after it is mailed. Some commenters suggested that the presumption of receipt should be expanded to include electronically delivered commitment letters, similar to Regulation Z. The Department agrees with this comment and has modified Section 5 to expanded the provision that the borrower is considered to have received the commitment letter three days after it is mailed to include emailed commitment letters. Additionally, the Department added a provision that the lender may rely on evidence that the borrower received the commitment letter earlier; again, similar to Regulation Z.

Definition of Business Day. One commenter inquired whether the reference to “legal public holidays” in the definition of business day included both state and federal holidays. The Department amended Section 5 to clarify that legal public holidays means those referenced in Regulation Z, 12 C.F.R. §1026.2(a)(6). This makes the definition of business day for delivery of the commitment letter consistent with the definition of business day for delivery of the Closing Disclosure.

Substituting the Closing Disclosure for the Commitment Letter. One commenter suggested that the Closing Disclosure replace the commitment letter. The Department had previously received this comment and considered it in preparing the 7-19-2017 draft Regulation. 9 V.S.A. §§103(a) and 103(b) require that a lender issue a commitment letter in connection with a residential mortgage loan. Our research indicates that the Closing Disclosure is not a commitment to lend. 9 V.S.A. §103(c) only gives the Department the authority to issue regulations regarding the form, content, and timing of the commitment letter. The Department does not have the authority to substitute a disclosure that is not a commitment letter, such as a Closing Disclosure, for the commitment letter required by 9 V.S.A. §103.

Three Business Day Waiting Period. One commenter suggested that the requirement to deliver the commitment letter at least three business days before the closing is too long. The commenter also suggested that the current 24-hour requirement is too long and that the lender should be able to deliver the commitment letter at the closing table. The Department believes that delivering the commitment letter to the borrower at the closing table would not be useful to the borrower. The Department also believes that if the lender has adequate information to deliver the Closing Disclosure at least three business days prior to the closing, the lender should have adequate information to deliver the commitment letter at least three business days prior to the closing.

Borrower Hardship. One commenter suggested adding a “hardship to borrower” provision that would reduce the three business day waiting period in situations where the borrower has a bona fide personal financial emergency. The commenter pointed to the hardship exception in Regulation Z. The Department agrees with this comment and has added Section 5 C to incorporate a borrow hardship provision similar to Regulation Z.

Owner Occupied One to Four Unit Dwelling. One commenter questioned the use of the term owner occupied in the definition of dwelling. The Department finds that the concept of an owner occupied one to four-unit residential structure is commonly used in both state and federal laws and regulations governing residential mortgage loans. The Department believes that the use of the term owner occupied one to four-unit residential structure is appropriate for the Commitment Letter Regulation and will make the Regulation more consistent with other state and federal laws and regulations governing residential mortgage loans.

First Lien Mortgage Loans. One commenter mentioned that the Regulation would apply to all first lien mortgage loans, including first lien Home Equity Line of Credit (“HELOC”) loans. The Department notes that Regulation B-98-1 currently applies to first lien HELOC loans. The Department is also aware that lenders are currently providing commitment letters for first lien HELOC loans in compliance with Regulation B-98-1. The Department does not propose to change this requirement.