



**TO: ALL STATE CHARTERED FINANCIAL INSTITUTIONS**

**SUBJECT: Tennessee Home Loan Protection Act - Preemption**

**DATE: January 31, 2007**

The Department has received numerous inquiries regarding the interpretation of the preemption provision of the Tennessee Home Loan Protection Act (THLPA) set forth in Tenn. Code Ann. 45-20-111. The THLPA, specifically Tenn. Code Ann. 45-20-109, grants the Commissioner of the Department the power to interpret the provisions of the THLPA. The purpose of this BULLETIN, therefore, is to provide my interpretation of the preemption provision.

The preemption provision provides as follows:

The provisions of this chapter shall apply to all high-cost home loans applied for and closed on or after January 1, 2007; provided, that this chapter shall not apply to the extent it is preempted by, or is in conflict with or inconsistent with the National Bank Act, 12 U.S.C. 21 et seq., the Homeowner's Loan Act, 12 U.S.C. 1464 et seq., the Federal Credit Union Act, 12 U.S.C. 1751 et seq., or regulations issued by the office of the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation or the federal credit union administration, and as interpreted by the federal courts, to national or state banks or trust companies, federal or state savings institutions, federal or state credit unions, or the operating subsidiaries of any of those.

The Department has analyzed the preemption provision and, with one possible exception, I have determined that the THLPA does not apply to national or state banks or trust companies, federal or state savings institutions, federal or state credit unions, or the operating subsidiaries of any of these institutions. The one possible exception is the provision in the THLPA, specifically Tenn. Code Ann. 45-20-103(17)(B), which places restrictions on high cost home loan closing locations. The Department is not aware of any preemption determination issued by any of the appropriate federal regulators specifically addressing home loan closing

locations. In any event, the Commissioner's authority in enforcing the restriction on high cost home loan closing locations is limited under the THLPA, in Tenn. Code Ann. 45-20-109, to persons subject to the regulatory jurisdiction of the Department or persons reasonably suspected of being subject to the Commissioner's regulatory jurisdiction.

Be advised that judicial interpretations as well as federal regulator interpretations could very well impact this preemption determination. The impact of any such interpretations on this preemption determination will be analyzed at the appropriate time.

**Greg Gonzales**  
**Commissioner**

*I The THLPA is contained in Chapter 801 of the Public Acts of 2006 and most of the THLPA is codified in Title 45, Chapter 20. This BULLETIN addresses preemption only with respect to the provisions of the THLPA codified in Title 45, Chapter 20. It should be noted that two sections of Chapter 801 were not codified in Title 45, Chapter 20. These two sections are as follows: First, Section 10 of Chapter 801 amends state law regarding the notice which must be given to the debtor in the event of a foreclosure. This section is codified in Tenn. Code Ann. 35-5-101 (e). Second, Section 11 of Chapter 801 which imposes penalties for misleading advertising in connection with loans, refinancing, insurance or any other product or service is codified at Tenn. Code Ann. 45-2-1720.*