



Bankers Advisory

COMPLIANCE MONITOR

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Vermont Issues Clarification for High Rate Loan Qualification

By Emily Ross, Esq.

The Vermont Department of Financial Regulation recently released a memorandum clarifying interest rates set for High Rate Loans for the 2013 calendar year.

Vermont law states that any lender granting loans that charge borrowers in excess of four points or interest in excess of three percent over the declared interest rate fall into the "high rate loan" category. This category only applies to loans secured by a first lien on residential real estate. Any lending in this "high rate loan" category requires a lender to issue additional disclosures to the borrower informing them of the high rate nature of the loan. The statute provides for administrative penalties up to \$5,000 for any lender not providing such disclosures. The commissioner may also require the lender to refund discount points and other charges paid by a borrower who did not receive the appropriate disclosures. By statute, the commissioner is required to notify all mortgage lenders of the declared interest rate annually. 9 V.S.A. §104.

This declared interest rate is determined by using the rate set by the Commissioner of Taxes for the purposes of underpayment and overpayment of tax liabilities pursuant to 32 V.S.A. §3108. The new rates for 2013 were released on October 16, 2012. The Commissioner of Taxes set these rates at 3.6% for overpayments and 5.6% for underpayments. On November 1, 2012 the Vermont Department of Financial Regulation released a clarifying memorandum stating that for purposes of High Rate Loans the overpayment rate of 3.6% will be used. Applying the calculation provided in 9 VSA §104 this means that any loan with an interest rate above 6.6% qualifies as a "high rate loan" and must be accompanied by additional disclosures.

The High Rate Loan disclosure must include four items to meet statutory requirements. The disclosure must include the statement, "You may be eligible for a loan with either a lower interest rate, fewer points, or both, from another lender," in at least 14 point bold type. The disclosure must notify the borrower that they are applying for a loan that falls into the "high rate loan" category because the interest rate is either three percentage points above the declared rate or the borrower is charging more than four points.

Additionally, the disclosure must inform the borrower that they may obtain a list of lenders from the Department of Banking, Insurance, Securities and Health Care Administration. Finally, the disclosure must be signed and dated by all borrowers as well as the lender. Vermont Reg. B-98-2, §3.

The new declared interest rate of 3.6% is a decrease from last year's rate of 4.8%. The new rate goes into effect on January 1, 2013 and will remain in effect for the 2013 calendar year.



Emily Ross, Esq. is Associate Counsel at Bankers Advisory, Inc. She is a graduate of Auburn University and earned her Juris Doctor at Case Western Reserve School of Law. She is admitted to the Bar in Massachusetts and Vermont. She can be reached at emily.ross@bankersadvisory.com

