



# Bankers Advisory

## COMPLIANCE MONITOR

November 3, 2015

### *Texas Updates Regulations Regarding Mortgage Loan Companies and Plain Language Contract Provisions*

By Laura Eckstein, JD

#### **Mortgage Loan Companies Duties and Responsibilities**

Effective November 5, 2015, the Texas Department of Savings and Mortgage Lending adopted provisions regarding the duties and responsibilities of mortgage loan companies, mortgage bankers, and residential mortgage loan originators.

#### **Loan Status Forms**

As amended, 7 TAC §80.201(a) requires that written confirmation of a conditional qualification must include the information in Form A, Figure: 7 TAC §80.201(a) whenever a conditional qualification is provided not only to a mortgage applicant, but to a prospective mortgage applicant as well.

#### **Advertising**

7 TAC §80.203(b)(2) contains the advertising requirements of residential mortgage loans offered by or through a mortgage company or originator. The amendment now requires that any advertisement must contain the name of the originator followed by the name of the sponsoring mortgage company, the originator's Nationwide Mortgage Licensing System and Registry identification number, and the company's physical office or branch office street address in Texas. 7 TAC §80.203(b)(2)(A)-(C).

#### **Books and Records**

7 TAC §80.204(b), which lists the mortgage applications books and records that must be maintained by each company or originator, has been amended to incorporate the integrated disclosure requirements of TILA/RESPA, which became effective on October 3, 2015.

#### **Plain Language Contract Provisions**

The Texas Office of Consumer Credit Commissioner has adopted amendments to its Plain Language Contract Provisions, making certain changes to conform with federal TILA/RESPA integrated disclosure requirements. The amendments also relate to improvements in clarity, consistency, formatting, grammar, and punctuation. These provisions are effective November 5, 2015.

#### **Conformity with TILA/RESPA Integrated Disclosures**

Amendments in Chapter 90 have been made in order to conform with the TILA/RESPA integrated disclosures now required under the recent amendments to Regulation Z. Four different changes have been made to ensure conformity with the TILA/RESPA integrated disclosures. First, the box containing the final

TILA disclosure has been removed from the Subchapter G model contracts, because the disclosure has been replaced with the CFPB's Closing Disclosure, which must be provided separately. Second, the payment schedule, currently in the final TILA disclosure, has been moved into the promise to pay. Third, the statement concerning no prepayment penalty, currently in the final TILA disclosure, has been moved into the provisions on the finance charge earnings and refund method. Fourth, in the model provisions for promissory notes for home improvement loans, the description of the property subject to the lien has been moved into the provision on security for payment. New provisions are included in §§90.402(c), 90.502(c), and 90.603(b) to specify that the model provisions are separate from the TILA-RESPA integrated disclosures.

### **High Cost Mortgage Loans**

Amendments in Chapter 90 were made to ensure conformity with the provision on late charges for high-cost mortgage loans in Regulation Z, 12 C.F.R. §1026.34(a)(8). Whereas Regulation Z limits the late charge for high-cost mortgage loans to 4% of the amount of the payment past due, the limitation that generally applies to secondary mortgage loans under Texas Finance Code, §342.302(e) is 5%. The amendments specify that the late charge is "4% of the amount of the payment past due," to more closely conform to the requirement in Regulation Z, 12 C.F.R. §1026.34(a)(8)(i). Conforming changes have been made to the model contracts in the figures accompanying the following provisions: §§90.404(a)(8), 90.504(a)(8), and 90.604(a)(14), (16).

### **Spanish Disclosures**

Amendments related to Spanish disclosures are contained in §90.701 and provide clarity regarding which forms must be provided. Under §90.703(a) for a Chapter 342 loan negotiated in Spanish, the licensee must provide a Spanish disclosure containing accurate amounts that are within the tolerances required by Regulation Z, 12 C.F.R. Part 1026. For a Subchapter G secondary mortgage loan, Paragraph (3) requires that the lender must provide copies of the CFPB's Spanish translations of both the TILA/RESPA integrated disclosures. The provisions are intended to ensure that the Spanish disclosures are in the same form as the disclosure required under Regulation Z.

### **About the Author**

Laura Eckstein, J.D. is a Regulatory Compliance Consultant at Bankers Advisory. She is a graduate of the University of Rhode Island and earned her Juris Doctor at Suffolk Law School. She is admitted to the Bar in Massachusetts and New Hampshire. She may be reached at [laura.eckstein@bankersadvisory.com](mailto:laura.eckstein@bankersadvisory.com)