

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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During the first few months of the new legislative sessions, we the usual rush of new and significant legislation aimed at the mortgage lending industry. Whether these efforts are focused on predatory practices, new licensing schemes or a wide range of other issues, the impact on the industry is unprecedented. This issue of Lenders Update demonstrates that this process continues, but, from our perspective, the energy and focus have diminished.

This month we report on FTC requests for public comments on the effects of credit scores, the New York regulations concerning High Cost Loans, and some developments in **South Dakota** and **Texas**.

Attorney Jennifer Dewberry also fills us in on state licensing developments with her report on **Wyoming's** passage of its new licensing law which will require most lenders and brokers to obtain new licenses.

The purpose of the Lenders Update is to provide a "heads-up" of new legislation and regulations affecting the mortgage lending industry. We try to provide brief summaries of new matters so our readers can judge whether the subject impacts their operations. We recommend that our readers review the entire new material in detail where relevant. For your convenience, the applicable statute, regulation or cases can be easily identified in the summary. Our Update includes changes in legislation available to Alt & Associates by March 15, 2005

FEDERAL ISSUES

FTC REQUEST FOR COMMENTS ON THE EFFECT OF CREDIT SCORES.

On February 28, 2005, the Federal Trade Commission published in the Federal Register at Vol. 70, No. 038, a request for comments related to the effects of credit scores on the availability and affordability of financial products. The Fair and Accurate Credit Transactions Act of 2003 ("FACT") required the FTC and the Federal Reserve Board to conduct this study. Comments will be received through April 25, 2005. Information concerning how comments can be submitted can be found in the Federal Register.

The FTC seeks information on how credit scoring models are developed and used and how these change over time. The agency would also like to know the extent to which credit scores have

affected the price and availability of credit and the amount of credit made available to consumers. When finalized, the report should be of considerable interest.

STATE ISSUES

SOUTH DAKOTA

South Dakota Senate Bill 154 was signed into law on **March 4, 2005**. The new statute authorizes the Commission to charge a fee not to exceed \$1,000 as an application fee for parties in the business of lending money and an application fee for a Mortgage Broker License which may not exceed \$500. The exact amount of the fees will be set by the Commission. In addition, all licensees will be required to pay an annual tax on their net income measured by the net income assignable to the licensees' business in South Dakota.

On February 22, 2005, South Dakota House Bill 1090 was also signed. This Bill provides that, in South Dakota, in addition to the finance charge, a creditor may charge, contract for, and receive, additional charges in connection with an installment sales contract if such charges are itemized and disclosed to the buyer. These include:

- Official fees and taxes.
- Charges for certain insurance if the consumer is informed in writing that any insurance is optional.
- Charges for debt cancellation contracts and debt suspension contracts, as defined in the statute.

TEXAS

The Finance Commission of Texas has adopted new regulation 7 TAC §153.93 which concerns a home equity loan lender's ability to cure any failure to fully comply with the many obligations imposed under Article XVI of the Texas Constitution. This Section of the Constitution regulates home equity loans. It provides that the lender or any holder of a note shall forfeit all principal and interest if the lender or holder fails to comply with its obligations under the Constitution and fails to correct that failure not later than the 60th day after the date the lender or holder is notified by a borrower of the defect. The new regulation sets forth the way the notification of failure to comply must be accomplished:

- The Lender must make a reasonably conspicuous designation, in writing, of the location where the borrower may deliver a written or oral notice.
- If this changes, the change does not become effective until the lender or holder sends conspicuous written notice to the borrower.
- If the lender or holder does not designate a location where the borrower may deliver a notice of violation, the borrower may deliver the notice to any physical address or mailing address of the lender.
- Finally, delivery of the notice by borrower to lender or holder's designated delivery locations or registered agent by certified mail, return receipt, or other carrier delivery receipt, constitutes a rebuttable presumption of receipt by the lender or holder of the note. If the borrower opts for a location or method of delivery other than set out in the regulation, the borrower has the burden of proving that the delivery was reasonably calculated to put the lender or holder on notice.

PREDATORY LENDING ISSUES

NEW YORK ADAPTS NEW REGULATIONS CONCERNING HIGH-COST LOANS

On February 23, 2005, the State of **New York** Banking Department adopted new regulations to Part 41 of its General Regulations. The Rules were adopted on an emergency basis and became effective **February 22, 2005**. The Regulations implement and expand upon the New York laws concerning High-Cost Mortgage Loans and establish new penalties for violations of these laws and remedies for homeowners who are affected.

Changes include the following:

- The definition of points and fees was revised to include certain charges such as premiums for insurance required by the lender to guarantee payment upon default and also title insurance premiums.
- Broker compensation is now included within points and fees.
- Only 3 percent of the points and fees of any High-Cost Home Loan may be financed.
- A new disclosure must be given not less than 10 days prior to closing.
- A lender of an existing High-Cost Home Loan shall not charge points and fees when refinancing such High-Cost Home Loan even when additional proceeds may be provided in the refinancing. A lender of an existing High-Cost Home Loan may charge points and fees when such loan is modified, renewed, extended or amended but only on any additional proceeds as the result of such modification, renewal, extension or amendment.
- The new regulations provide standards to implement the requirements for “independent verification” of a borrower’s financial resources when determining whether the loan is affordable.
- Lenders must use the VA residual income guidelines in addition to the 50% debt to income ratio if they wish to have a rebuttal presumption that the borrower is able to afford the loan.
- Standards are provided to determine when a refinanced loan has a “tangible net benefit” to the borrower in order for lenders to avoid accusations of loan “flipping”.
- The affordability provisions apply to all borrowers, not just those whose income is less than 120% of the income of the applicable Standard Metropolitan Statistical Area (“SMSA”).

STATE LICENSING

WYOMING PASSES NEW LICENSING LAW

On February 25, 2005, Wyoming’s Governor signed into law the Wyoming Residential Mortgage Practices Act. As of **July 1, 2005**, this new law will require any person conducting mortgage lending or mortgage brokering activities relative to first lien residential mortgages with Wyoming residents apply for a license no later than September 30, 2005.

A license is not required for any person or entity who funds a residential mortgage loan which has been originated and processed by a licensee or by an exempt person, who does not directly or indirectly solicit borrowers in Wyoming for the purpose of making residential mortgage loans, and who does not participate in the negotiation of residential mortgage loans with the borrower. Negotiating does not include setting the terms under which a person may buy or fund a

residential mortgage loan originated by a licensee or exempt person. Those people employed by or under contract exclusively with one licensee are not required to be licensed under the Act as long as any fees paid by the borrower are paid to the licensee or exempt entity and not to the employee or person under contract.

A lender or broker must license the principal office location (which does NOT have to be located in Wyoming) and must obtain separate licenses for each additional office location. A surety bond of \$25,000 is required for the principal office and \$10,000 for each additional licensed office. The license will expire June 30 of each year and shall be renewed by filing the required form and paying the required fee (both of which are yet to be determined by the State Banking Commissioner) at least 30 days before the expiration date.

Compliance with all of the provisions of the Act is mandatory as of July 1, 2005. Anyone engaged in business in Wyoming as of July 1, 2005 must apply for a license no later than September 30, 2005. Anyone not engaged in business in Wyoming as of July 1k, 2005 will have to obtain a license before engaging in the activities governed by the Act.

Supervised Lender licensees must obtain the new license as well. The Supervised Lender license only authorizes a lender to make loans under the Wyoming Uniform Consumer Credit Code, which governs all consumer loans *except* first lien mortgage transactions. Any person or entity engaged in activities under both the Uniform Consumer Credit Code and the Residential Mortgage Practices Act must have both licenses.

The applications for Mortgage Broker and Lender licenses are not yet available. The Division of Banking anticipates that application forms will be available sometime in June. Information regarding progress on the application and on promulgating the Rules that are necessary under the Act will be posted on the Division's website at <http://audit.state.wy.us/banking/>.

QUICK NOTES

- Georgia license renewals are due by April 1, 2005. If you did not receive your renewal application, you can renew online before the end of the due date at <https://bkgfin.dbf.state.ga.us/MortgageDocs/FY2006RenewalPrint.html>.
- The Nevada Mortgage Lending Division has drafted a revised Monthly Activity Report form which is now available on its website at <http://www.mld.nv.gov/>. The new form is to be used beginning immediately.
- The Arizona State Banking Department revised its Mortgage Banker Application on March 2, 2005. The revised application is available on the website at http://azbanking.gov/Forms/Mortgage_Broker_Application.pdf. According to the new application, the Department is not accepting outdated application forms.

LEGISLATION EFFECTIVE DATES

Ohio	HB 426	February 28, 2005	February 15, 2005	Active Duty Benefits
South Dakota	SB 154	March 30, 2005	March 4, 2005	Application Fees

Our monthly Lenders Update is published via e-mail as a complimentary service to our subscribers and clients in the financial industry throughout California and the United States.
Our Lenders Update Manual: A Guide to State Mortgage Lending Law is available through our website at www.altandassociates.com

ALT & ASSOCIATES provides regulatory compliance and licensing services, operational advice and transactional assistance as well as litigation representation to the financial services industry.

Over the past two decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations.

If you have any questions please contact:

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