



Douglas B. Foster
Commissioner

TEXAS DEPARTMENT OF SAVINGS & MORTGAGE LENDING

Mortgage Banker Compliance Examination Rating System

The Texas Department of Savings and Mortgage Lending has adopted with slight modification the regulatory compliance rating system established and implemented by the Federal Financial Institution Regulatory Agencies.

The Federal Financial Institutions Examination Council (FFIEC) developed and recommended to the member agencies for adoption a uniform consumer compliance rating system. The purpose of the rating system is to reflect in a comprehensive and uniform fashion the nature and extent of a banker's compliance with consumer protection and civil rights laws and regulations.

The examiner should disclose the recommended consumer compliance rating to the mortgage banker's designated representative at the time of the examination along with a comment that the Department must concur with the rating and may, in some instances, change the rating before the report is sent to the mortgage banker. Mortgage banker examination reports will disclose the assigned rating in the Compliance Rating section of the report. With respect to a mortgage banker that is rated "3", "4", or "5", for consumer compliance, report comments should appropriately elaborate on the particular deficiencies noted in the banker's compliance program to further support the rating assigned.

The primary purpose of the rating system is to help identify those mortgage bankers whose compliance with consumer protection and civil rights laws and regulations displays weaknesses requiring special supervisory attention and which are cause for more than a normal degree of supervisory concern. In addition to the compliance ratings, greater supervisory concern and enforcement actions may result from consumer complaints and/or unlicensed activity disclosed either during or independent of the examination process.

COMPOSITE RATINGS

One

A mortgage banker in this category is in a strong compliance position. The banker has sufficient knowledge of applicable state and federal statutes and regulations, and adequate staff for effectuating compliance. An effective formal compliance program, including an efficient system of internal procedures and controls, has been established. Changes in consumer statutes and regulations are promptly reflected in the banker's policies, procedures, and compliance training. The banker provides adequate training for employees. If any violations are noted, they relate to relatively minor deficiencies in forms or practices that are easily corrected. The examination reveals no evidence of discriminatory acts or practices, reimbursable violations, or practices resulting in repeat violations. The banker promptly corrects violations. As a result, the banker gives no cause for supervisory concern.

Commentary - This rating would include bankers exhibiting an equal emphasis on compliance with their focus on origination. This emphasis is evidenced by a proactive compliance program and limited violations. There is either an independent review process or sufficient controls and confirmations to provide ongoing assurance of quality.

Two

A mortgage banker in this category is in a satisfactory compliance position. The banker has sufficient knowledge of applicable state and federal statutes and regulations, and adequate staff for effectuating compliance. Although a system of internal operating procedures and controls has been established to ensure compliance, violations have nonetheless occurred. These violations, however, involve technical aspects of the law or result from oversight on the part of operating personnel. Modifications in the banker's compliance program and/or the establishment of additional review/audit procedures may eliminate many of the violations. Compliance training is satisfactory. The examination reveals no evidence of discriminatory acts or practices, reimbursable violations, or practices resulting in well-defined patterns of repeat violations.

Commentary - This rating is representative of a banker who has a program of compliance, formal or informal, that is sufficient to prevent systemic violations on a given issue. An individual loan file may have multiple problems where checks and balances failed, but those problems are isolated and are not found repeatedly in other files. Despite the number of violations, there are no significant fee issues and the examiner would not recommend a formal response delineating a requirement for corrective action to the Department.

Three

Generally, a mortgage banker in this category is in a less than satisfactory compliance position. Mortgage bankers in this category are a cause for supervisory concern and require more than normal supervision to remedy deficiencies. Violations may be numerous. In addition, previously identified practices resulting in violations may remain uncorrected. Overcharges, if present, involve a few consumers and are minimal in amount. Compliance training exists but is less than satisfactory. The examination reveals no evidence of discriminatory acts or practices. Although the banker may have the ability to effectuate compliance, increased efforts are necessary. The numerous violations discovered are an indication that the banker has not devoted sufficient time and attention to consumer compliance. Operating procedures and controls have not proven effective and require strengthening. This may be accomplished by, among other things, designating a compliance officer and developing and implementing a comprehensive and effective compliance program. By identifying a mortgage banker with marginal compliance early, additional supervisory measures may be employed to eliminate violations and prevent further deterioration in the banker's less than satisfactory compliance position.

Commentary - This rating is indicative of an operation with systemic compliance and/or documentation problems. At least some fee issues will be present including gross underestimation of fees or rates, although these violations will not be egregious or widespread. The examiner envisions the need for a plan of corrective action and formal response to the Department.

Four

A mortgage banker in this category requires close supervisory attention and monitoring to promptly correct the serious compliance problems. Numerous violations are present. Overcharges, if any, affect a significant number of consumers and involve a substantial amount of money. Practices resulting in violations cited at previous examinations often remain uncorrected. Compliance training is poor or nonexistent. Discriminatory acts or practices may be in evidence. Clearly, the banker has not exerted sufficient efforts to ensure compliance. Examination findings may indicate a lack of interest in administering an effective compliance program, which may have contributed to the seriousness of the banker's compliance problem. Internal procedures and controls have not proven effective and are seriously deficient. Prompt action on the part of the Department may enable the mortgage banker to correct the deficiencies and improve the banker's compliance position.

Commentary - This rating is reflective of a banker with widespread documentation problems as well as numerous fee-related issues. The examiner believes that, based on the limited files reviewed, there are probably a significant number of loan applicants who are entitled to reimbursement. The Department will take formal enforcement action. There is a need for an independent third- party review of the banker's files to determine how many loan applicants are entitled to reimbursement and the amounts of reimbursements to be paid to them by the banker.

Five

A mortgage banker in this category is in need of the strongest supervisory attention and monitoring. The banker is substantially in noncompliance with the consumer laws and regulations. The banker has demonstrated an unwillingness or inability to operate within the scope of consumer laws and regulations. Previous efforts on the part of the Department to obtain voluntary compliance have been unproductive. Discrimination, substantial overcharges, and/or practices resulting in serious repeat violations are present.

Commentary - This rating is reflective of a banker with widespread documentation problems, numerous fee-related issues, and an intentional refusal to maintain adequate records. Lack of critical loan file documentation or entire loan files impedes the examiner's ability to effectively examine the banker. The Department will take formal enforcement action possibly including revocation for failure to take prompt corrective action.