

SHB 2770 Rulemaking - "Disclosure Summary" Comments

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Received: May 05, 2008

Comments:

Joe, as we discussed, here are some observations about 2770.

The defined term "residential mortgage loan" is broadly drafted and could cover both closed-end and open-end loans, first and subordinate mortgage loans and owner-occupied and non owner-occupied residences.

While it is probably not intended, there is no exception for commercial loans. Thus, a commercial loan or guaranty secured by residential real property could be subject to the requirements of the act.

There is an exclusion for "loans to individuals making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment." Is this an exemption for a warehouse loan to an individual (but not an entity)? Or is it intended to mean "loans made by individuals", thereby excluding seller financing?

The required disclosure summary must be in a form adopted by the DFI. However, the effective date of this legislation is June 12, 2008, and there is no guidance as to how financial institutions are to avoid liability prior to adoption of the form of disclosure. A knowing violation of the act is a Class B felony, which can be charged by any prosecuting attorney.

The disclosure must be "on a separate sheet of paper" calling into question whether electronic disclosure of the summary is possible.