

Application of the SAFE Act to Manufactured Housing Sellers

Several manufactured-home providers have asked about the requirements of Chapter 347 of the Texas Finance Code and the recently enacted Texas SAFE Act. This paper addresses three issues: (1) which entities must be registered under Chapter 347, (2) which employees of Chapter 347 registrants must be licensed under the Texas SAFE Act, and (3) the OCCC's role as regulatory official with respect to Chapter 347 registrants.

Requirements of Chapter 347:

Chapter 347 of the Texas Finance Code generally applies to manufactured-home purchases that are subject to a finance charge or payable in more than four installments. Tex. Fin. Code § 347.002(3). Chapter 347 allows real property to be included in the sale, as long as the real property does not exceed 200 acres and the manufactured home is attached within a reasonable amount of time. *Id.* § 347.455(a). However, Chapter 347 does not apply if the creditor makes a special election to treat the entire transaction as a real-property sale. *Id.* § 347.455(b), (c). It also does not apply to purely business or commercial transactions. *Id.* § 347.007.

Chapter 347 generally requires registration by entities that extend credit for the manufactured-home purchases described above. *Id.* §§ 347.002(4), 347.451(a). There are exceptions for banks, savings associations, Chapter 342 licensees, and credit unions. *Id.* §§ 341.001, 347.451(a).

Any entity that extends credit for manufactured-home purchases must be registered with the OCCC unless it falls into one of the exceptions listed above.

Requirements of the Texas SAFE Act:

The Texas SAFE Act generally requires individuals to be licensed if they act as residential mortgage loan originators. Tex. Fin. Code § 180.051(a)(1). A residential mortgage loan originator includes any individual who takes an application for a residential mortgage loan, offers the terms of a residential mortgage loan, or negotiates the terms of a residential mortgage loan. *Id.* § 180.002(19)(A). A residential mortgage loan is a loan for personal, family, or household use that is secured by a dwelling, with a deed of trust or equivalent security interest. *Id.* § 180.002(18). The term *dwelling* has the same definition as in the federal Truth in Lending Act (TILA). *Id.* § 180.002(5).

Because it incorporates TILA's definition of *dwelling*, the Texas SAFE Act also applies to certain transactions that do not involve real property. Under TILA, a dwelling "means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives." Truth in Lending Act § 103(v), 15 U.S.C. § 1602(v). Under Regulation Z, which implements TILA, "*Dwelling* means a residential structure that contains one to four units, whether or not that structure is

attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.” Regulation Z, 12 C.F.R. § 226.2(a)(19). For purposes of TILA, a manufactured home is a dwelling, so it is also a dwelling for purposes of SAFE.

Generally, if a Chapter 347 registrant has employees who act as residential mortgage loan originators, then those employees must be individually licensed under the Texas SAFE Act. However, the Texas SAFE Act contains an exemption for “individual[s] licensed under Chapter 1201, Occupations Code.” Tex. Fin. Code § 180.002(19)(B)(iii).

This exemption conflicts with a rule recently proposed by the federal Department of Housing and Urban Development (HUD). HUD’s rule provides a list of entities that states must require to be licensed, and there is no exception for manufactured-home sellers. See 75 Fed. Reg. 66,557–58. If a state does not comply with HUD’s requirements, then HUD may establish its own loan-originator-licensing system for that state. Federal SAFE Act § 1508(a), 12 U.S.C. § 5108(a); 75 Fed. Reg. 66,560. The Texas SAFE Act further provides that provisions of the act may be severable if deemed to be invalid.

The OCCC’s role as a regulatory official:

Under the Texas SAFE Act, the OCCC is a regulatory official with respect to Chapter 347 registrants. Tex. Fin. Code §§ 180.002(17), 180.251(c). Chapter 347 registrants are therefore exempt from the Department of Savings and Mortgage Lending’s recently adopted rule implementing the Texas SAFE Act. See Tex. Admin. Code § 80.301 (providing an exception for “individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, §180.251(c)”).