

Federal and State Mortgage Fraud Initiatives

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What is Mortgage Fraud

- FBI -- “material misstatement, misrepresentation, or omission relating to the property or potential mortgage relied on by an underwriter or lender to fund, purchase or insure a loan.”
- The FBI has emphasized that “[t]he defrauding of mortgage lenders should not be compared to predatory lending practices which primarily affect borrowers.”



Current Federal Law

- Provides all authority law enforcement needs to prosecute mortgage fraud
 - Mail and wire fraud statutes
 - Transportation of stolen goods
 - Fraud on federally-chartered and federally-insured institutions (“Section 20” institutions)
 - Numerous other federal statutes apply in different contexts



Current State Law

- Provides all authority state law enforcement officials need to prosecute mortgage fraud
 - Theft by deception statutes
 - Fraud statutes
 - State regulatory agencies have substantial authority over state-licensed individuals and entities



S. 1222 (Obama/Durbin Bill)

- Contains several provisions that would aid in combating mortgage fraud:
 - Mandatory reporting requirements
 - Communication system between industry and law enforcement
 - Database of debarred or censured mortgage professionals
 - Increased funding to law enforcement



S. 1222 (Obama/Durbin Bill)

- Applies only to “mortgage professionals”
- Contains several provisions unrelated to combating mortgage fraud
 - Heightened foreclosure requirements on subprime loans containing variety of terms
 - Assignee liability in cases of “deceptive practices”
 - Housing counseling to borrowers regarding any practices likely to increase foreclosure risk



Georgia's Mortgage Fraud Law

- Limited to mortgage fraud
- No reported decisions applying Georgia law
- GA Asst. AG at recent AARMR Conf.:
 - Difficulty with prosecuting mortgage fraud is not legal authority but resources
 - Notwithstanding Georgia law, Georgia AG's office "cannot keep up"



Numerous State Bills Pending

- Three categories:
 - Laws that target mortgage fraud without confusing the term with predatory lending (often patterned on Georgia law)
 - Laws that purport to address mortgage fraud but also seek to address predatory lending
 - Laws that use the term “mortgage fraud” but are aimed largely, if not exclusively, on predatory lending



Mortgage Bankers Association Position


- Current federal laws provide sufficient authority to prosecute mortgage fraud
- New untested federal statutes would have to be interpreted and could hamper prosecution
- It would be a mistake to conflate mortgage fraud and predatory lending
- Layering private rights of action on criminal statutes is not wise



Mortgage Bankers Association Position

- What is needed is:

- a centrally coordinated federal mortgage fraud office at the Justice Department
- with adequate funding
- and coordination with state prosecutors and law enforcement personnel



National Fraud Prevention Database

- An MBA initiative
- Fannie Mae, Freddie Mac and national lenders participating and others are welcome to join Working Group
- Will develop:
 - standards for submission of data
 - rules for disseminating data
 - an organization to hold the database
 - criteria for vendor selection



Enforcement Risk for Lenders

- Warning sign: high EPDs
- Lender exposure to enforcement actions
- Steps lenders should take to protect themselves
- Dealing with law enforcement personnel