



Regulatory Update

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NEW DEVELOPMENTS = NEW ACTIONS



Opening and Overview

- GOOD Morning
- Presentation will focus on:
 - Nontraditional Guidance
 - Subprime Statement
 - HOEPA Review
 - RESPA Reform
 - Legislation
 - HR 3915 Frank, Miller, Watt, Bachus Bill
 - Kanjorski Bill discussed earlier

NEW DEVELOPMENTS = NEW ACTIONS



Increased Foreclosures Have Led to New Regulatory Actions

- Delinquencies and foreclosures have risen
- 85% of subprime borrowers are current and most prime borrowers are, too
- Ohio, Indiana and Michigan account for less than 10 percent of mortgage loans in the country, but nearly 20 percent of the nation's loans in foreclosure and 15 percent of all of the foreclosures started in the country during the first quarter
- Evidence economy is to blame for much of today's issues not product types. A cooling real estate market is not helping
- Still considerable pressure for regulation

RECENT REGULATORY DEVELOPMENTS

Federal



The Interagency Guidance on Non-traditional Mortgage Product Risks (the “Guidance”)


- **Guidance – First Response to Regulatory Concerns**
 - **Coverage and Scope**
 - Applies to “Non-traditional Products” with a deferred interest or interest only feature
 - Does not generally apply to Hybrid ARMs (2/27 and 3/28s)
 - Covers underwriting, risk management and consumer protection
 - **Underwriting**
 - Nontraditional products to be underwritten at fully indexed rate, assuming a fully amortizing payment
 - Stated income or other reduced documentation permissible only with clear mitigating factors

RECENT REGULATORY DEVELOPMENTS

Federal

The Interagency Guidance on Non-traditional Mortgage Product Risks (the “Guidance”) cont’d

- **Risk Management**
 - Institutions’ policies must consider levels of risk in operating practices, accounting procedures and capital
 - Third party monitoring required
- **Consumer Protection**
 - Communications with consumers, including ads, oral statements, promotional materials and monthly statements should provide
 - “Clear and balanced information” at crucial decision points, when borrowers shopping
 - Describe risks and benefits of products, payment shock and negative amortization
 - Servicing statements must disclose borrower’s current loan balance, allocation of principal versus interest, and if applicable, amount by which principal balance increased
 - Guidance accompanied by Regulators’ Illustrations
- **Key Point**
 - Specifically rejects “suitability standard”



Shortly After Adopting Guidance Federal Agency Issued Statement on Subprime Mortgage Lending

- **Scope**
 - **Statement applies to Subprime ARMs with one or more of the following features**
 - **Low interest rate that expires after a relatively short period**
 - **Lack of limits on how much interest rate rises on reset**
 - **Limited or stated income doc types**
 - **Product features likely to result in need to refinance in the near term to maintain affordable payment**
 - **Excessive prepayment penalties**
 - **Prepayment penalties exceed the initial period**
 - ***Principles may apply to Prime***
- **To Comply Lender Must:**
 - **Underwrite to fully indexed rate assuming fully amortizing payment schedule**
 - **Determine borrower's ability to repay documenting income unless clear mitigating factors**



Consumer Protection Provisions

- **Provide information to enable consumers to understand material terms, costs and risks of loan products at a time that will help borrower select;**
- **Communicate to borrowers, in ads, oral statements and promotional materials, clear and balanced information about the relative benefits and risks of products including payment shock; prepayment penalties, balloon payments; and responsibility for taxes and insurance; and**
- **Not extend prepayment penalties beyond initial reset period - borrowers should be provided a reasonable period of time (at least 60 days prior to reset date) to refinance without penalty.**

Defining Subprime in Statement

- **Statement defers to 2001 Expanded Interagency Guidance definition which says subprime borrower has reduced repayment capacity and impaired credit history with some of the following factors:**
 - Higher than average probability of default as evidenced by a FICO of 660 or below (with product and collateral as sub factors); and/or
 - Back-end DTI of 50% or greater, or otherwise impaired ability to pay for living expenses after subtracting debt service requirements from gross monthly income;
 - Two or more 30-day delinquencies in the prior 12 months, or one or more 60 day delinquencies in the last 24 months;
 - Judgment, foreclosure, repossession or charge off within the prior 24 months;
 - Bankruptcy in the past 5 years.

Additional Thoughts – Regulator Flexibility

- Some regulators allow lender to treat loans where FICO less than 660 as an Alt-A product rather than subprime with mitigating factors
- 620 or below virtually always treated as subprime

Federal and State Regulators Working Together

- **American Association of Residential Mortgage Regulators (AARMR) and Conference of State Bank Supervisors (CSBS) issued model guidelines for state regulators**
- **Check AARMR and CSBS Web Sites for content and coverage update**
- **At the end of October**
 - **40 states and the District of Columbia have adopted the nontraditional guidance so far in one form or another**
 - **26 states have adopted the later subprime statement**

PENDING REGULATIONS



Federal Reserve HOEPA Hearing

- **Federal Reserve Conducted HOEPA Hearing in June, 2007 and Will Likely Propose New UDAP Rules by the end of 2007**
- **Hearing Considered -**
 - Determining borrower's ability to repay
 - Stated income and alt/no doc loans
 - Prepayment Penalties
 - Requiring escrows for taxes and insurance

Industry in its comments preferred disclosure rather than UDAP rules with considerable liability

PENDING REGULATIONS


RESPA Reform Is Returning

- **The President and HUD Secretary have announced that new RESPA rules will be issued by the end of the year**
- **Indications will include:**
 - **Comparable GFE and HUD-1**
 - **Possibly categories of fees**
 - **Mortgage broker fee disclosure**
 - **Limits on cost increases**
- **MBA has proposed options on its website www.mortgagebankers.org**

PENDING REGULATIONS OTS ANPR

- **OTS Published Advance Notice of Proposed Rulemaking (ANPR) Dealing With Unfair and Deceptive Acts**
- **Asks whether OTS should:**
 - **Expand its current, limited, prohibitions against unfair or deceptive acts or practices, i.e. requiring confession of judgment, misrepresenting co-signer liability, imposing an unjust delinquency charge**
 - **Issue guidance generally defining where acts or practices are unfair or deceptive**
 - **Convert recent interagency guidance, e.g., nontraditional, subprime, others into rules**
 - **Develop guidance similar to HUD's Housing Goal Rules**
 - **Follow state law models like Michigan and list prohibited practices**
- **COMMENTS WERE FILED NOVEMBER 6**


PENDING LEGISLATION

- 
- **Several bills recently introduced**
 - **Bachus Bill emphasizes licensing and registry**
 - **Schumer Bill suitability approach**
 - **One house bill – one page form**
 - **Miller, Watt, Frank Bill introduced Monday October 22, 2007 covers origination**
 - **Kanjorski Bill covers servicing**
 - **These two bills likely to join and may pass House**
 - **Bankruptcy Bill**

PENDING LEGISLATION

- **HR 3915 Miller Watt Frank and Bachus – Marked Up November 6, 2--6 Work in Progress**
 - **Originators covers brokers and lenders**
 - **Licensing standards and national registry**
 - **Duty of care**
 - **Disclosure of range of products & licensing**
 - **Anti-steering prohibits YSPs and incentive comp for subprime loans**
 - **Ability to repay and net tangible benefit required for all loans**
 - **Qualified mortgages - Prime presumed**
 - **Qualified Safe Harbor Mortgages Rebuttably Presumed**
 - **Fully indexed rate, DTI, Documentation, 7 years fixed or ARM with cap**
 - **HOEPA Mortgages - Lower Point and Fees Trigger**
 - **Securitizer Liability**
 - **Individual remedies, penalties, rescission**

PENDING LEGISLATION

- 
- **New 3915 Provisions based on the Mark-Up**
 - **Bachus Licensing provisions**
 - **Counseling**
 - **One Page Form**
 - **Likely to link up with Kanjorski proposals**
 - **Still concerns**
 - **Lack of Preemption**
 - **Some loans will not be made**
 - **Wrinkles that bring liability**

Thoughts from Here

More Requirements Are Coming

- **HOEPA Rules are imminent**
- **RESPA and later TILA disclosure changes are coming**
- **Statutory changes likely**
- **Industry supports**
 - **Greater transparency**
 - **Greater financial literacy**
 - **Targeted uniform national standard**