

Workshop 3 – Quick Guide to Anti-Predatory Lending Approaches

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Introduction

- ▶ Predatory Lending
 - Significance
 - Definitions
 - General Political Setting

Setting

- ▶ Evolving Concept of “Home Finance”
 - Mortgage as “Bank Account” vs. “Purchase Money”
 - Complex Finance Options
 - Loan
 - Supported by ancillary services
 - Very high loan amounts
 - Mortgage provides for financial options that are “malleable”?
 - Secured by property
 - Capitalization for small business
 - Basis of wealth for communities

Setting

- ▶ Disclosures: Tool or Proxy
 - Traditional View: In free market system, consumers need information & education, and should be allowed to make own informed decisions. The “Disclosure” Approach--
 - Allows for markets to function and “create”
 - Does not unduly involve government in functions of market
 - Allows market to decide “good” and “bad”
 - “Proxy”

Setting

- **Emerging View**: (Consumer Advocates) – Disclosures are inadequate, alone, to control mortgage abuses.
 - Consumers are not sufficiently savvy
 - Informational imbalance
 - Market needs “substantive” control
 - **“Tool”** (at best)

Setting

- Increasing Consensus: Current Disclosure System “Inadequate”
 - Consumer Complaints
 - Negative Reports by “Think Tanks”
 - June 2007 Study by Federal Trade Commission

Setting

- ▶ FTC Report's "key findings" are—
 - Current mortgage cost disclosures fail to convey key mortgage costs to many consumers.
 - Both prime and subprime borrowers failed to understand key loan terms when viewing the current disclosures, and both benefitted from improved disclosures.
 - Prototype disclosures developed for the study significantly improved consumer recognition of mortgage costs, demonstrating that better disclosures are feasible.
 - Improved disclosures provided the greatest benefit for more complex loans, where both prime and subprime borrowers had the most difficulty understanding loan terms.
 - The study also demonstrates the importance of consumer testing in the development and evaluation of consumer disclosures.

Setting

▶ Mortgage Bankers Association

- 2008 Advocacy Agenda: “MBA continues to support RESPA reform in order to simplify the mortgage closing process, to make it consumer friendly and to facilitate market innovations that lower costs for industry and consumers.”
 - Current RESPA requirements are confusing to consumers and cumbersome for industry practitioners.
 - Reform is needed to improve access to mortgage finance, to lower costs to consumers, and to limit costly litigation.
 - Moreover, by making the mortgage transaction more transparent, reform will reduce abusive lending.
- “Project Clarity”

Definitions

- ▶ Defining the Debate
 - Diversity of Views
 - Disagreement on Solutions
 - Internal Disagreements in Both Spheres

Advocates' Views

- ▶ **Dacosta Mason (AARP):** Principal aim is to eradicate “equity stripping.” (Bad underwriting, high upfront fees financed into loan, supported by repeated refinances, that “steal equity” from consumers.)
 - Traditional view
- ▶ **Kurt Eggert (Law Professor – Chapman University):** “The primary goal of predatory lending is to convince or coerce borrowers to obtain loans that cost more than the market rate given the borrower’s risk characteristics.”)
 - Overpricing
 - Steering

Advocates' Views

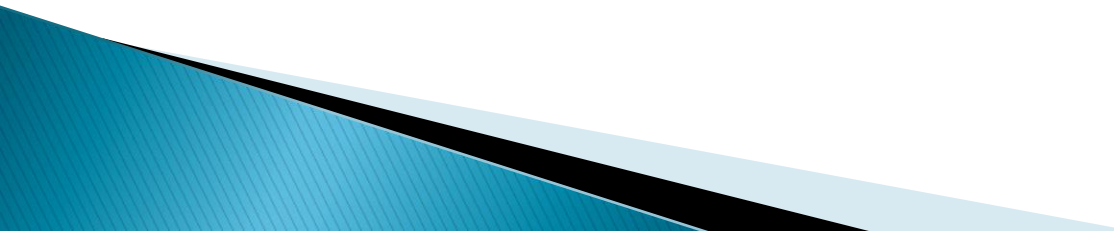
- ▶ **David Berenbaum** (National Community Reinvestment Coalition): Focus is on “fair lending,” and discriminatory aspects of mortgage lending. (HMDA, Fair Housing)
- ▶ **Janis Bowdler** (NCLR): Overly aggressive sales techniques that deliberately mislead the borrower.

Advocates' Views

- ▶ **Plaintiff's Bar** (Filings and Class Action Challenges): Legal or regulatory mistakes increasingly labeled as “predatory.”
 - RESPA
 - TILA
 - ECOA
- ▶ **Martin Eakes** (“Center For Responsible Lending”): Structural unfairness. PL takes “different forms.” Change and shape the laws so as to control “unfair” pricing and products.
 - Seek changes in the business model
 - All-inclusive APR
 - Prohibit PPP & Balloons; “Suitability Standard”

Advocates' Views

UNDERSTAND THAT—

- ▶ Each harm identified takes a different formulation and specific remedy
 - ▶ All harms are “mixed” in PL debates and discussions.
 - ▶ There are “civil rights” implications in these debates.
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Advocates' Views

- ▶ Jesse Jackson—
 - Senate Testimony, February 2007
 - Teaching financial literacy and eliminating “predatory lending” is the most important goal of the civil rights movement.
 - Emphasizes the importance of “inheritance” (preservation of “equity”)
- ▶ David Scott (GA), Maxine Waters (CA):
 - “Economic exploitation of minorities”

Industry Views

▶ Industry Groups—

- American Bankers Association
 - America's Community Bankers
- Mortgage Bankers Association
- Consumer Mortgage Coalition
- Consumer Bankers Association
- American Financial Services Association
- National Association of Mortgage Brokers
- State Bankers Associations
- State Brokers Associations
- *Coalition for Fair and Accurate Lending*

Industry Views

- ▶ All industry representatives “defend” their constituents differently.
 - MBA: “Mortgage Fraud”
 - Bankers: Blame “Non-Regulated” Entities
 - Prime Lenders: Blame “Subprime” Segment
 - Lenders: Blame brokers
 - Secondary Market Players
 - State battles confused industry policy stances

Summary of Politics

- ▶ Convoluted political battlefield
- ▶ Recent “Mortgage Meltdown” Events:
 - Lenders/Brokers
 - Wall Street/Investors
 - Appraisers
 - Credit Rating Agencies
 - Consumers
 - Regulators
 - Government Policies

Congressional Responses

▶ Federal Laws

- HOEPA (*Home Ownership and Equity Protection Act*)
 - Most focused on “predatory lending abuses”
 - Structure--
 - Does not “prohibit” lending—only “adds” protections
 - Creates “high cost loan” category subject to additional protections and disclosures
 - Adds assignee liability provisions
- Other Mortgage Lending Laws
 - RESPA
 - TILA
 - ECOA

Current Initiatives

- ▶ Various important MORTGAGE REFORM proposals are pending, all propelled by “predatory lending” abuses:
 - “Mortgage Reform and Anti–Predatory Lending Act of 2007” (Frank Bill) (H.R. 3915)
 - “The Home Ownership Preservation and Protection Act of 2007” (Dodd Bill) (S. 2452)
 - Federal Reserve Board Proposed Rule (73 FR 1672)

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