

Legislative and Regulatory Update

Nonprime and Specialty Lending Conference

Ken Markison

Senior Director and Regulatory Counsel



Good Afternoon

- Ken Markison, Senior Director – Regulatory Counsel at MBA
- Nanci L. Weissgold, Partner at Law Firm of K &L Gates in Washington, DC
- Jack Konyk, Senior Vice President, National City Mortgage



Introduction

- Today we will talk about the unparalleled array of regulatory and legislative proposals at the Federal and state level
- Ken - HOEPA and RESPA
- Nanci – State Issues
- Jack - Federal Legislative Trends

Main Drivers

- Delinquency and foreclosure rates have risen
- Sense that too many borrowers are losing their homes
- Fact is multi-faceted issue involving economy and forces aplenty
- Proposals deal with all aspects of lending including origination and servicing
- Also, relief for borrowers

HOEPA Rule - Approach

- Regulates Based on APR - Costs
- HOEPA or highest cost loans subject to current HOEPA requirements
- New Category of “Higher Priced Loans” defined by Home Mortgage Disclosure Act (HMDA) -like triggers – 3% and 5% over comparable Treasuries
- All Loans subject to some of the new rules, too

HOEPA Rule – Higher Priced Mortgages

Rule would:

- 1. Require Finding of Ability to Repay** – Prohibit creditors from engaging in a pattern or practice of extending credit without considering borrowers' ability to repay the loan by considering the consumer's current and expected income, current obligations, and employment.
 - **Rebuttable Presumption** – Establish a rebuttable presumption of a violation where a lender fails to verify and document repayment ability, consider the margin and index for variable rate loans, consider taxes and insurance, the ratio of the consumer's total debt obligation to income and residual income after paying obligations.
 - **Safe Harbor** – Where creditor has reasonable basis to believe that consumers will be able to make loan payments for at least seven years, considering all of the factors of the ability to repay requirements.
- 2. Require Documentation** – Require creditors to verify the income and assets they rely upon with third-party documents.



HOEPA Rule – Higher Priced Mortgages

Rule would:

3. Limit Prepayment Penalties – Allow prepayment penalties with high-cost mortgages and higher-priced mortgages only if

- At closing borrower's DTI does not exceed 50 percent (and debt and income are verified);
- Prepayment is not made using funds from a refinancing by the same creditor or its affiliate;
- Penalty term does not exceed five years from closing;
- Penalty is not prohibited under other applicable laws; and
- Prepayment penalty expires 60 days before the first scheduled reset, if any.

4. Require Escrows – Require establishment of escrow accounts for taxes and insurance for at least the first year of a first lien higher-priced mortgage.

- Proposal permits, but does not require, creditors to offer borrowers an option to cancel escrows once the first year has passed.



HOEPA Rule – For All Loans

For All Loans - The rule would:

- 1. Yield Spread Premiums – Prohibit YSPs unless broker enters into written agreement with consumer before any payment to the broker setting forth compensation and other points**
- 2. Appraisals – Prohibit creditors and mortgage brokers and their affiliates from pressuring an appraiser to misrepresent a dwelling's value, for all closed-end residential loans. Prohibits lender knowing or should have known broker influenced**



HOEPA Rule – For All Loans

For All Loans - The rule would:

- 3. Loan Administration – Prohibit certain servicer practices including: (1) failing to credit consumer’s periodic payment as of date received; (2) imposing a late fee or delinquency charge where only basis is consumer’s failure to include in current payment a delinquency charge imposed on earlier payments; (3) failing to provide a current schedule of servicing fees within a reasonable time after request; or (4) failing to provide accurate payoff statement within reasonable time**



HOEPA Rule – For All Loans

For All Loans - The rule would:

- 3. Loan Administration – Prohibit certain servicer practices including: (1) failing to credit consumer's periodic payment as of date received; (2) imposing a late fee or delinquency charge where only basis is consumer's failure to include in current payment a delinquency charge imposed on earlier payments; (3) failing to provide a current schedule of servicing fees within a reasonable time after request; or (4) failing to provide accurate payoff statement within reasonable time**



HOEPA Rule – For All Loans

For All Loans - The rule would:

- 4. Advertising – Ban deceptive advertising practices in both open-end and closed-end mortgages, including, for example, misleading use of the word “fixed” in describing payments associated with hybrid ARMs, and characterizing as government loan when not**
- 5. Early disclosures – Require early TILA and RESPA disclosures within 3 days of application and prohibit originators from taking any application fee until the disclosures are received for all closed-end mortgage transactions.**



Comments on HOEPA

- ◆ Comprehensive, thoughtful and asks several questions
- ◆ Little preemption
- ◆ Triggers may be in the wrong place
- ◆ Numerous technical issues
- ◆ Comments due April 8
- ◆ Should only be complemented by legislative proposals for consumers and borrowers

RESPA Rule

Based on review of document circulated would:

1. Establish a 4-page standard Good Faith Estimate (GFE) form;
2. Impose tolerances to limit increases in GFE estimates at closing;
3. Revise requirements for disclosure of mortgage broker fees as 'the charge or credit for the interest rate chosen;''
4. Make changes to the HUD-1 to facilitate comparison between GFE and HUD-1 charges;



RESPA Rule

5. Establish a new script to be read to borrowers at settlement concerning final loan terms and settlement costs;
 6. Revise regulations to permit certain average-cost pricing and volume discounts;
 7. Clarify “required use” requirements to restrict disincentives to use of non-affiliates; and
 8. Make technical amendments to the RESPA rules.
- ◆ Proposal also announces HUD will seek legislation to increase enforcement authority
 - ◆ Invites public comment for 60 days



RESPA Comments

- ◆ Too early to tell but--
 - 60 days is too short
 - Extensive and has to gibe with Board changes
- ◆ We'll be polling our members