

ROLE OF ENFORCEMENT IN REALIZING DESIRED OUTCOMES

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MBA's Regulatory Compliance
Conference

September 16, 2008

- **State legislators, governors, regulators and mortgage trade associations in implementing the requirements of the S.A.F.E Act must include provisions for effective enforcement.**
- **Without effective enforcement any licensing or registration requirement at the business entity or loan officer levels would not have the desired effect of keeping the “bad actors” out of the mortgage origination business.**
- **The overwhelming majority of “predatory” or abusive lending practices highlighted in the past 10 years were a violation of existing federal or state laws and regulations.**
- **The enactment of predatory lending and loan officer licensing laws in many states over the past nine years did not have a significant impact in reducing the incidence of abusive or “predatory” lending because resources were not available for effective enforcement.**

THE ENFORCEMENT CHALLENGE – THE MICHIGAN EXPERIENCE

- Michigan enacted in 1987 its mortgage licensing law for brokers, lenders and servicers.
- The Michigan Mortgage Lenders Association (MMLA) and other industry trades successfully pushed for enforcement resources funded by license and other operating fees to be placed in a restricted fund that could only be used for enforcement of the act.
- Unlike most other licensing laws the legislation, with industry support, allowed the regulator to set license and operating fees within a wide range including a CPI inflator for the maximums.
- Michigan also enacted in 2002 a Mortgage Prohibitions or “Bad Actors” Law, which authorized the regulator to ban individuals that commit fraudulent acts from being an owner of, or employed by a mortgage company. (Fifty five individuals have been banned from the industry mostly in 2007 and 2008.)
- Additionally a predatory lending law was enacted in 2002 that specifically gave the regulator power to enforce licensees’ compliance with applicable federal laws and regulations and to impose state penalties for violations.

THE MICHIGAN EXPERIENCE - CONTINUED

- Even though there were significant balances in the regulator's restricted enforcement fund since 1998 to enforce the various acts, the executive and legislative branches did not approve the levels of appropriations to hire enforcement staff, resulting in five examiners to monitor 3000 licensees.
- The regulator concerned about the growing fund balance, and state government's constant search for new sources of revenue, lowered license and operating fees between 2001-2006 to slow the fund's growth.
- In May 2006, in an effort to balance the budget the Governor and Legislature, converted \$7 million of the \$9 million in the fund, action tantamount to a backdoor tax.
- Industry notified of action two days before adjournment, and our objections were met with a query from legislators about where they could find \$7 million dollars from other sources.
- In defense of its action the Michigan Budget Office stated that the restricted fund language did not include language that funds not expended in a fiscal year must lapse to the subsequent fiscal year.
- Shortly after the funds transfer, Michigan foreclosure rates started to rise due to job loss in the manufacturing sector and the emerging subprime crisis.

THE FALLOUT FROM THE TRANSFER

- Michigan foreclosure rates in 2007 are among the highest in the nation and the state has the highest unemployment rate.
- Detroit News front-page story puts blame for high foreclosure rate and predatory lending on lax enforcement.
- Excerpts from the November 29th story follow:

“As Michigan's foreclosure crisis was growing in the fall of 2006, state legislators jumped into action. They took money away from the state office that investigates mortgage fraud. To help alleviate a budget deficit, the Legislature raided \$7 million from a fund set aside by law to pay the salaries of mortgage examiners. It would have been enough to increase the number of examiners six-fold”.

“Lax regulations, an undermanned examiners office and reluctant prosecutors turned Metro Detroit into a hub of fraud, where con men and those on the fringes of the law steered buyers into loans that increased the odds of foreclosure”

MICHIGAN RESPONSE TO MEDIA PRESSURE IN LIGHT OF MORTGAGE CRISIS

- **With industry support the Governor pushed successfully in the current fiscal year for 23 examiner positions for mortgage oversight.**
- **Michigan enacted a loan officer registration law drafted by MMLA and the Michigan Mortgage Brokers Association. MMLA pushed for language which amended the restricted fund language of the Mortgage Licensing law to mandate that funds not expended in any fiscal year shall lapse to the subsequent fiscal year.**
- **This amendment strengthened the lockbox that protects the fund.**
- **While not foolproof, to tap into the fund the legislature will have to change the law, which gives the industry the appropriate notice and time to lobby against the change.**

MICHIGAN'S NEW RESTRICTED FUND LANGUAGE

- 8) ~~Money received under this act shall be deposited in the state treasury and credited to the financial institutions bureau to be used only for the operation of the financial institutions bureau.~~ THE DEPARTMENT OF TREASURY SHALL ESTABLISH AND ADMINISTER A RESTRICTED ACCOUNT IN THE GENERAL FUND NAMED THE MBLSLA FUND. THE DEPARTMENT OF TREASURY SHALL CREDIT TO THE ACCOUNT ALL FEES COLLECTED UNDER THIS ACT OR UNDER THE COMMISSIONER'S AUTHORITY UNDER THIS ACT AND MONEY APPROPRIATED OR RECEIVED FROM ANY SOURCE. THE DEPARTMENT OF TREASURY SHALL USE THE MONEY IN THE ACCOUNT ONLY TO PROVIDE MONEY TO THE COMMISSIONER, TO ADMINISTER AND ENFORCE THIS ACT AND OTHER COSTS ASSOCIATED WITH THE COMMISSIONER'S REGULATORY OBLIGATIONS. MONEY IN THE ACCOUNT AT THE END OF A STATE FISCAL YEAR SHALL NOT REVERT TO THE GENERAL FUND BUT SHALL BE CARRIED OVER IN THE ACCOUNT TO THE NEXT STATE FISCAL YEAR.

CONCLUSION

The prerequisites for any chance of adequate enforcement of licensing laws are:

- **Industry commitment to support a flexible fee structure that enables the regulator the authority to generate the necessary resources.**
- **Legislation that requires that proceeds from fees and fines be placed in a restricted fund that can only be used for administering and enforcing the legislation.**
- **A specific provision that funds not expended in any given fiscal year shall lapse to the subsequent fiscal year.**
- **Industry vigilance to oppose any attempts by the executive or legislative branches of government to change the statute or in any other way to tap into the fund.**