

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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Issue

As promised, legislative and regulatory activity has picked up around the country in the last month.

We have new predatory lending legislation in Indiana and changes to the regulatory lending scheme in West Virginia and Wisconsin. We also have rule changes in Kentucky and Utah.

The purpose of the Lenders Update is to provide a "heads-up" of new legislation and regulations affecting the mortgage lending industry. We try to provide brief summaries of new matters so our readers can judge whether the subject impacts their operations. We recommend that our readers review the entire new material in detail where relevant. For your convenience, where applicable, statute, regulation or case can be easily identified in the summary. Our Update includes changes in the legislation available to Alt & Associates by April 15, 2004

FEDERAL ISSUES

None of significance to report.

PREDATORY LENDING

INDIANA

Indiana HB 1229 becomes effective **July 1, 2005**, and makes changes to licensing requirements and creates anti-predatory lending prohibitions in the state of Indiana. The new statute includes the following significant changes:

Indiana will no longer exempt from the definition of loan broker: 1) Any person authorized to sell and service loans for FNMA or the Federal Home Loan Mortgage Corporation, 2) issue securities backed by the GNMA, 3) make loans insured by HUD, 4) act as a supervised lender or non supervised automatic lender of the United States Dept. of Veterans Affairs, or 5) act as a correspondent for loans insured by HUD. This exemption was commonly used by many lenders and may require some of you to obtain new licensing in Indiana.

Probably more importantly, the Act set forth an anti-predatory lending scheme.

The Act defines a high cost home loan as a home loan with:

- A trigger rate that exceeds the benchmark rate; or
- Total points and fees that exceed:
 - 5% of the loan principal for a home loan having a loan principal of at least \$40,000.
 - 6% of the loan principal for a home loan having a loan principal of less than \$40,000.

The Act defines a benchmark rate as the interest rate established under Section 152 of the Federal Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1602 (AA)) and the regulations adopted under that Act by the Federal Reserve Board, including 12 CFR 226.32 and the official staff commentary to the regulations as amended. In other words, the same rate used for “Section 32 Loans”.

Prohibited Lending Practices.

A creditor making a high cost home loan is prohibited from:

- financing insurance,
- replacing a loan made by a governmental or non-profit lender with a high cost home loan with the first ten years,
- recommending default on an existing loan,
- charging a fee for providing a balance due,
- financing any points and fees,
- including prepayment fees,
- refinancing a high cost home loan by charging points and fees within four years,
- requiring a payment that is more than twice as large as the average of earlier monthly payments,
- increasing the interest rate after default,
- increasing the outstanding principle balance at any time because the regular payments do not cover the full amount of interest due,
- paying a contractor under a home improvement contract from the proceeds of a high cost home loan,
- including a provision that requires arbitration.

A creditor is required to:

- treat each payment as posted on the same business day as the payment was received,
- provide a payoff balance within ten business days of borrower’s request, and
- provide the borrower with contact information for a HUD or IN Dept. of Commerce certified nonprofit counseling agency prior to making a high cost home loan.

Finally, certain disclosures, as set forth in the Act for high cost home loans, are now required to be made:

- to the borrower prior to consummation,
- regarding prepayment penalty fees,
- regarding liability for purchasers or assignees, and

- on the face of the deed of trust.

NEW JERSEY

We do not normally report items that are either not specific legislative or regulatory changes or directly related to those changes. However, we did think that a new study by the University of Virginia released in late March was of interest concerning New Jersey's new anti-predatory legislation, which is known as the Home Ownership Security Act. The study was performed at the request of the National Home Equity Mortgage Association and the National Association of Mortgage Brokers.

In summary the results reflected a sharp reduction in lending to deserving borrowers. Loans made for refinancing dropped by more than 67%. Home improvement loans were down 75% in the first two months of the year. One billion dollars is estimated to have been lost in lending volume during this two-month period. The study showed that lenders are confused by ambiguities in the law or are simply unable to do business.

Results further show that 84% of mortgage brokers and other lenders have reduced certain types of subprime lending. In a startling statistic, 40% of New Jersey lenders and brokers closed their businesses, or had significant reductions in employment, since the law went into effect. In short, the study seemed to demonstrate that borrowers, particularly those who had less than perfect credit, are being hurt.

STATE ISSUES

KENTUCKY

New rules for mortgage loan brokers and mortgage loan officers have been implemented in the state of Kentucky. The rules require all registered mortgage loan brokers and registered loan officers must complete twelve hours of continuing education each year. An approved course from another state is acceptable as long as the course meets Kentucky classroom requirements for continuing education.

UTAH

Utah has clarified its new rules concerning continuing education hours required to renew licenses. Prior to **December 31, 2005** zero credit hours are required for renewal. After **December 31, 2005** fourteen credit hours will be required for renewal.

WEST VIRGINIA

West Virginia HB 4168 becomes effective **June 10, 2004**, and makes changes to licensing requirements and provides definitions and regulations related to "good funds" in the state of West Virginia.

The Act requires all persons engaged in West Virginia in the business of lender, broker or loan originator to obtain a license from the Commissioner, and requires all foreign corporations to register with the Secretary of State prior to transacting business in West Virginia.

Licenses are not required for loans made by the following:

- Federally insured depository institutions
- Regulated consumer lender licensees
- Insurance companies
- Any other lender licensed by and under the regular supervision and examination for consumer compliance of any agency of the federal government.

The Act requires the lender to, at or before loan closing, cause disbursement of loan funds to the settlement agent. In the case of a refinancing, or any loan where a right of rescission applies, the lender must, within one business day after the expiration of the rescission period required under the federal Truth-in-Lending Act, cause disbursement of loan funds to the settlement agent, unless the loan is rescinded by the customer. All funds disbursed by the lender to the settlement agent must be good funds. The lender is not entitled to receive or charge any interest on the loan until disbursement of loan funds and loan closing has occurred.

WISCONSIN

Wisconsin SB 279 adds requirements for registration of loan originators in Wisconsin. The statute also requires mortgage brokers to provide consumers with certain disclosures. The requirements regarding registration as a loan originator become effective on **July 2, 2005**.

The Act requires each applicant for registration as a loan originator to pass a written examination and requires the employer of each applicant to obtain a criminal history. There are also education requirements for originators. Applicants for renewal of registration as a loan originator must submit evidence of completion of at least 16 hours of education or passage of examinations within two years prior to application.

When effective, the new statute will require that every loan application be signed by a registered loan originator and every contract between a mortgage broker and a consumer, under which the mortgage broker agrees to provide brokerage services to the consumer, must be in writing.

Consumers must be given a consumer disclosure statement, explain the content of the statement, and ensure the consumer initials or signs the statement prior to entering into a contract. The consumer disclosure statement must contain a brief explanation of the relationship between the consumer and the mortgage broker under the proposed contract, a brief explanation of the manner in which the mortgage broker may be compensated under the proposed contract.

Lenders Update is published via e-mail as a service to our colleagues in the financial industry throughout California and the United States.

ALT & ASSOCIATES provides regulatory compliance and licensing services, operational advice and transactional assistance as well as litigation representation to the financial services industry. Over the past two decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations.

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