LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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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, the applicable statute, regulation, cases or website can be easily identified in the summary. Our Update includes information available to Alt & Associates by February 17, 2008.

FEDERAL ISSUES

MORTGAGE FORGIVENESS DEBT RELIEF ACT OF 2007

As most of us know, the President signed the Mortgage Forgiveness Debt Relief Act of 2007 just before Christmas last year. While many of us are now familiar with the legislation, we still have received numerous questions concerning the tax consequences flowing from its provisions. The answers are straightforward. The statute provides a window of three years for home owners to refinance their mortgage. If there is any debt forgiveness associated with the refinance, they need pay no taxes on the amount of forgiveness they receive. The Internal Revenue Code previously provided that if a lender forgave any portion of the mortgage, under most circumstances, that amount would be taxed as income.

PRE-APPROVED "FIRM OFFERS" OF CREDIT

Since the enactment of the Fair Credit Reporting Act, law firms such as ours and, we are sure, many compliance officers with institutional lenders, have "enjoyed" interpreting the FCRA "Firm Offer of Credit" rules. Essentially, the statute and its regulations state that an entity may use credit information that it obtains from a credit reporting agency, to make an offer of credit even if the offer or transaction is not initiated by the customer/borrower, <u>if</u> it meets the following criteria:

- Ø This so called "firm offer" may be conditioned on verification after the borrower accepts the offer, that the borrower still meets the criteria which were initially used to select him/her;
- Ø The creditor may determine prior to sending out the offer, certain pre-determined criteria or characteristics which the borrowers must meet in the event that they respond to the offer; and

- Ø The borrower must be willing to furnish the security for the credit transaction that was disclosed to the borrower in the original offer.

Now, a Wisconsin Court has added a new twist. In the case of Wojtczak v. Chase Bank USA, N.A., 2007 WL 4232995 the Wisconsin District Court considered whether a Chase Bank mailer constituted a firm offer of credit under the FCRA. It found that as well as meeting the standards just mentioned, an offer must have sufficient potential value to the borrower. The Court determined this by weighing three factors:

- Ø Are the terms of the firm offer adequately stated and disclosed;
- Ø Is it likely that the offer, if accepted by the borrower, will be honored;
- Ø The loan or credit being offered must not be nominal or subject to so many limitations that it has little or no value.

The Court still found in favor of Chase.

NEW FHA LOAN LIMITS

According to an update from the National Associates of Mortgage Brokers, issued on February 21, 2008, HUD plans to publish new FHA loan limits. A Mortgagee Letter will be issued, perhaps in the first week of March, containing these new limits. Separate lists will be published for GSE's and FHA programs.

HUD will also be recalculating the median home prices which are used to calculate these limits. These will be based on 125% of the median home price. The cap will be $729,750.

The floor for FHA loans will be raised from $201,060 to $271,050. Originators can begin processing loans based on these new criteria, for applications assigned FHA case numbers after February 13, 2008. The new limits will expire in twelve months without further statutory action.

Thanks NAMB for the "heads up".

STATE ISSUES

MASSACHUSETTS REGULATIONS

New regulations took affect in Massachusetts on **January 2, 2008** specifically prohibiting several new forms of mortgage fraud. The regulation may be found at 940 CMR 8.06(15).

Among the new prohibitions and/or requirements:

- Ø Prohibiting lenders from price gouging;
- Ø Prohibiting discrimination among borrowers who have similar credit or qualifications;
- Ø Prohibiting brokers from increasing their compensation by providing a borrower a loan with higher interest rates or other less favorable terms; and
- Ø Requiring brokers and lenders to determine the borrower's ability to repay the loan. This includes the determination that the borrower can pay an adjustable rate loan at the higher adjusted rate, not at any starter rate.

NEW RULES FOR MORTGAGE LOAN ORIGINATORS IN NEW YORK.
As we know, beginning the first of this year, mortgage originators were required by New York banking law to obtain authorization from the Superintendent of Banks. In December the Superintendent announced rules for this process. The Department is using the new NMLS (Nationwide Mortgage Licensing System). New York is one of a majority of states which has agreed to use this system and applicants will be required to submit this new online application as well as other supplementary documents directly to the Department. Essentially new applicants must file immediately upon accepting employment. Employees/originators who are currently loan originators as of January 1, 2008 must file by **July 1, 2008** or at such a later date as may be agreed between the Department and individual employers.

Instructions and applications can be found at http://www.banking.state.ny.us/iambb.htm under Mortgage Loan Originator Instructions.

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