LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

ALT & ASSOCIATES

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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 January 17, 2008.

To say that the last several months have been dynamic is an understatement. Proposals and new legislation have been introduced on various subjects and in various forums, all relative to our industry's situation and its effect on the nation's economy.

- Ø New legislation has been proposed in both the U.S. Senate and in the House.
- Ø The FHA Modernization Bill is pending.
- Ø New conforming loan limits have been proposed.

All of this seems to be changing on a daily basis. In addition, the 2008 legislative year has begun for state legislatures and numerous new bills have been introduced or pre-filed. In preparing the content of this newsletter, it was difficult for us to determine what would be most helpful for our readers.

We decided to concentrate on the one new significant proposal that stood the greatest chance of being adopted in anywhere close to its current form**,** the Federal Reserve Board's new proposal for changes to Regulation Z. The following is a brief description of the proposed changes and the link in case you need more information.

As we know, the Homeownership and Equity Protection Act amended the Truth-In-Lending Act. This has become known as HOEPA. Under this Act, the Federal Reserve Board was given the responsibility to regulate mortgage loans in areas which it finds to be unfair or deceptive. Lately, the Federal Reserve has drawn criticism for perhaps not acting as aggressively under its mandate as it could have, to mitigate the subprime mortgage crisis.

On December 18, 2007, the Federal Reserve Board announced proposed changes to Reg. Z with the stated purpose of "protecting consumers from unfair and deceptive home mortgage lending and advertising practices". Then, on Wednesday, January 9, 2008, the proposed rules were formally published in the Federal Register at Vol. 73, No. 6. The Federal Register publication can be found at http://edocket.access.gpo.gov/2008/pdf/E7-25058.pdf

The proposed rules are open to public comment which must be received on or before April 8, 2008. If you wish to make a comment, the various alternatives for submitting these comments, (mail, fax, e-mail) are detailed on the first page of the Federal Register publication.

The first significant proposed change in the regulation defines a new category, a "higher-priced mortgage loan". As proposed, this is a loan which, for first lien mortgages, has an APR three percentage points or more above the yield of comparable Treasury Notes and for subordinate lien mortgages, an APR exceeding the comparable Treasury rate by five points or more. For loans that fit into this category and are secured by a consumer's principal dwelling, the Federal Reserve has suggested four protections:

1. Creditors could not engage in a practice of extending credit without considering the borrower's ability to repay.
2. Creditors must verify the income and assets they rely upon in making the loan.
3. Prepayment penalties could only be permitted under certain conditions. The most interesting is that no penalty could apply within 60 days of any possible payment increase.
4. Creditors must establish escrows for taxes and insurance.

Beyond these protections for "higher-priced mortgage loans", the Federal Reserve has proposed three protections which would apply to **all** loans which are secured by the consumer's principal dwelling, regardless of APR:

1. Yield spread premiums could not be paid to a broker unless the broker had entered into a written agreement which disclosed to the consumer all compensation and other relevant facts including information concerning the yield spread premium. This agreement would have to be entered into prior to application and payment of any fees.
2. Restrictions would prohibit lenders or mortgage brokers from coercing appraisers to misstate a home's value.
3. Companies who service mortgage loans would be prohibited from engaging in a number of practices. The most significant of which is**,** that servicers would have to credit payments received on the date of receipt and provide fee schedules upon the request of borrowers.

Next, come revisions to the Truth-in-Lending's advertising rules contained in Regulation Z. Further information would be required about rates, monthly payments and other loan features. Specifically, you will see in the proposal that seven deceptive advertising practices would be prohibited.

Finally, the proposal would increase the requirements for disclosure in "Good Faith Estimates" of costs and payments for all loans secured by a consumer's principal dwelling.

We are sure, that those of you that have a chance to review the proposal in full will find it interesting**,** as did Representative Barney Frank, chairman of the House Committee on Financial Services. The Congressman released a "tongue in cheek" statement on the proposed rules which we quote:

> "*The staff of the Financial Services Committee and I have had a chance to review the Federal Reserve's proposed rules regarding abusive subprime loans. We now have confirmation of two facts we have known for some time: one, the Federal Reserve System is not a strong advocate for consumers, and two, there is no Santa Claus. People who are surprised by the one are presumably surprised by the other."*

Like everything else today, it appears that these rules will not have a smooth ride.

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