

# 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 it is relevant to them. 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 as of July 14, 2008.

## FEDERAL ISSUES

### FED AMENDS REG Z.

On July 14, 2008, Federal Reserve Chairman, Ben Bernanke, announced the Fed's new rules to protect homebuyers from "questionable" lending practices. The plan would apply to new loans made by lenders of all types, including mortgage bankers and brokers.

The final rule adds four key protections for a newly defined category of "higher-priced mortgage loans" secured by a consumer's principal dwelling. For loans in this category, these protections will:

- Prohibit a lender from making a loan without regard to the borrowers' ability to repay the loan from income and assets other than the home's value. A lender complies, in part, by assessing repayment ability based on the highest scheduled payment in the first seven years of the loan. To show that a lender violated this prohibition, a borrower does not need to demonstrate that it is part of a "pattern or practice."
- Require creditors to verify the income and assets they rely upon to determine repayment ability.

- Ban any prepayment penalty if the payment can change in the initial four years. For other higher-priced loans, a prepayment penalty period cannot last for more than two years.
- Require creditors to establish escrow accounts for property taxes and homeowner's insurance for all first-lien mortgage loans.

It is the rule's purpose to capture virtually all loans in the subprime market, but exclude loans in the prime market. To provide an index, the Federal Reserve Board will publish the "average prime offer rate," based on a survey currently published by Freddie Mac. A loan is "higher-priced" if it is a first-lien mortgage and has an annual percentage rate that is 1.5 percentage points or more above this index, or 3.5 percentage points if it is a subordinate-lien mortgage

In addition to the rules governing higher-priced loans, the rules adopt the following protections for loans secured by a consumer's principal dwelling, regardless of whether the loan is higher-priced:

- Creditors and mortgage brokers are prohibited from coercing a real estate appraiser to misstate a home's value.
- Companies that service mortgage loans are prohibited from engaging in certain practices, such as pyramiding late fees. In addition, servicers are required to credit consumers' loan payments as of the date of receipt and provide a payoff statement within a reasonable time of request.
- Creditors must provide a good faith estimate of the loan costs, including a schedule of payments, within three days after a consumer applies for any mortgage loan secured by a consumer's principal dwelling, such as a home improvement loan or a loan to refinance an existing loan. Currently, early cost estimates are only required for home-purchase loans. Consumers cannot be charged any fee until after they receive the early disclosures, except a reasonable fee for obtaining the consumer's credit history.

The rule also sets additional advertising standards which ban seven deceptive or misleading advertising practices, including representing that a rate or payment is "fixed" when it can change.

The new rules take effect on **October 1, 2009**. The single exception is the escrow requirement, which will be phased in during 2010 to allow lenders to establish new systems as needed.

More information may be found on the Federal Reserve Board site at <http://www.federalreserve.gov/newsevents/default.htm> including the 417 page article to be published in the Federal Register.

## STATE ISSUES

### ARIZONA

#### Arizona Licenses Loan Originators

On July 7, 2008, Governor Janet Napolitano signed into law Senate Bill 1028. The new statute requires licensing of the estimated 10,000 loan originators in the State of Arizona. Licensing will be accomplished by the Department of Financial Institutions who will be publishing rules and procedures. Originators will have to be employed by a mortgage banker or mortgage broker. Thankfully for Arizona lenders, there is a lengthy lead time and the Bill will not take effect until **January 2010**. Again, the Department of Financial Institutions has not published any official summary or time schedules concerning the new law. However, we assume that when they do, it will be published on its website at <http://azdfi.gov/index.html> .

## **CALIFORNIA**

### **California Enacts New Servicing and Foreclosure Restrictions**

The California Legislature passed SB 1137 which was signed into law by Governor Arnold Schwarzenegger. The law significantly affects California's foreclosure and loan servicing laws and procedures. The bill is an urgency measure and therefore takes effect immediately, but most provisions do not become operative until 60 days after the effective date of the bill. In addition, the statute applies only to loans made between January 1, 2003 and December 31, 2007 and the requirements "sunset" on January 1, 2013. So, there will be two sets of rules in effect for foreclosure and servicing depending on when the loan was made.

Substantively, the statute would require that borrower's be contacted 30 days prior to filing a Notice of Default and participate in a meeting, either in person or telephonically. Failure to reach the borrower must be documented in a declaration showing the due diligence of the lender. Due diligence in this case means, one first class letter and telephone calls to the borrower on at least three occasions at different hours on business days and on different days. In situations where the borrower does not respond, the lender must follow up with a certified letter, return receipt requested, asking for a response and providing a toll free telephone number where a live human being can be reached. Mortgage lenders will also be required to have a contact page set up on the web, giving information concerning the foreclosure process and potential work-outs or settlements.

As a transition item, if an NOD was filed prior to the effective date of the bill, the subsequent Notice of Sale must include information concerning contact with the borrower or the lenders due diligence attempts to do so.

SB 1137 also provides for an Expanded Notice of Sale and that the Notice be provided to the residents of the property. These Notices have to be provided in six languages including English. Obviously, the purpose of these provisions is to make renters aware of additional protections for themselves in the event of a foreclosure sale. Specifically, they must receive 60 days notice prior to eviction.

The California Mortgage Bankers Association has submitted the information and an analysis of SB 1137. Their website is [www.cmba.com/new/](http://www.cmba.com/new/)

## **Advance Fees and Foreclosure Consultants**

One of the tricky issues in California for loan modification consultants is the issue of advance fees. The Commissioner's message in the DRE, Real Estate Bulletin for the summer calls this to mind. The Bulletin can be found at <http://www.dre.ca.gov>

If the company offering loan modification services is a DRE licensee, any licensee requiring the payment of advance fees by the borrower must document this arrangement in an agreement which must be approved by the Department in what is commonly seen as a fairly rigorous review. The agreement must meet the standards in Business and Professions Code Section 185 as well as the regulations at 2970 and 2972.

Please remember that once an NOD is filed, a party rendering services to a borrower, unless exempt, is a foreclosure consultant. In these circumstances collection of an advance fee is not allowed at all.

One of the exemptions from being considered a foreclosure consultant is a DRE licensee. However, the exemption does not apply to a DRE licensee if they collect advance fees. Thus, whether exempt or not, once an NOD has been filed, advance fees are generally prohibited.

## **PENNSYLVANIA**

### **Pennsylvania Enacts Five Mortgage Reform Bills**

On January 8, 2008, Governor Edward G. Rendell, of Pennsylvania signed five new statutes purportedly providing additional protection to homebuyers, strengthening the oversight of the mortgage loan industry and reforming some lending practices which put borrowers at risk. Detailed information concerning this legislative package can be found on the Pennsylvania Department of Banking website, [www.banking.state.pa.us/](http://www.banking.state.pa.us/)

In brief, the statutes are as follows:

- HB 2179 now requires persons offering mortgage loans to have passed a background check, completed training relative to applicable laws, passed a test to verify their knowledge of these laws and be licensed by the Department of Banking.
- SB 483 was enacted with the stated intent to prevent borrowers from being trapped in unaffordable loans by certain prepayment provisions. Specifically, the law bans prepayment penalties on mortgages of \$217,873 or less. The figure will be adjusted annually for inflation.
- SB 484 sets up an information service to provide homebuyers and borrowers information concerning mortgage companies or sales persons specifically about enforcement actions, fines and penalties.
- SB 485 speaks to the issue of inflated appraisals and deals with it by adding the Attorney General and the Secretary of Banking to the membership of the state's appraisers' board to provide their expertise. It also increases the maximum penalty for appraiser misconduct to \$10,000.

- SB 46 requires that a copy of every foreclosure notice be sent to the Pennsylvania Housing Finance Agency. The stated purpose is to allow the Agency to monitor foreclosure activity throughout the state.

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**Over the past two decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations. If you have any questions please contact:**

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