

LENDERS UPDATE™

A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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The last thirty days has seen considerable regulatory action in our mortgage lending industry. We anticipate another month or so of activity prior to the usual slow down over the summer and into the election season.

Below you will find updates of newly proposed FTC and FHA rules, as well as more controversy over the OCC preemption issue and a number of state, legislative and regulatory changes, beginning with new predatory lending statutes in Utah and Wisconsin.

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 May 15, 2004

FEDERAL ISSUES

OCC PREEMPTION

The controversy caused by the OCC's policy to preempt National Banks from state laws continues (See Lenders Update: January 2004). Consumer advocates still feel that the preemption doctrine will cause an increase in predatory lending. In our experience, given the stated policy of the OCC towards abusive lending practices and its usual diligence in enforcing these policies, this argument appears weak at best. Be that as it may, at the time of writing, it appears that Sen. John Edwards (D-NC), former presidential candidate, and Representative Luis Gutierrez (D-ILL), will introduce resolutions in the Senate and House of Representatives, respectively, to seek disapproval of the OCC's policy. We will keep you advised.

FHA PROPOSES NEW TREBLE DAMAGES RULE

The Department of Housing and Urban Development has proposed a new rule (See Federal Register: 4/14/04) set to encourage, and punish where necessary, lenders who do not help troubled borrowers save their homes. HUD expects lenders to work with borrowers and to use loss mitigation practices prior to a home loan falling four full monthly installments in arrears.

Penalties for failure to do so will be increased from \$6,500 per violation, to a limit of treble that amount.

HUD set out a number of loss mitigation techniques:

- Forbearance, by reduction of payments for a temporary period of time.
- A partial claim for a one-time claim payment from FHA to cure the current default.
- Mortgage modification.
- Sale of the property.
- Deed-in-lieu of foreclosure.

REGISTRY FEES

On April 30, 2004, in the Federal Register, the Federal Trade Commission published proposed rules amending the Telemarketing Sales Rules. The FTC, pursuant to Congressional requirements, has reviewed the fees charged to access the National Do Not Call Registry and has proposed to revise these charges. The FTC assumes that the same number of entities will access the registry in the next annual period as did in the former. The Commission's proposal could keep the allowance for free access to "exempt" organizations and for the first five area codes of data. After that, the fee would be \$45 per area code. The maximum that could be charged will be \$12,375. This would apply to any entity accessing 280 area codes of data or more.

PREDATORY LENDING

UTAH

Utah HB 160 adds this state to the long list of states regulating "predatory lending".

As with most of these laws, the Act first sets the threshold and defines a High-Cost Mortgage as a credit transaction secured by the borrower's principal dwelling, if either of the following apply:

- The transaction is secured by a mortgage on the borrower's principal dwelling and the annual percentage rate, at the consummation of the transaction, will exceed by more than eight percentage points for first mortgages and ten percentage points for junior mortgages, the yield on treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received; or
- The total points and fees payable at or before the transaction will exceed the greater of 8% of the total loan amount or \$400.

If the credit transaction is a High Cost Mortgage then:

- **Prepayment Penalties**

A penalty for prepayment cannot be assessed after more than 36 months and the amount of the penalty may not exceed 80% of the total amount of interest included in the immediately preceding six scheduled payments. A high-cost mortgage may not require a prepayment penalty if the high-cost mortgage is paid with the proceeds of a new loan by the same lender or an affiliate of that lender.

- **Negative Amortization**

A high-cost mortgage must provide for regular, periodic payments sufficient to pay all accrued interest and a portion of principal on the scheduled due date for each payment and to pay the full amount of the loan during the term of the loan.

- **Points and Fees**

A high-cost mortgage lender may not finance, directly or indirectly, any portion of the points, fees, or other charges payable to the lender or any third party in an amount in excess of 8% of the total loan amount, unless disclosures, as provided for in the statute, are made to the borrower.

- **Insurance Prohibition**

Credit transaction involving a high-cost mortgage may not include the offer or sale of any insurance policy, on a single premium or single fee basis.

- **Encouraging Default Prohibition**

A lender may not recommend or encourage default or nonpayment leading to foreclosure on an existing loan or other debt.

WISCONSIN

Wisconsin has also joined the predatory lending club with AB 792, which sets forth prohibitions and required disclosures regarding high cost home loans, which Wisconsin calls Covered Loans. The Act's provisions are relatively simple and straightforward.

A Covered Loan is a consumer credit mortgage loan transaction, other than an open-end credit plan or reverse mortgage, in which the total points and fees payable by the customer at or before the loan closing exceed 6% of the total loan amount.

If the loan is a Covered Loan, among other items, the following are prohibited:

- Balloon payments.
- Negative amortization.
- Increased interest after default.
- Disregard for the customer's ability to repay.
- Refinance of a Covered Loan within one year.

Disclosures

A prepayment penalty in a Covered Loan is prohibited unless the lender offers the customer the option of choosing a loan product without a prepayment penalty. Then, a prepayment penalty is permitted only during the 36 months immediately following consummation. The customer must sign a disclosure acknowledging it was given the choices or alternatives.

Finally, at least 3 days before making a Covered Loan to a customer, a lender must ensure that the customer has been given the disclosure, as required by the new law.

STATE ISSUES

CONNECTICUT

Connecticut HB 5411 takes effect **October 1, 2004**, and provides licensing requirements for mortgage brokers and mortgage lenders, and guidelines regarding the collection of advance fees.

- **Licensing**

The Act prohibits any person from engaging in the business of making first mortgage loans or acting as a first mortgage broker in Connecticut unless such person has first obtained the required license.

The Act prohibits any person from acting as an originator without being registered. A licensee may not employ or retain an unregistered originator. The statute provides further requirements and details for applications and for renewal fees for all licenses.

- **Advance fees**

The statute further regulates "Advance Fees". Every Advance Fee paid or given, directly or indirectly, to a mortgage lender or first mortgage broker shall be refundable, unless the person providing the Advance Fee and the mortgage lender or first mortgage broker agree in writing that the Advance Fee shall not be refundable. To be enforceable, among other requirements, the writing must:

- Be dated and signed prior to the payment of any Advance Fee;
- State the total Advance Fee;
- State any conditions under which the Advance Fee will be retained; and
- The form of the agreement must:
 - § Be separate from any other forms,
 - § contain a heading equal to at least 10 point bold face type titling the form 'AGREEMENT CONCERNING NONREFUNDABILITY OF ADVANCE FEE', and
 - § provide for a duplicate copy.

GEORGIA

Georgia SB 405 again refines Georgia's requirements for licensing and registration of mortgage lenders and mortgage brokers. Mortgage brokers are now required to either provide a \$50,000.00 bond, or annual evidence that the broker is a HUD loan correspondent under Title I and/or Title II. If a mortgage broker is a HUD loan correspondent, such broker must also submit the audit required by HUD to the Department of Banking and Finance.

Licensed mortgage lenders must annually provide an audited financial statement less than 15 months old. Registration as a mortgage lender or broker must also be made annually.

HAWAII

Hawaii HB 1737 changes what the commissioner will consider to be equivalent experience in reference to mortgage broker and mortgage solicitor applications. The Act takes effect immediately. A designated mortgage broker or mortgage solicitor must have two years of

experience in financial transactions involving primary or subordinate mortgage financing, or equivalent experience. The statute also allows, under certain circumstances, as equivalent experience, two years of experience as a licensed Insurance Producer.

SOUTH CAROLINA

South Carolina HB 4818 takes effect **May 11, 2004**, and provides restrictions regarding delinquency charges and requirements for notifications to cosigners.

The Act prohibits collecting a delinquency charge on a payment that is otherwise a full installment payment for the applicable period and is paid on its due date or within ten days after its due date if the only delinquency is attributable to a late fee or a delinquency charge assessed on an earlier installment.

Further, the statute now requires a clear and conspicuous notice to cosigners regarding the debt and the potential liability assumed by cosigning. A notice that complies with the FTC's Trade Regulation Rule on Credit Practices (16 C.F.R. Section 444) is acceptable.

UTAH

Utah Regulation, R162-203, now requires licensees under the Utah Residential Mortgage Practices Act to notify the Division of Real Estate, on the form required by the Division, of any entity for which licensees shall conduct residential mortgage lending, before acting on behalf of that entity.

Also, Regulation 162-204 now requires a person licensed under the Utah Residential Mortgage Practices Act to maintain the following records:

- Application forms;
- Disclosure forms;
- Truth-In-Lending forms;
- Credit reports and the explanations therefor;
- Conversation logs;
- Verifications of employment, paycheck stubs, and tax returns;
- Proof of legal residency, if applicable;
- Appraisals, appraisal addenda, and records of communications between the appraiser and the registrant or lender;
- Underwriter denials;
- Loan approval; and
- All other records required by underwriters involved with the transaction.

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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