

CONTENTS

- **FRONT PAGE**
H.B. 3915
- **RESPA Overhaul**
- **H.R. 5500**
- **Federal Watch**
- **State Watch**
- **Investor Updates**

House of Representatives passes H.B. 3915 (Mortgage Reform and Anti-Predatory Lending Act)

H.B. 3915 was passed on November 15, 2007 by the House and introduced to the Senate on December 3, 2007. If enacted, H.B. 3915 will amend the Truth in Lending Act (TILA) and the Home Ownership Equity Protection Act (HOEPA) to establish a duty of care standard for residential mortgage loan originations. The main focus of the bill is to cut down on what Congress considers abusive lending practices. New sections added to the TILA will:

- Prohibit yield-spread premiums in subprime loans;
- Prohibit steering borrowers creditworthy for lower cost loans into higher cost loans;
- Prohibit prepayment penalties on subprime loans;
- Prohibit mandatory arbitration and single premium credit insurance on any residential mortgage;
- Offer extra protections for extremely high cost loans including mandatory counseling before loan closing;
- Prohibit balloon payments on high cost loans;
- Prohibit the financing of points and fees.

Included in the mark up of the bill were amendments passed by Rep. Bachus (HR 3012) related to the licensing and registration of individual mortgage brokers and bank employees who originate mortgages and the establishment of a Nationwide Mortgage Licensing System and Registry; the Miller-Watt bill (HR 1182) whereby the scope of consumer protections is enhanced for high-cost loans under HOEPA;

Rep. Biggert's bill (HR 3019) that establishes within HUD an Office of Housing Counseling that will conduct activities relating to homeownership and rental housing counseling; Rep. Kanjorski's bill (HR 3837) prohibiting appraisal fraud; amendments by Reps. Green and McHenry that expand disclosure requirements in mortgage loans; Rep Brown-Waite classified VA loans as qualified mortgages that are presumed to pass ability to repay and net tangible benefit standards.

Some groups, specifically the MBA, are opposed to the new legislation, however, the mortgage brokers are ecstatic that according to the bill, their fees can be financed into the loan. Only time will tell whether H.B. 3915 will, as stated by Rep. Barney Frank, House Financial Services Committee, "prevent a repetition of events that has caused one of the most serious financial crises in recent times" .



HUD Proposes RESPA Overhaul

Introduction of New Good Faith Estimate and Other

In an effort to improve the complicated, unclear, and costly home buying process, U.S. Housing and Urban Development has proposed mortgage reform designed to help consumers better understand their loan terms so that they can shop more effectively for a home loan. The proposed GFE will enhance the disclosure of important aspects of the loan by including the interest rate and monthly payment, whether the interest rate and principal balance can increase and by how much, and whether the loan has a prepayment penalty or balloon payment. A draft of the proposed GFE and a revised HUD-1 has been released. Lenders and Brokers may not be happy that the proposed GFE requires that yield spread premium be disclosed.

In addition, HUD is proposing that settlement agents read a "closing script" to borrowers at the settlement table and that a copy of the script is provided to the borrower. There is a different script for each loan type and each one restates in clear and concise language every loan term and also provides an illustration to show borrowers which numbers can change from that provided in the GFE and by how much.

Legislative changes to RESPA are being proposed whereby HUD is seeking the authority to impose penalties for violations of specific sections of RESPA including those dealing with a provision of a uniform settlement statement, GFE, settlement cost booklet, loan servicing, prohibition against kickbacks, referral and unearned fees, title insurance and portions of the section related to escrow accounts.

The proposed GFE, revisions to the HUD-1, and proposed settlement scripts can be viewed at www.hud.gov.

Foreclosure Credit Forgiveness Act of 2008 (Introduced in House)

H.R 5500 has been introduced in the House to amend the Fair Credit reporting Act to provide forbearance from foreclosures of subprime mortgages in the determination of a consumer credit score, and for other purposes.

If enacted, a foreclosure on a subprime mortgage of a consumer may not be taken into account by any person in preparing or calculating the credit score for, or with respect to, the consumer. Regulations will be prescribed to define subprime mortgage for purposes of this amendment before the end of the 30-day period beginning on the date of enactment and shall apply without regard to the date of the foreclosure.

As of February 26, 2008, this bill has been referred to the House Committee on Financial Services.



FEDERAL WATCH

FHASecure

The Federal Housing Administration has launched the FHASecure Program to refinance certain delinquent mortgage loans with interest-only and payment-option adjustable-rate features. The program will rescue subprime borrowers from potential foreclosure **IF** their delinquency is a result of interest rate reset or full amortization.

FACT Act

On October 25, 2007, the banking regulators jointly issued final regulations to implement Section 214 of the Fair and Accurate Credit Transaction Act. The regulations include model language and guidance for notices that financial institutions are required to send if they share consumer information with affiliates for the purpose of marketing solicitation. The effective date of the regulations is January 1, 2008 with a mandatory compliance date of October 1, 2008. To view the new regulations, go to:

- 12 CFR §41.20-28 of the OCC regulations,
- 12 CFR §222.20-28 of the Federal Reserve regulations,
- 12 CFR §334.20-28 of the FDIC regulations,
- 12 CFR §571.20-28 of the OTS regulations, and
- 12 CFR §717.20-28 of the NCUA regulations.

STATE WATCH

MAINE

Effective January 1, 2008, **L.D.**

1869 will make substantive changes to Maine law regarding mortgage loans and permissible “high rate, high-fee mortgages” as defined by the law. Ultimately, the bill should protect consumers from abusive lending practices by:

- Requiring the verification of the borrower’s ability to repay;
- Requiring that lenders receive certification from third party non-profit organization that the consumer has received counseling prior to making high rate, high-fee mortgages;
- Prohibiting the financing of any points and fees in connection with high rate, high-fee mortgages; and
- Prohibiting prepayment penalties in connection with high rate, high-fee mortgages.

NORTH CAROLINA

Under a new act (**H.B. 1817**), effective January 1, 2008, requirements have been added to consumer protection statutes for “rate spread home loans”. These loans are defined as home loans in which:

- The difference between the A.P.R. for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is either equal to or greater than:
 - o *Three (3) percentage points, if secured by first lien mortgage or deed of trust; or*
 - o *Five (5) percentage points, if secured by a subordinate lien mortgage or deed of trust.*
- The difference between the A.P.R. for the loan and the conventional percentage for the loan is 1.75 percentage points, if secured by a first lien mortgage or 3.75 percentage points, if secured by a subordinate lien mortgage.

In connection with these loans, lenders are charged with verifying the borrower’s ability to repay and making certain that no prepayment penalties or fees are charged or collected. Further included in the new statute, additional “consumer friendly” duties have been imposed on mortgage brokers.

COLORADO

Effective January 1, 2008, **S.B.**

203 requires that mortgage brokers obtain a license in lieu of the current registration.

STATE WATCH CONT'D

ARKANSAS

Effective October 1, 2007, the **Arkansas Securities Department** has issued amendments to their Fair Mortgage Lending Rules. Included in the revised regulation is the requirement that a signed Disclosure Certification be included in the closing documents. This disclosure will certify:

- All transactions have been disclosed;
- All costs have been documented and reflected on the HUD-1 or other settlement statement; and
- Any split fees or shared commission have been disclosed on the HUD-1 or settlement statement.

MASSACHUSETTS

New predatory lending rules have been implemented by the MA Attorney General in order to address concerns about predatory lending practices. A description of acts and practices deemed unfair or deceptive are provided for various categories such as direct dealings with consumers. Lenders have to act quickly as compliance with required disclosure rules is required **January 1, 2008**.



INVESTOR UPDATES

- In light of the current housing default rates, **Fannie Mae** has joined Freddie Mac in cutting its dividend and selling billions of dollars worth of special stock to raise capital and cushion mounting losses from high risk loans. The company does not see an improvement to the situation in 2008 so the sell of special stock “will provide additional capital to conservatively manage increased risk in the housing and credit markets...”.
- Both **Fannie Mae** and **Freddie Mac** have issued announcements that no changes will be made to conventional loan limits in 2008.
- For settlement dates on or after March 1, 2008, **Freddie Mac** will expand their use risk based pricing by adding fees based on Indicator Scores and L-T-V ratio. Delivery fees are being increased for certain mortgages and revisions have been made to requirements for calculating maximum financing concessions.
- JP Morgan Chase and the Federal Reserve Bank have agreed to provide funding to bolster Bear Stearns, which says its liquidity position has deteriorated in the wake of market rumors it has tried to dispel.
- Origen Financial Inc., a manufactured housing lender structured as a REIT, says reduced pricing in the whole-loan sales market and the inability to securitize loans are forcing it to suspend originating loans for its own account until the markets recover.

Law Office of Bill R. Johnson, P.L.L.C.

11811 North Freeway, Suite 500
Houston, Texas 77060

Phone: 832-487-8612

Fax: 866-207-2597

E-mail: bill.johnson@brjlawfirm.com

When you need an experienced problem-solver with broad functional expertise, and understanding of your business operations, with an innate ability to imbed legal processes into the day-to-day operations of your business, contact the **Law Office of Bill R. Johnson, P.L.L.C.**



This publication is for informational purposes about current cases, statutes, and regulatory materials of interest to banks and finance company lawyers. It is not intended to be legal advice of counsel or to substitute for legal advice of counsel concerning legal matters. For legal advice or assistance, contact Bill R. Johnson at 832-487-8612.