

MORTGAGE BILL BOARD

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“The days of making a loan without verifying the borrower’s income or the borrower’s ability to repay are certainly gone.”

Mortgage lenders struggle to cope with low (subprime) originations and recent rise in legislation

Many of the mortgage loan products available just six months ago are now extinct. Amidst tough market conditions, tightened underwriting standards, and the recent surge in anti-predatory lending laws, many lenders have all but eliminated any product that could be labeled “sub-prime”, or “alternative”. The days of making a loan without verifying the borrower’s income or the borrower’s ability to repay are certainly gone.

The current state of the

industry is confirmed by the demise of the smaller sub-prime lenders who have shut



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down operations or the large companies that have closed down or significantly reduced their sub-prime operations.

However, Wall Street is not ready to give up on the mortgage industry and neither am I. Lenders will be wise to take this time to leverage their legal/compliance resources to ensure all the “i”s are dotted and the “t”s are crossed in preparation for brighter days ahead.

How do lenders comply with the “Ability to Repay” rules?

Lenders operating in this highly charged environment are finding the landscape more complex. Regulatory requirements are increasingly aimed at placing greater responsibility on lenders to make reasonable credit decisions. At the top of these regulations is the requirement that lenders verify a borrower’s ability to repay.

This level of accountability is challenging for most lenders since the regulators have failed to provide guidance to assist lenders in determining

a borrower’s future financial circumstances.

Prior to the current defensive lending atmosphere and regulatory climate, a lender would utilize several factors, other than a borrower’s credit score, in determining credit worthiness.

To facilitate compliance with federal and state “ability to repay” rules, all credit decisions should be based on a thorough analysis of the following factors:

- **Loan To Value (LTV) -**

comparison ratio between the loan amount to the value of the property being used as collateral

- **Past Credit History** — prior borrowing and repayment behavior
- **Credit Score** — (FICO) number derived from information contained in a credit report
- **Review of all Income/Assets/Liabilities** — evaluation of earnings, cash resources, and financial obligations
- **Collateral** — verification that property is sufficient security for the loan



FEDERAL WATCH

Federal Reserve Board

The board of Governors has released the HOEPA dollar amount for 2008. Effective January 1, 2008, the points and fees thresholds for HOEPA will be greater of 8% of the total loan amount for \$561. The change is not limited to the federal HOEPA calculation.

Federal Financial Regulatory Agencies

A Statement on Subprime Mortgage Lending has been issued to address issues relating to certain adjustable-rate mortgage (ARM) products that can cause payment shock. The Statement establishes consumer protection standards that should be followed to ensure that consumers, especially subprime borrowers, obtain loans they can afford to repay and receive information that adequately describes product features.

STATE WATCH

New York

Effective August 1, 2007—NY requires that entities attempting to foreclose a residential mortgage loan provide borrowers an additional notice. The notice must be provided in bold letters stating that the borrower is in danger of losing their home and must respond to the complaint by filing a response to the court, as well as the attorney for the foreclosing entity. In addition, the statement informs the borrower that making a mortgage payment will not halt foreclosure proceedings.

Arizona

Effective September 20, 2007, AZ has enacted residential fraud legislation that will prohibit persons from:

- (1) knowingly making any deliberate misstatement,

misrepresentation or material omission during the mortgage lending process that is relied on by a mortgage lender, borrower, or other party to the mortgage lending process

- (2) Knowingly using or facilitating the use of any deliberate misstatement, misrepresentation, or material omission during the mortgage lending process that is relied on by mortgage lender, borrower, or other party to the mortgage lending process;

- (3) Receiving any proceeds or other monies in connection with a residential mortgage loan that the person knows resulted from a violation of the above;

- (4) Filing or causing to be filed with the office of the county recorder of any county of Arizona any residential mortgage loan document that the person knows to contain a deliberate misstatement, misrepresentation, or material omission.

Violations of **HB 2040** will be considered a class 4 felony. Repeated violations will constitute a class two felony.

STATE WATCH, CONT'D

Texas

Amending the Texas Finance Code to add criteria for a “registered Financial Services Company”, **HB 1716** is effective September 1, 2007 and will allow a Registered Financial Services Company to perform the services of a mortgage broker as if the company were licensed as a mortgage broker, though individuals who are the exclusive agents of the company. The bill also details the eligibility requirements, registration fees, and renewal procedures for these companies.

In addition, Texas Governor Rick Perry signed **HB 2783** to create a provisional loan officer license for license applicants. Effective September 1, 2007, Requirements include:

- 18 months of experience during the 20 months immediately preceding the application;
- Qualification for a loan officer license, other than the educational and examination requirements.

Further, the new legislation requires corporations, limited liability

companies, and limited partnerships to obtain mortgage broker licenses as entities. The entity must designate an individual licensed as a mortgage broker as a designated representative in order to comply with this provision. Last, applicants will be required to submit proof of completion of approved education courses and the new law sets new guidelines for course approval.

HB 716, effective September 1, 2007 requires that a lender, mortgage banker, or mortgage broker provide each applicant for a home loan a separate notice in 14-point font. The notice provides a warning that intentionally or knowingly making a materially false or misleading written statement to obtain property or credit is a violation of the Texas Penal Code.

North Carolina

Under a new act, 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 sure 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.

INVESTOR UPDATES

Fannie Mae has revised their underwriting standards for short term adjustable rate mortgage loans. To limit the impact of potential payment shock after the expiration of introductory rates, borrowers must now be qualified based on the greater of the qualifying rate specified for the transaction, or the fully indexed rate.

- Lehman Bros. has closed its sub-prime unit.
- Bank of America makes a \$2 billion investment in Countrywide.
- Citigroup, Bank of America, JP Morgan Chase, and Wachovia all took advantage of the Fed’s discount window by borrowing \$500 million each.

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