

November 7, 2007

House Committee Adopts Mortgage Reform Bill

The House Financial Services Committee yesterday passed H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007, with 9 Republicans led by Minority Leader Spencer Bachus (R-AL) joining the Democrats in support, and 5 not voting. The bill, which was co-sponsored by the Chairman, Barney Frank (D-MA), is scheduled to be taken up by the full House of Representatives next Tuesday, November 13. The next step would be for consideration in the Senate, where hearings have been held but no legislation has been voted on.

A number of changes in the bill were adopted to address some of the industry's issues, and there are beneficial provisions, but CBA remains concerned that the result could have an adverse impact on mortgage lending if it is not further refined. We expect that between now and next Tuesday, additional changes will be made.

Notable issues include:

- Although the bill was amended to provide preemption for assignee liability, it still does not broadly preempt state laws for loan originators.
- The bill was amended in a number of ways to attempt to reduce the suitability-type expectations and shift more of the details to the regulatory agencies, but we still believe that it will have an adverse impact on credit availability and increase liability risk and burden on lenders.
- The licensing and registration requirements were replaced with ones modeled on ones previously introduced by Congressman Bachus, and –though burdensome—they are an improvement over the earlier version.
- The prohibition on the use of employee compensation based on loan terms was narrowed to subprime lending and otherwise refined to make it slightly less objectionable.
- A provision that would protect against evicting tenants following foreclosure was retained, although the Chairman promised to work with the opposition before the vote on the floor of the House.
- The bill would continue to prohibit mandatory arbitration, but it was amended to narrow the prohibition to mortgages and open-end loans secured by a primary dwelling.

Bill Description

The far-reaching bill contains four titles: Title I creates a “duty of care” for all mortgage loan originators, which must diligently work to offer a range of products appropriate to the consumer’s circumstances and meet other disclosure and certification requirements. It imposes a licensing and registration requirement on all mortgage loan originators, non-bank lenders, and brokers under a qualifying state licensing scheme, and banks under a parallel scheme to be developed by regulatory agencies. If states do not adopt qualifying laws, HUD is to promulgate a back-up regulation, ensuring that originators act “solely in the best interest” of the consumer.

The Title also prohibits incentive compensation (including yield spread premiums) that is based on or varies with the terms of a loan (other than the amount of the principal)—but the restriction would apply *only to subprime mortgages*. Anti-steering rules would be developed by regulators to prohibit the steering of consumers to loans for which (i) they do not have a reasonable ability to repay; (ii) that do not provide a net tangible benefit; or (iii) that have “predatory characteristics or effects”; and it prohibits the steering of consumers who qualify for prime mortgage loans to subprime mortgage loans.

Title II requires all mortgage loans to be based on a two-part “minimum standard”: (1) An “ability to repay” test, including the consumer’s current and expected incomes, and based on the “fully indexed rate”; and (2) for refinancing, a “net tangible benefit” to the consumer. “Qualified” (Q) mortgages (under a rate threshold) and “qualified safe harbor” (QSH) mortgages (which meet certain requirements) create a form of safe harbor for creditors and assignees. *The “safe harbor” for loan originators would be “rebuttable,” and thus somewhat less protection than the safe harbor for assignees.*

QSH mortgage loans must meet certain requirements, which were amended to make them less onerous. For example, the mandatory DTI ratio would be determined by regulators rather than set in the statute. Liability against originators and assignees is the right of rescission, which may be used as a defense to foreclosure, until the statute of limitations expires, after which the consumer may seek actual damages. Protections are provided for assignees who either provide a right to cure, or have a policy against buying Q or QSH mortgage loans, exercise due diligence and obtain reps and warranties.

Title III amends and expands the Home Ownership Equity Protection Act (HOEPA), lowering some triggers for compliance and expanding coverage. Among many new requirements, it would require the consumer to obtain pre-loan counseling from a HUD-approved counselor, and it would expand HOEPA to include open-end credit.

Title IV was added to the bill, based on HR 3019, by Judy Biggert (R-IL), which would establish within HUD an Office of Housing Counseling that will conduct activities relating to homeownership and rental housing counseling.

We will continue to keep you informed. Please contact Steve Zeisel at 703.276.3871 or szeisel@cbanet.org for comments or questions.