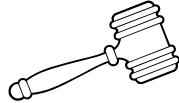


Pratt's **MORTGAGE** Compliance **LETTER**

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In the Courts

Massachusetts AG Wins Round Two in Court Battle over Unfair Mortgage Loans

In a decision handed down on May 2, Justice Cynthia Cohen of the Massachusetts Appeals Court upheld a preliminary injunction against California-based Fremont General and Fremont Investment and Loan ("Fremont"), a subprime lender that originated thousands of loans in Massachusetts.

On February 28, 2008, Superior Court Judge Ralph D. Gants granted the Commonwealth's request for a preliminary injunction that prohibits Fremont from initiating or advancing foreclosures on loans that are "presumptively unfair." Judge Gants then issued an expanded preliminary injunction on March 31 prohibiting Fremont from assigning or selling Massachusetts loans owned by Fremont, or the servicing obligations on those loans, unless the buyer agrees in writing to be bound by the obligations set forth in the court's original preliminary injunction issued February 25, 2008.

"We are pleased that the Appeals Court has upheld Judge Gants' ruling, which offers some measure of relief to homeowners and communities suffering from the effects of Fremont's loans," said Attorney General Martha Coakley. "Lenders cannot escape responsibility for their illegal conduct and contribution to the foreclosure crisis in Massachusetts, and we will continue to hold accountable those who have engaged in allegedly unfair and deceptive practices."

On March 26, Fremont petitioned the Single Justice of the Appeals Court for review of Judge Gants' order. The Mortgage Bankers Association and several other industry trade associations filed an amicus brief.

Justice Cohen's ruling specifically notes that the trial court's decision was broadly supported not only by Massachusetts statutes but by a number of federal regulations that addressed the unfairness inherent in Fremont's loan products.

The original injunction issued by Judge Gants prohibits Fremont from initiating or advancing foreclosures on loans that are "presumptively unfair." Under the terms of the injunction, Fremont must provide the Attorney General's Office with at least a 30-day notice of all foreclosures it intends to initiate for the approximately 2,200 loans that Fremont still owns and services, and allow the Attorney General an opportunity to ob-

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ject to the foreclosure going forward. If Fremont has issued a loan that is considered “presumptively unfair,” and the borrower occupies the property as his or her principal dwelling, the Attorney General has 45-days to object to the foreclosure.

Under the injunction, a loan is “presumptively unfair” if it possesses the following characteristics:

- The loan is an adjustable rate mortgage with an introductory period of three years or less;
- The loan has an introductory or “teaser” interest rate that is at least three percent lower than the fully-indexed rate (the relevant index at the time of origination plus the margin specified in the mortgage note);
- The borrower has a debt-to-income ratio (the ratio between the borrower’s monthly debt payments, including the monthly mortgage payment, and the borrower’s monthly income) that would have exceeded 50% if Fremont had measured the debt, not by the debt due under the teaser rate, but by the debt due under the fully-indexed rate; and
- Fremont extended 100% financing or the loan has a substantial prepayment penalty or penalty that lasts beyond the introductory period.

After the notice and objection process, Fremont may only proceed with a foreclosure to which the Attorney General objects if Fremont files a request with the court, and the court reviews the matter and agrees that a foreclosure is appropriate. In considering whether to allow the foreclosure, the court will consider, among other factors, whether the loan is unfair and whether Fremont has taken reasonable steps to work out the loan and avoid foreclosure. The preliminary injunction does not release borrowers from their monthly mortgage obligations.

On appeal, Fremont argued that the trial court judge impermissibly expanded the reach of the Massachusetts Predatory Home Loan Practices Act. Fremont also argued that the loans the court found to be presumptively unfair are in fact expressly permitted by both federal and state law. Justice Cohen concluded that neither of these arguments has merit.

Bankruptcy Court Rules Against Bank in “Poster Child” Case

In a decision handed down on May 28, Judge Leslie Tchaikovsky of the U.S. Bankruptcy Court, Northern

District of California, ruled against National City Bank in the bank’s attempt to except its \$250,000 claim from a husband and wife’s Chapter 7 bankruptcy discharge.

The court concluded that the husband and wife borrowers, by inflating their earnings, had made a material false representation concerning their financial condition in their “stated income” loan application, “with knowledge of its falsity and the intent to deceive the Bank.” The court also ruled, however, that the bank was out of luck because it failed to prove that it had reasonably relied on the debtors’ false representation in the loan application.

The court found that the bank had ignored a “red flag” (the fact that the borrowers’ incomes had changed dramatically from a previous application) and had otherwise failed to comply with its own guidelines for “stated income” loans.

Calling the case “a poster child for some of the practices that have led to the current crisis in our housing market,” Judge Leslie Tchaikovsky ruled against the bank’s nondischargeability claim under 11 U.S.C. § 523(a)(2)(B). *In re Hill*, Case No. 07-41137 TT.



Capitol Comment

Mortgage Bill: Senate Banking Committee Plays Catch-Up

Two lions of the Senate — Banking Committee Chairman Christopher Dodd (D-CT) and ranking member Richard Shelby (R-AL) — have finally agreed on a compromise version of Dodd’s mortgage-relief legislation. On May 20, the resulting bill, the Federal Housing Finance Regulatory Reform Act, quickly passed the committee by a 19-2 vote. The Senate will likely approve it in short order. A quick conference with the House could put a bill on President Bush’s desk by the July 4 recess.

One part of the package would authorize the FHA to guarantee up to \$300 billion of 30-year, fixed-rate mortgages to refinance troubled subprime loans, provided the lender agrees to write down the current loans to below-market values. This provision parallels a bill the House recently approved, although significant differences remain between the House and Senate versions. (See “House Approves Mortgage-Relief Measures” below.)

A second part of the package — crucial in winning Shelby’s support — would significantly strengthen the

regulation of the mortgage-related government-sponsored enterprises — Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. One key provision would enable the GSEs' new overseer to set limits on their portfolios and to set stronger minimum capital requirements, provided the regulator was acting to protect the GSEs' safety and soundness.

Another provision that was important in winning Republican support for the measure involves how to finance the FHA guarantees. The House bill would put the taxpayers on the hook for potential losses. By contrast, the Senate bill would finance the program by diverting some of the mandatory contributions that Fannie Mae and Freddie Mac would have to make to a planned low-income housing fund.

Under the legislation, Fannie and Freddie are to contribute 4.2 basis points on the unpaid principal of their new mortgage purchases to fund low-income housing. Ultimately, however, Dodd agreed that temporarily a portion of this contribution would be diverted to backstop FHA's refinance program. This change enables Senators to declare that their bill creates no risk to the taxpayers, and that the low-income housing program will ultimately get its funding source back.

The Senate package also includes a measure to create a national licensing system for mortgage originators. This provision is designed to standardize requirements for mortgage brokers and to ensure that they meet minimum educational and performance standards. Dodd and Shelby added this provision largely to gain the support of Sen. Mel Martinez (R-FL).

The ultimate package will also include legislation to modernize the FHA's programs and to provide a package of tax breaks to various participants in the housing and mortgage markets. It also sets the high-cost loan limit for Fannie and Freddie at 132 percent of the conforming loan limit (\$550,000). Nonconforming loans would have to be securitized, not held in GSE portfolios.

Once House and Senate conferees iron out differences between their separate bills, the final measure will go to the White House, which has not clearly stated whether the President would sign or veto it. However, the Bush administration has placed a high priority on getting a strong new supervisor for the GSEs. The Senate bill should go a long way toward fulfilling that desire, suggesting the bill would be acceptable to the administration.

Hurdles Remain

The Dodd-Shelby compromise surprised many Washington observers and led many to declare that House-Senate agreement on a final bill is a mere formality. While there's a good chance a mortgage relief bill will be enacted, the path is not without obstacles.

For example, there is the provision raising the ceiling on jumbo mortgages eligible for purchase by Fannie and Freddie from \$417,000 to \$550,000. However, the economic stimulus package enacted earlier this year temporarily raised the ceiling to as much as \$729,750. Congress members from high-cost areas would rather make the temporary ceiling permanent than see it fall back to the \$550,000 level.

Also, many House Democrats will not take kindly to temporarily diverting low-income housing funds to backstop FHA guarantees for troubled mortgage borrowers — a relatively more prosperous group. This change will be especially difficult for House Financial Services Chairman Barney Frank (D-MA), who had insisted that the first year's allocation of low-income housing funds be reserved exclusively for the benefit of Hurricane Katrina victims.

There is also a movement to add provisions to the bill essentially blocking the agreement between New York State Attorney General Andrew Cuomo and the GSEs that imposes new standards on appraisals in connection with loans acquired by Fannie and Freddie. Some in Congress see the agreement as an usurpation of federal authority by the state attorney general.

Finally, there is another dispute regarding Fannie and Freddie. Some in Congress want to give the GSEs broader authority to offer new products without the prior approval of their regulator. Others oppose such a move, fearing that the GSEs will ultimately enter the retail mortgage market. How all of these issues will shake out as the FHA package moves through the remaining legislative process remains to be seen.

House Approves Mortgage-Relief Measures

Bipartisan cooperation is a fleeting thing in this town. A lot of politicians, in both Congress and the Administration, were patting themselves on the back when the emergency stimulus package sailed through the legislative process back in February. Strong support from both parties and cooperation between Congress and the White House won passage of tax rebates and other measures to deal with the economic crisis. Some optimists expected the same spirit of cooperation would prevail as Congress took up the mortgage mess.

But February was a long time ago. On May 8, as the House devoted floor time to consideration of three related bills dealing with mortgage relief, the old partisan fissures reappeared. The White House, disgruntled with how the

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legislation was shaping up, promised to veto the bills if they were not modified. Bipartisan nirvana has not yet been achieved.

Three Related Bills

First, the House passed legislation drafted by Rep. Maxine Waters (D-CA) that would provide \$15 billion to states and localities to purchase and rehabilitate fore-closed homes. A parallel Senate bill would provide up to \$4 billion in community development block grants for similar purposes. The 239-188 vote on the House measure, with just eleven Republicans voting “aye,” shows how low bipartisanship has fallen.

The House then approved two additional measures. One would provide \$11 billion in assorted tax breaks and offer a \$7,500 refundable tax credit for first-time homebuyers. It would also expand subsidies for the developers of low-income housing and increase the amount of tax-exempt bonds a state can issue to build low-income housing.

Republicans unsuccessfully tried to substitute their own version of the tax bill, a version that features a \$10,000 tax credit for homebuyers. In the Republican bill, beneficiaries of the tax credit would not have to repay the amount over time, as the Democrat’s bill would require.

The House then passed, by a vote of 266-154, the broader Federal Housing Administration (FHA) bill, which would allow that agency to insure loans to refinance up to \$300 billion in troubled subprime mortgages.

Again, the White House is threatening a veto if the Democratic version of this bill survives unchanged in the Senate. “I will veto the bill that’s moving through the House today if it makes it to my desk,” the President warned after meeting with Republican House leaders. “I urge members on both sides of the aisle to focus on a good piece of legislation” — the Republican alternative.

House Financial Services Committee Chairman Barney Frank (D-MA) is disappointed by the veto threat; he had hoped that including Administration-supported provisions to modernize the FHA’s mortgage-insurance program and language to strengthen oversight of Fannie Mae and Freddie Mac would win White House support.

Apparently not. As we said, the season of bipartisanship was very short. Unless another really scary financial crisis hits, it’s not likely to return.

Bernanke Cites Risk Management Lessons

Federal Reserve Chairman Ben Bernanke says he learned a few things from what he calls the “current turmoil” in the financial markets. Speaking at a Chicago Fed seminar on bank structure, he thinks these lessons would also benefit a wide array of market participants — including financial institutions of all types and sizes.

First, Bernanke blames our current problems largely on “the problematic implementation of the so-called originate-to-distribute approach to credit extension,” which created problems at every step of the process. At the point of origination, underwriting standards were increasingly compromised. Poor-quality loans were embedded in complex and opaque structured products, which spread losses throughout the system.

This problem extended beyond subprime mortgages, Bernanke declared. Credit standards eased elsewhere in the financial system as well, even as market-risk premiums contracted. Investors often took insufficient care in evaluating risks, in part because they relied too much on the credit rating agencies, whose methodologies, data, and assumptions were deficient. When the mortgage crisis arose, the agencies had to sharply downgrade a variety of products, causing investors to lose confidence in the agencies and the markets for structured credit products to seize up.

This experience should provide a number of lessons for risk management at financial institutions, the Chairman observed. These lessons include:

- *Risk management:* “For risks to be successfully managed, they must first be identified and measured,” Bernanke observed. This requires the use of a range of risk measures, including both quantitative and qualitative metrics. “Sophisticated quantitative tools and models play an important role in good risk management,” Bernanke said, “But no model, regardless of sophistication, can capture all of the risks that an institution might face.” Institutions must emphasize validation, independent review, and other controls for models and similar quantitative techniques.
- *Valuation:* Developing in-house expertise to conduct independent valuations enables institutions to avoid relying solely on third-party assessments. Testing valuations (by selling a small sample of the assets in question, for example) helps institutions derive appropriate market liquidity premiums in their pricing models and evaluations.
- *Liquidity risk:* In the current crisis, the more-successful institutions developed firm-wide strategies for liquidity risk management that incorporated information

from all business lines, Bernanke observed. Firm-wide strategies that included consideration of the liquidity risks associated with structured investment vehicles led to less involvement in these activities.

- *Senior management oversight:* Senior managers should be actively engaged in risk management, which includes determining the firm's overall risk preferences and creating the incentives and controls to induce employees to abide by those preferences.

“Recent events have also demonstrated the importance of generous capital cushions for protecting against adverse conditions in financial and credit markets,” Bernanke concluded. “I strongly urge financial institutions to remain proactive in their capital-raising efforts. Doing so not only helps the broader economy but positions firms to take advantage of new profit opportunities as conditions in the financial markets and the economy improve.”

FinCEN Warns of Fraud in Refinancings

Money laundering is a growing problem in the real estate industry, the Financial Crimes Enforcement Network (FinCEN) has warned. The agency released a report that analyzes incidents of suspected money laundering in residential real estate transactions, based on FinCEN's study of suspicious activity reports (SARs) filed by financial institutions.

The residential real estate fraud study follows previous FinCEN analyses of activity in the commercial real estate and residential mortgage markets. As was the case with the two previous reports, FinCEN detected a pattern of sharply increasing money laundering activity during the years that real estate prices were spiraling upwards and interest rates were low (especially 2004-2005). After 2005, the rate of increase slowed as the real estate markets faltered.

The report notes that more than 75 percent of the suspects identified in real estate-related SARs had no professional relationship with the residential real estate industry. Collusion with real estate or construction professionals was rare.

Also, in contrast to criminals seeking to profit by committing mortgage fraud, those who seek to launder money through residential real estate generally intend to make timely payments. Their goal is not to profit from an illicit loan, but rather to disguise the source of their funds. Therefore, they seek to make their transactions appear as unremarkable as possible.

The report is intended to help raise awareness of

vulnerability to money laundering and to assist financial institutions to better recognize risk and thus provide better information to law enforcement in order to combat criminal activity.

One area for special attention, according to FinCEN, is refinancing transactions. The agency points out that, while the mortgage and real estate markets have slowed, there is every reason to expect a big upsurge in refinancing transactions as financially troubled homeowners seek to find more favorable terms. Government programs will encourage this trend.

As always happens, fraudsters will “follow the money” into the refinancing market, FinCEN analysts believe.

Fed, FTC Propose Credit Pricing Disclosures

The Federal Reserve Board and the Federal Trade Commission proposed new regulations that would require a creditor to provide certain consumers with risk-based pricing notices. The notices would have to be given when, based in whole or in part on the consumer's credit report, the creditor offers or provides credit to the consumer on terms less favorable than the terms it offers or provides to other consumers.

Risk-based pricing refers to the practice of using a consumer's credit report, which reflects his or her risk of nonpayment, in setting or adjusting the price and other terms of credit offered or extended to a particular consumer. Many creditors offer more favorable terms to consumers with better credit histories.

The proposed rules would apply, with certain exceptions, to all creditors that engage in risk-based pricing — not just to depository institutions. Under the proposed rules, the lender would provide a risk-based pricing notice to the consumer after the terms of credit have been set, but before the consumer becomes contractually obligated on the credit transaction.

The agencies' joint proposal provides a number of different approaches that creditors may use to identify the consumers to whom they must provide risk-based pricing notices. In addition, the proposed rule includes certain exceptions to the notice requirement. The most significant of the exceptions permits creditors, in lieu of providing a risk-based pricing notice to those consumers who receive less favorable terms, to provide all of their consumers with their credit scores and explanatory information.

The proposal, which would implement Section 311 of the Fair and Accurate Credit Transactions Act of 2003, was published in the *Federal Register* of May 19.

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FDIC Drafts Mortgage Relief Program

In a highly unusual move, the FDIC has proposed to Congress a program for the relief of troubled mortgage borrowers. The program does not appear to have the support of the administration, any particular bloc in Congress, or even of the other financial regulatory agencies. Rather, it seems to represent the recommendations of the agency's activist chairman, Sheila Bair.

Bair won considerable respect with her early warnings that a mortgage crisis was brewing, and now her agency is proposing a solution.

Loans from Treasury, Not FHA

Under the FDIC plan, Congress would authorize the Treasury Department to make loans to borrowers with unaffordable mortgages. These loans would pay down as much as 20 percent of their principal. The repayment and financing costs for these Home Ownership Preservation (HOP) loans would be borne by mortgage investors and borrowers.

Bair promises that the proposal would not cost the government anything. Borrowers would have to repay both their restructured mortgage and the HOP loan. Mortgage investors would pay the Treasury's financing costs and agree to concessions on the underlying mortgage to achieve an affordable payment.

The Treasury would have a super-priority interest — superior to mortgage investors' interest — to guarantee repayment. If the borrower defaulted, refinanced, or sold the home, Treasury would have a priority recovery for its loan from any proceeds. The government would have no continued obligation and the loans would be repaid in full.

HOP mortgages would be available only for refinancing owner-occupied residences with mortgages that were written with a debt-to-income ratio exceeding 40 percent. Eligible loans would include those originated between January 1, 2003 and June 30, 2007 and that were for amounts below the ceiling on FHA conforming loans.

Mortgage investors would pay the first five years of interest due to Treasury on the HOP loans when they enter the program. After 5 years, borrowers would begin repaying the HOP loan at fixed Treasury rates. A Treasury public debt offering of \$50 billion would fund modifications of approximately 1 million loans that were "unsustainable at origination." Principal and interest costs are fully repaid.

Odd Timing

In a case of odd timing, the FDIC proposed the new plan just as the House Financial Services Committee

was wrapping up work on its own entirely different bill (below). It is unlikely that Congress would shift its focus from FHA legislation to the FDIC plan, despite the respect Congress members are said to have for Bair and her willingness to take on tough issues.

IRS Issues Loan Modification Guidance

The Internal Revenue Service (IRS) has issued guidance (Rev. Proc. 2008-28) describing the conditions under which modifications of mortgage loans will not cause IRS to challenge the tax status of the securitization vehicles that hold the loans or to assert that those modifications create a liability for tax on a prohibited transaction.

The revenue procedure applies to a modification of a mortgage loan held by a REMIC or an investment trust if several conditions are met, including:

- The terms of the modified loan are less favorable to the holder than were the unmodified terms of the original mortgage loan;
- The holder or servicer reasonably believes that the modified loan presents a substantially reduced risk of foreclosure; and
- The holder or servicer reasonably believes that there is a significant risk of foreclosure of the original loan.

The IRS pointed out that this reasonable belief may be based on guidelines developed as part of a foreclosure prevention program, or it may be based on any other credible systematic determination.

The revenue procedure governs IRS determinations made on or after May 16, 2008, with respect to loan modifications that are effected on or before December 31, 2010.

HUD Launches Fair Housing Campaign

The Department of Housing and Urban Development (HUD) launched a campaign to educate the public, especially minorities, about their rights under the lending provisions of the federal Fair Housing Act. The centerpiece of the bilingual campaign is a television public service announcement featuring Dennis Haysbert, best known for his role as President Palmer in the TV series "24."

The announcement ends with the tagline "HUD — One Call. Many Answers" and encourages people to call HUD's fair housing hotline, 1 (800) 669-9777, or log onto HUD's Web site, www.hud.gov/fairhousing, if they

believe they have experienced lending discrimination.

“HUD studies confirm that African Americans and Hispanics trying to become homeowners are often given less information about loan terms, are quoted higher rates and fees, and are sometimes discouraged from applying for loans,” said Kim Kendrick, HUD’s Assistant Secretary for Fair Housing and Equal Opportunity. “Hopefully, this compelling campaign will empower existing and prospective minority homeowners to report these incidents so that they can receive help.”



State Roundup

Cuomo Settlement Panned

Lenders and other real estate settlement service providers are bitterly unhappy with New York State Attorney General Andrew Cuomo’s efforts to regulate real estate appraisers.

Cuomo rewrote the rulebook with a stroke of his pen when he signed a consent agreement settling his office’s complaints about the business practices of Fannie Mae and Freddie Mac. The two GSEs signed an agreement not to purchase mortgages if the appraiser involved in the transaction did not meet Cuomo’s standard of independence.

The trouble is, Fannie and Freddie play such a big role in the mortgage market that most lenders would have no choice but to comply with Cuomo’s requirements.

Several elements of the mortgage industry are now protesting what they see as Cuomo’s power grab. For instance, the settlement document prohibits appraisers from working for lending institutions. Yet federal law — the FIRREA law of 1989 — sets explicit standards for in-house appraisers at banks. In another example, FIRREA provides for a lesser standard of appraiser regulation for transactions of \$250,000 or less. Yet Cuomo’s agreement includes no such exception. Can the New York Attorney General’s decree contradict federal law?

Cuomo has allowed interested parties to comment on his actions — but only to the extent “necessary to avoid unforeseen consequences.” This is but a “mimic” of the comment period required by federal law, Bank of America complained.

The ICBA joined other trade groups in a joint protest letter and submitted its own separate comments. In its letter, ICBA pointed out that the agreement requires

each lender to maintain a consumer hot line that must be staffed by an employee who answers to an independent bank official with no connection to the lending process. That’s a tall order for a bank with only a few employees, ICBA argued.

Maryland Launches Campaign to Combat Foreclosures

On May 6, Maryland Governor Martin O’Malley and other state officials kicked off a multimedia advertising campaign to help tackle rising foreclosures in the State and ensure Maryland homeowners are aware of the programs available to provide assistance and relief. The slogan of the campaign is “Mortgage Late? Don’t Wait!”

The Department of Housing and Community Development, the Department of Labor and Licensing Regulation, and the Department of Transportation collaborated to develop the statewide campaign.

“To protect our middle class families from losing their homes, we must make sure Marylanders know all of the programs and services available to them,” said Governor O’Malley. “I am pleased to announce our latest effort to combat foreclosure. Under the maxim that ‘knowledge is power’ we are launching a multimedia ad campaign to let our fellow citizens know that help is available.”

The new campaign is the latest in the state’s continuing efforts to help prevent foreclosures. In June 2007, Governor O’Malley initiated a comprehensive effort to combat rising foreclosure rates in Maryland. Since then, the 17 initial HOPE counseling agencies have provided foreclosure prevention assistance to more than 4,000 homeowners and has fielded more than 4,500 calls for assistance. Maryland recently expanded the HOPE counseling network to a total of 28 nonprofit housing counselors with grants totaling \$1.6 million. These nonprofits will be able to assist more than 6,000 homeowners in the coming year.

Minnesota Governor Backs Up Threat, Vetoes Foreclosure Bill

Much to mortgage lenders’ relief, Minnesota Governor Tim Pawlenty has vetoed the Minnesota Subprime Borrower Relief Act of 2008. The Mortgage Bankers Association had vigorously opposed the bill.

Governor Pawlenty vetoed foreclosure deferment legislation on May 29. The Minnesota Subprime Borrower Relief Act (S.F. 3396) would have imposed a one-year

State Roundup, continued from page 7

moratorium on foreclosures. It also would have permitted troubled borrowers to make payments equal to the minimum monthly payment at the time of origination or 65% of the payment at the time of default, whichever was lower.

Kieran P. Quinn, MBA chairman, applauded Governor Pawlenty's veto. MBA opposed the bill's foreclosure deferment plan, which would have effectively frozen the foreclosure process for one full year on all qualifying loans made between January 1, 2001 and August 1, 2007.

"While MBA continues to work with state and local policymakers to explore all reasonable avenues for alleviating the foreclosure problem nationwide, we applaud Governor Pawlenty for his leadership in promoting solutions to aid troubled borrowers and correctly deciding to veto this bill," Quinn said.

MBA argued that even though the bill was crafted with the best of intentions, it would have succeeded in prolonging the problem for the families it intended to help.

"Moreover," MBA said in a press release, "the Governor understands the constitutional questions surrounding foreclosure moratoriums and rightly recognized such initiatives as an unsound public policy choice. Delaying a foreclosure subjects a borrower to accrued interest, taxes, insurance premiums, foreclosure costs and many other fees. This puts borrowers into a deeper financial hole when the deferment period ends, making foreclosure an ultimate inevitability, rather than a threatening possibility."

MBA said it supports solutions that do not harm the delicate state economy and are beneficial to all Minnesota homeowners. "Unfortunately," MBA added, "a foreclosure moratorium or deferment is not one of those solutions."

"If Minnesota creates a statutory right for individuals to remain in their homes beyond our already extensive foreclosure laws, mortgage providers will factor this additional business risk into mortgage agreements, and Minnesota mortgages will be more expensive," Pawlenty explained in a letter to Minnesota Senate President James Metzen.

Pawlenty said the bill would negatively impact the credit market in Minnesota by increasing interest rates for Minnesotans who are trying to refinance or purchase a new home. He also argued that the bill raises "significant legal and philosophical concerns." He specifically cited the contract clause and the due process and equal protection clauses of the U.S. Constitution.

Michigan Governor Signs Service Member Foreclosure Protection Bill

On May 21, Michigan Governor Jennifer M. Granholm signed a bill that protects military service members from the threat of mortgage foreclosure. The bill prevents foreclosure on future home purchases for six months after the end of an owner's military service.

"Military service members are protecting our families every day, the least we can do is protect their dream of homeownership," Granholm said. "When military service members return to their families and their communities here in Michigan, the last thing they should have to worry about is losing their home."

Public Act 138 amends the Revised Judicature Act by allowing a court to issue a stay on mortgage foreclosure proceedings for six months after the end of the individual's military service. Under the new law, mortgage servicers who attempt to sell or foreclose real estate that has received a stay from the court could be subject to a \$2,000 civil fine.

Iowa Governor Culver Signs Consumer-Protection Legislation

Iowa Governor Chet Culver signed House File 2556, the annual omnibus bill for the Iowa Division of Banking, on May 10. Included in the legislation are several changes to code chapters administered by the Division designed to address issues that have arisen as the country deals with issues presented by the subprime mortgage crises and the resulting credit crunch.

Culver also signed Senate File 2308. This bill provides consumer protection for security breaches, including a mandatory notification requirement. The bill requires any person who owns or licenses computerized data will give notice of the breach of security. The notification must be made in the most expeditious manner available and without unreasonable delay. The bill also identifies acceptable ways to render notice to the consumer.

"As Iowans face growing concerns about the national economy, it is imperative that we take steps now to protect Iowa consumers," said Governor Culver. "That is why I am proud to sign these bills today. With these steps, we are once again sending a message that predatory business practices in Iowa will not be tolerated."

Georgia Bill Revises Foreclosure Notice Requirements

On May 13, Georgia Governor Sonny Perdue signed legislation that amends the notice requirement for non-ju-

dicial foreclosures. Under S.B. 531, the foreclosing party must provide the borrower with notice of a foreclosure sale at least 30 days prior to the date of sale. The bill also requires that the notice provide the name, address, and telephone number of the individual or party that will have authority to negotiate all terms of the mortgage with the debtor.

Connecticut Law Requires Reinstatement Payment Statements

On May 12, Connecticut Governor M. Jodi Rell signed legislation (H.B. 5578) that requires mortgagees to provide reinstatement payment statements within seven business days of a borrower's request. Effective October 1, 2008, the new law decreases the amount of time a mortgagee has to provide a payoff statement upon a borrower's request from ten business days to seven business days. Under the revision, mortgagees are not required to provide a reinstatement payment statement if the borrower does not have the right to cure a payment default.

Ohio Enacts Payday Law

Ohio Governor Ted Strickland signed legislation establishing stricter regulations for short-term lending practices (payday lending). Sponsored by State Representative Chris Widener, House Bill 545 caps the interest rate for payday loans at 28 percent, reduced from the current annual interest rate of 391 percent. The bill also sets a \$500 borrowing limit for consumers and restricts borrowers to four loans per year. Additionally, the legislation extends loan terms to 31 days from 14 days.

"The bipartisan legislation signed today takes a major step toward protecting Ohio consumers who are already struggling with debt by strictly regulating payday lenders and lowering the maximum interest rate for short-term loans," Strickland said.

Connecticut Adopts URPRA

Connecticut is the latest state to adopt the Uniform Real Property Electronic Recording Act. On May 12, Governor Jodi Rell signed House Bill 5535, which will go into effect on October, 2009. The new law authorizes electronic signatures and recording in real property transactions. HB 5535 also establishes a Real Property Electronic Recording Advisory Committee to advise the state librarian about adopting, amending, and repealing regula-

tions under the new law. The new law becomes effective October 1, 2009.

Other News You Can Use

Big Banks Tighten More

The big banks that are included in the Fed's survey of senior loan officers are tightening up on credit across the board. A tightening of lending standards and terms occurred over the past three months in all major loan categories from C&I and commercial real estate loans to home equity lines of credit and student loans.

Seventy percent of the banks surveyed have tightened their lending standards for home equity lines of credit (HELOCs). Half the respondents reported they had tightened terms on existing HELOCs to protect themselves from declining home values.

"Large majorities of respondents also cited increased defaults of material obligations under loan agreements, as well as significant changes in borrowers' financial circumstances as additional reasons for tightening terms on the existing HELOCs," the Fed said.

The portion of banks that have tightened lending standards on prime mortgages over the last three months rose slightly from January — the time of the previous survey — to 60 percent. Of the banks that originated nontraditional residential mortgage loans, about 75 percent reported tightening their standards, a slightly smaller portion than in January.

About 25 percent of the banks surveyed said they had experienced weaker demand for prime residential mortgages and 30 percent indicated weaker demand for nontraditional mortgage loans over the past three months.

The portion of domestic banks that tightened their lending standards on credit card loans tripled from 10 percent in January to 30 percent in the latest three-month period. At the same time, about a quarter of the banks said they were less willing to make consumer installment loans than they had been in January and 45 percent reported tightening lending standards on non-credit card consumer loans.

In response to a special question on student loans, 40 percent of the domestic banks that originated loans under the Federal Family Education Loan Program (FFELP) last year think the number of loans will decrease in the coming school year. Another 45 percent expect a decline in the number of schools for which they provide FFELP financing and 60 percent expect to reduce the amount of

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borrower benefits on the loans from those provided in 2007.

The loan officers are also expecting their participation to diminish in private-credit (non-FFELP) student loans this year.

Jumbo Mortgages Still Scarce

Whatever happened to jumbo mortgages? That's what House Financial Services Committee Chairman Barney Frank (D-MA) wants to know.

The economic stimulus package that President Bush signed in February authorized a temporary increase in the cap on mortgages that Fannie Mae and Freddie Mac can purchase or guarantee. The ceiling went from \$417,000 to

a figure that can hit \$729,750 in certain high-cost markets. The change will be in effect throughout this year.

The idea was to get money flowing into big mortgages to stimulate the economies of areas with high-cost real estate, where conforming loans might not be as useful as in lower-cost areas.

Despite Freddie Mac's earlier announcement that it would use its new lending flexibility to buy up to \$15 billion in home loans for higher-priced properties, jumbo loans remain scarce, Frank said. Rates remain about one point higher than those for conforming loans, and there is little evidence that the new lending flexibility has had any effect.

Frank claims that the mortgage industry has not done enough to make higher-value loans available in the affected markets. "I am disappointed," Frank declared at a recent mortgage bankers' convention. "We fought very hard to raise the loan limits for Fannie and Freddie, and there have been a lot of problems in implementation."

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