

Week of November 19, 2007

House Approves Major Mortgage Reform Bill

On Thursday, November 15, the House of Representatives approved H.R. 3915, the "Mortgage Reform and Anti-Predatory Lending Act of 2007," by a vote of 291-127. If enacted, this legislation would fundamentally change mortgage practices in several areas: establish a federal duty of care in offering mortgage products; require licensing of all mortgage originators; prohibit steering; create an ability to repay standard; lower HOEPA triggers; attach limited liability to secondary market securitizers; and require an escrow account for some first-lien mortgages in certain circumstances. Prior to floor action, MBA sent a letter to the House Leadership expressing serious concerns with this bill. While the bill is intended to improve several areas of the mortgage market, H.R. 3915 will greatly limit the availability of credit and will prevent many qualified Americans from becoming homeowners. On Wednesday, November 14, the Bush Administration issued its Statement of Administration Policy. Although the Administration supported several key goals of H.R. 3915, it believed this legislation would restrict credit for potential homebuyers and limit refinancing options for current homeowners. Action now moves to the Senate where Banking Committee Chairman Christopher Dodd (D-CT) is preparing to introduce his own reform package.

Senate Passes Terrorism Insurance Legislation

On Friday, November 16, the Senate passed S. 2285, the "Terrorism Risk Insurance Program Reauthorization Act of 2007" (TRIPRA). The bill would extend the current program by seven years (through 2014) and provide the commercial mortgage market with affordable terrorism insurance. Now that both the House and Senate have passed terrorism extension bills, they will meet in conference to negotiate the differences. MBA will continue to work with Congress to pass final legislation this year that will provide long-term terrorism risk insurance.

Senators Reach Agreement and Move Closer to Passing FHA Reform

This week, Senate Banking Committee Chairman Christopher Dodd (D-CT), Ranking Member Richard Shelby (R-AL) and Senator Elizabeth Dole (R-NC) reached agreement on including a 12-month moratorium for Federal Housing Administration (FHA) risk-based pricing programs in S. 2338, the "FHA Modernization Act of 2007." Senator Dole had raised objections with these programs, but this agreement now moves the Senate one step closer to passing FHA reform legislation. Senators DeMint (R-SC) and Coburn (R-OK) have placed "holds" on the bill, a procedural maneuver allowing them time to review the legislation, that has temporarily delayed passage of S. 2338. MBA is working with both offices to work through their concerns.

President Signs Appropriations Bill that Funds La. Road Home Program

This week, the President signed the FY08 Appropriations Conference Committee Report for the U.S. Department of Defense. Included in the report is a Continuing Resolution (CR) to fund federal programs through December 14, while Congress works to finish the remaining appropriations bills. The CR also includes \$3 billion for Louisiana's Road Home Program.

GSE Housing Goal/Fund Legislation Introduced

On Friday, November 16, Senator Jack Reed (D-RI) introduced a bill, "Government Sponsored Enterprise Mission Improvement Act of 2007," that would strengthen the affordable housing mission of Fannie Mae and Freddie Mac (GSEs). The bill would require the GSEs to set aside 4.2 basis points on each dollar of unpaid principle balance. This set-aside would go towards an Affordable Housing Block Grant Program

managed by the Secretary of Housing and Urban Development (HUD), and would also be allocated for a Capital Magnet Fund managed by the Secretary of the Treasury. It would also create a new statutory duty for the GSEs to serve "underserved markets" that lack adequate credit through conventional lending sources. All measures in this bill are aimed at facilitating loan modification, refinance options and other financial activities for moderate-, low- and very low-income borrowers facing foreclosure.

MBA Submits Comments to OTS Concerning its Possible Rulemaking on Unfair and Deceptive Acts and Practices

Last week, MBA submitted comments to the Office of Thrift Supervision (OTS) regarding whether OTS should expand its unfair and deceptive acts and practices (UDAPs) rules governing federally chartered savings associations. In its comments, MBA encouraged OTS to await new UDAP rules from the Federal Reserve under the Homeownership Equity and Protection Act (HOEPA) before embarking on its own UDAP rulemaking. MBA also urged that if OTS goes forward, its actions should be coordinated and taken in concert with other federal financial regulators. MBA has long supported strong actions against abusive lending in the form of uniform national standards. MBA believes that coordinated and concerted action by regulators can serve that objective.

MBA Joins Amicus Brief Filed in Fair Labor Standards Case before 9th Circuit U.S. Court of Appeals

MBA joined in an Amicus Curiae brief filed in the U.S. Court of Appeals for the 9th Circuit by the U.S. Chamber of Commerce and other lending industry trade associations in Mevorah et al v. Wells Fargo Home Mortgage. The brief supports Wells' claim that certification of a class of loan officers' overtime claims was erroneous on several counts. Notably, the brief points out that the District Court ignored significant individualized questions related to each class member's respective job activities that would prevent class certification. It also expressed concern that the court's establishment of the class as an "opt-out class" -- where class members would be included unless they opted-out -- was inconsistent with the Fair Labor Standards Act (FLSA).

Massachusetts Attorney General Heeds MBA's Concern

Massachusetts Attorney General Martha Coakley (AG) this week extended the effective date for new regulations governing the conduct of mortgage brokers and mortgage lenders. The regulations will now take effect on January 2, 2008. MBA recommended that the AG push the effective date to January 2 from the initial November 15 deadline to allow adequate time for lenders to update their systems, policies and procedures. AG Coakley's office plans to issue guidance clarifying provisions of the regulations concerning broker compensation and client interests.

Predatory Lending (H.R. 3915)

The House Financial Services Committee passed H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007, by a vote of 45-19. It is anticipated to be considered by the House of Representatives next week (the week of November 12). While the process that produced this legislation was open, the Mortgage Bankers Association has expressed concern with several portions of the bill, including: the lack of federal preemption; the 'rebuttable presumption' provision of the bill which exposes a lender to liability even when a loan meets the qualified safe harbor requirements; the renter provision which will make it harder for homes that are in the foreclosure process to be sold to families and other third parties; and lower HOEPA triggers which we believe will eliminate certain good products from the mortgage market.

Bankruptcy (H.R. 3609)

We expect the House Judiciary Committee to consider H.R. 3609, the Emergency Home Ownership and Mortgage Equity Protection Act of 2007 the week of November 12. This legislation would completely change the home real estate market by eliminating the security lenders have in making mortgages. H.R. 3609 would put the mortgage into the bankruptcy trust, something that will devastate lenders and our customers. We believe that at a time when the mortgage market is experiencing a serious credit crunch, passing this bill will increase costs to consumers, further destabilize the mortgage market and hurt the overall economy. Mortgage bankers will no longer be sure that the money they lend is truly secure. This uncertainty will require higher interest rates and larger downpayments to offset the risk and will push many lenders out of making certain mortgages. The people impacted most will be those with lower incomes, weaker credit and smaller downpayments.

TRIA (S. 2285)

On November 1, the Senate Banking Committee reported out S. 2285, the Terrorism Risk Insurance Program Reauthorization Act of 2007, which includes a seven-year extension of the Terrorism Risk Insurance Act (TRIA). We believe that a long-term extension of the terrorism risk insurance program will help provide clarity and certainty of the federal government's response to a terrorist attack will serve as an important deterrent to future attacks. We urge the full Senate to act soon, and will keep you informed.

All of these issues have been posted to the Mortgage Action Alliance's website (www.mortgageactionalliance.org) so that individuals may contact their elected representatives and express their opposition to H.R. 3609, concern with H.R. 3915, and their support for S. 2285. New Calls to Action will be sent so that you may send them to fellow real estate finance industry professionals shortly.