

# LEGISLATIVE BULLETIN

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## FEDERAL LEGISLATION AND REGULATIONS

### **The Homeownership Preservation and Protection Act of 2007**

On December 12, 2007, Senator Chris Dodd, Senate Banking Committee Chairman, introduced his version of a bill to reform the mortgage lending process and to stop predatory lending practices. This bill is very similar to Representative Frank's H.R. 3915, which was passed by the House of Representatives on November 15, 2007.

This Senate bill would prohibit mortgage brokers from steering prime borrowers to more expensive subprime loans, create a fiduciary duty for the mortgage brokers towards borrowers, and provide for a duty of good faith and fair dealing toward borrowers for all lenders. This bill would also "establish additional protections for subprime borrowers and borrowers who get nontraditional mortgages." It will require a real analysis of the borrowers' ability to repay the loan. The bill prohibits prepayment penalties and Yield Spread Premiums on subprime and nontraditional loans, and requires that these loans provide a net tangible benefit to the borrower. This bill would allow state attorneys general to enforce the provisions of the law, and does not preempt state law. A limited liability for holder of a mortgage would be provided if due diligence procedures are in place to ensure that the loans purchased are on conformity with the law in much the same manner as H.R. 3915. MBA will be opposing this bill.

In talking with one of Georgia's Senators, he stated that he did not think that either Frank's H.R. 3915 or Senator Dodd's bill would pass the senate in their present forms. His thoughts are that the ultimate legislation will prove to be much more reasonable so as not to substantially disrupt the mortgage lending markets any more than necessary.

### **The Federal Reserve Proposed New Rule on Mortgage Lending**

In mid December, the Federal Reserve, reacting to the heavy criticism it was receiving for a perceived failure of the Federal Reserve to have regulated lenders and mortgage brokers who were making "unfair and predatory loan," issued a proposed set of new regulations to address some of the recent the problems in the mortgage credit markets. The proposed Fed rules would touch almost every corner of the mortgage market.

This new proposal would require lenders to assess subprime borrowers' ability to repay loans from sources other than rising home values. Lenders would be barred from making high cost loans that rely on unverified income or assets, and lenders would be banned from paying mortgage brokers bonuses (YSP's) beyond what consumers would have agreed in advance that the brokers would receive. The new proposed rule would not assign any liability to the investors or purchasers of mortgage loans that turn out

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to be deceptive or unfair as the Fed states it does not have the authority to do so. The Federal Reserve Bank does the authority to regulate both mortgage brokers and mortgage banking lenders who are not affiliated with banks, and this proposed regulation would affect all parties in the mortgage lending process. The public will have 90 days to comment on the new proposed rules.

In the meantime, both Senator Dodd and Representative Frank both plan to pursue legislation which has already been introduced to address mortgage reform and predatory lending practices. Senator Dodd states that the Fed's proposals amount to "a clear signal that legislation is necessary to help protect homeowners from abusive and predatory lending practices."

### **The Terrorism Risk Insurance Act (TRIA)**

TRIA was set to expire at the end of this year, and fortunately has been extended through December 31, 2014. MBA was very instrumental in the continuation of TRIA without which the commercial lending markets would be unable to function.

### **Private Mortgage Insurance**

Congress extended last year's law which allows certain borrowers to deduct the private mortgage insurance premiums on their income tax forms.

### **GEORGIA LEGISLATION**

As reported in the last MBAG Newsletter, a credit reporting freeze bill will be introduced modeled after the Utah statute which is lender friendly. Most major trade associations affected by this bill, including MBAG, have given approval to this particular proposed bill.

There will be many bills to amend the Georgia Fair Lending Law introduced during the upcoming 2008 session of the Georgia General Assembly. The MBAG Legislative Committee under the leadership of Debbie Pennington will be closely monitoring any bills which might adversely affect the mortgage lending industry in Georgia.

**If you have any questions concerning this article or need further information, please contact Richard Raymer or Mo Thrash at (678) 281-6500.**