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REGULATORS

ABA, ABASA: Withdraw, Re-Propose Risk-Retention Proposal

The federal agencies should withdraw and re-propose their joint proposal rule that would implement the Dodd-Frank Act's risk-retention requirements -- including the exemption for "qualified residential mortgages" -- because it contains serious flaws that must be corrected, ABA and its ABA Securities Association affiliate said yesterday in a comment letter.

The agencies failed to consider the risk-retention proposal's cumulative effect in concert with other rule changes intended to improve mortgage underwriting, the trade groups said. They include Truth in Lending Act and Real Estate Settlement Procedures Act changes; new requirements under the Secure and Fair Enforcement for Mortgage Licensing Act; changes in appraisal standards; and new rules controlling mortgage originator compensation.

Such changes, combined with the proposed risk-retention requirements, would pile undue burdens and costs on lenders, potentially driving many from the market and increasing the cost of credit beyond the reach of otherwise qualified borrowers, they said. The trade groups added that the proposal also runs counter to congressional intent in a number of areas. The QRM exception, for example, is extremely narrow; imposes much higher down-payment requirements than Congress anticipated; and ignores using mortgage insurance to help borrowers qualify for a mortgage.

ABA and ABASA emphasized that the proposal must be restructured to allow more borrowers to qualify for the QRM exception, regardless of whether their loans are sold to the secondary market. They also noted that the proposed rule would exempt the government-sponsored enterprises from risk-retention requirements while they remain in conservatorship.

While such an exemption may be necessary, it will only prolong the GSEs' conservatorship and make moving the market to the private sector more difficult, they said. Finally, the proposal's risk retention requirements are unworkable, the trade groups explained. Elements of the proposal requiring a premium recapture account will make most securitizations economically unviable.

[Read the letter.](#) For more information, contact ABA's [Bob Davis](#).



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Rep. Frank: Proposed QRM Too Narrow

In related news, Rep. Barney Frank (D-Mass.) at a recent press briefing said that regulators' proposed qualified residential mortgage definition -- which would exempt mortgages with a 20-percent down payment from the Dodd-Frank Act's risk retention rules -- was too narrow. Frank reiterated the importance of the risk-retention provisions but suggested a QRM down payment requirement of 4 or 5 percent would be more reasonable.

ABA, as part of the broad-based Coalition for Sensible Housing Policy, responded by reiterating concerns about the proposed QRM standards.

"Requiring a 10 or 20 percent minimum down payment in addition to strong underwriting would raise the cost and reduce the availability of mortgages for creditworthy families without the wealth or savings for a down payment, but do so with only minor improvements in overall default rates," the coalition said in a press statement. "We urge policy-makers to redesign a QRM that will support -- not hinder -- the housing recovery, attract private capital and minimize future defaults without shutting responsible borrowers out of the housing market."

For more information, contact ABA's [Joe Pigg](#).

ABA Offers Alternative to Improve Fed's Ability-to-Repay Proposal

On July 22, ABA filed a comment letter with the Federal Reserve Board offering an alternative solution to strengthen the "qualified mortgage" option's safe-harbor protections in the proposed rule that would require creditors to determine a consumer's ability to repay a mortgage before making the loan.

While the Fed's Dodd-Frank Act-mandated proposal provides four options for complying with the ability-to-repay requirement, ABA emphasized that the market requires a regulatory structure that provides creditors with safe harbor protections from liability if the loan does not have certain features, including negative amortization and fees within certain limits.

To help regulators craft a safe-harbor structure that is both protective and broad enough to support needed mortgage lending, ABA proposed an alternative solution with amplified consumer protections and provisions that incentivize increases in safe and sound lending activities.

ABA said its proposal supports QM standards that are generally consistent with the Fed's, and with certain changes to the points and fees calculation. "A most important element of this alternative approach is that the proposal requires that the rules be finalized with full safe harbor protections and

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would pledge ABA support for stricter standards than even those proposed by the Board ... ," the association explained.

ABA added that it is critical for the Consumer Financial Protection Bureau, which is taking over the final rulemaking, to provide lenders with clear, understandable rules, and a safe harbor to properly shield lenders when they make safe loans. "A final rule that does not give lenders clarity in standards and a safe harbor will not prove sufficient to achieve the stated goal of promoting a robust mortgage lending market...," ABA said.

ABA pointed out in its comment letter (pages 17-18) that the definitions of "rural" or "underserved" that would allow balloon loans to meet the QM standards are too restrictive, and since most banks would not qualify, they would constrict needed credit in such communities. ABA is forming a working group composed of member banks that specialize in rural and underserved markets to help policymakers define the terms "rural" and "underserved" as they relate to balloon-payment mortgages in the Federal Reserve's proposed rule requiring creditors to determine a consumer's ability to repay a mortgage before making the loan.

[Read the letter.](#) [Read the proposal.](#)

For more information, contact ABA's [Bob Davis](#) or [Rod J. Alba](#).

OCC Issues Foreclosure Guidance

The OCC issued [guidance](#) on national banks' oversight and management of mortgage foreclosure practices. The guidance directs national banks to conduct self - assessments of their foreclosure-management practices by September 30 and to correct any weaknesses they identify.

The OCC explained that while earlier reviews of the 14 largest servicers addressed a wide segment of the mortgage-servicing market, the new guidance is aimed at ensuring that all national-bank mortgage servicers adhere to appropriate foreclosure management standards. In its Bulletin 2011-29, OCC stresses that banks engaged in mortgage servicing must ensure compliance with foreclosure laws, conduct foreclosures in a safe and sound manner, and establish responsible business practices that provide accountability and appropriate treatment of borrowers. The bulletin provides additional clarification on expectations regarding governance of foreclosure process to include adequate staffing and training, dual-track processing, management of affidavit and notary practices, documentation, oversight of third-party service providers, and adherence to all laws and regulations related to mortgage foreclosure.

Fed, FTC Issue Credit-Score Disclosure Rule

The Federal Reserve and the Federal Trade Commission (FTC) [issued](#)

joint final rules on July 6 to implement Dodd-Frank Act provisions amending the Fair Credit Reporting Act (FCRA) and requiring creditors to disclose credit scores and related information to consumers in risk-based pricing and adverse action notices. In addition, the Fed adopted model Regulation B notices to incorporate these new requirements into the regulation.

Generally, the regulations are pursuant to section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which requires disclosure of credit scores and information related to credit scores in: risk-based pricing notices, if a credit score is used in setting the material terms of credit; and FCRA adverse action notices, if a credit score is used in making the decision. The Fed also issued a final rule that amends certain model notices in Regulation B (Equal Credit Opportunity) that combine the adverse-action notice requirements for both Regulation B and Regulation V.

The rule's effective date was set for July 21, 2011.

ABA has updated its staff analysis on these final rules. The updated parts of the analysis -- based on bankers' questions and new information -- involve the rules' application to business loans and the treatment of guarantors and co-signers (questions 4, 13, 14, 15); ChexSystems' Qualifile score (question 13); the use of credit scores with noncredit products (question 11); and the disclosure of inquiries (question 10).

ABA has posted an identical analysis under both its summary of the Fed and FTC joint rules amending Regulation V (FCRA), and under its summary of the Fed's rule amending certain model notices in Reg B (Equal Credit Opportunity Act).

[Read the analysis.](#)

RESPA-TILA Mortgage Disclosures--Round Three

The Consumer Financial Protection Bureau has revised and reintroduced for feedback its two prototypes of a single mortgage disclosure form that would merge Truth in Lending Act and RESPA disclosures. The revised versions incorporate feedback the CFPB received from thousands of comments and interviews with consumers, lenders and brokers.

On Wednesday, August 10, ABA submitted comments to the CFPB on these latest amended draft mortgage forms. The ABA comments focused on the format of the draft forms, and on their general clarity and intelligibility. ABA observed that its comments are limited to critiques of the physical presentation of the initial forms, since the draft disclosures are being released without the necessary regulatory context that sets forth the timing of delivery or the responsibilities that attach to the issuer. In the comments, ABA pointed out that the draft form labeled "Camellia Savings Bank" contains the better format of the two alternatives issued by the Bureau, offering a good level of clarity and a degree of cost itemization

that allow consumers to discern the separate costs associated with the transaction. ABA detailed a number of confusing elements that remain in the forms, including unclear expositions of projected payments and escrow-related disclosures. ABA warned about the use of graphics and logos that would lead to excessive costs in reproduction for banks.

The comments express that ABA must necessarily reserve deeper substantive comments until the forms are placed in final proposed form where specific elements can be better analyzed in a more definitive manner.

A copy of the forms released for comment can be found [here](#). A copy of the ABA comments can be found [here](#).

For more information, contact ABA's [Rod J. Alba](#).

HUD Issues Clarifying Amendments to Regulation X

On July 11, the U.S. Department of Housing and Urban Development (HUD) issued technical corrections and clarifying amendments to RESPA's Regulation X. These amendments are intended to further illuminate the amendments to Regulation X that HUD issued on November 17, 2008, which became effective on January 1, 2010.

In the Federal Register notice, HUD delineates a number of distinct clarifications.

- First, HUD confirms that borrowers must express the intent to continue with the transaction after receipt of the good faith estimate (GFE), before any fees, except for credit report fees, may be charged. Such instructions had been described in the preamble but "accidentally omitted" from the regulation text.
- Second, HUD states that a revision of the GFE, instead of a "new" GFE, may be issued when there are changed circumstances that affect settlement charges. HUD observes that "revised GFE is not a new GFE, and it is important to maintain this distinction."
- Third, HUD observes that in borrower-requested changes, the current rule inadvertently omits that the revised GFE may increase charges listed on the GFE only to the extent that changed circumstances affecting the loan, or the borrower's requested change, actually increased those charges. HUD therefore clarifies that changed circumstances that would permit a revised GFE must actually increase the charges.
- Fourth, HUD clarifies that in provisions related to "new home purchases," the term applies to new "construction" home purchases only, and would not cover "any home that is new to the borrower."
- Finally, settlement services that were listed on the GFE but ended up not being purchased must not be included in the HUD-1 settlement statement. HUD reasons that allowing loan originators to include on Page 3 of the HUD-1 charges from the GFE for

settlement services that were not purchased could both induce loan originators to discourage consumers from purchasing settlement services (e.g., owner's title insurance) in order to gain padding in the tolerance categories, and encourage loan originators to pad the tolerance categories on the GFE with estimates of services that the consumer will not need in the transaction.

The notice makes a number of other corrections to numerical and typographical errors. ABA notes that these amendments are generally consistent with informal oral and written guidance that HUD has issued on these topics in the past, and that are described in ABA's [RESPA Guide](#).

For a copy of the Federal Register notice [here](#).

For more information, contact ABA's [Rod J. Alba](#).

ABA Comments on Preemption

ABA in a [comment letter](#) expressed support for the OCC's conclusion that the Dodd-Frank Act codifies the pre-emption standards articulated in the Barnett Bank case. ABA's comments were in response to several proposed OCC regulatory amendments related to the agency's integration of the Office of Thrift Supervision, as required by the Dodd-Frank Act. In the comments, ABA states that "the preamble to the NPR concludes that the DFA amendment is a codification of the standard for the preemption of state law articulated in the Barnett Bank case and its progeny" and "ABA agrees with this conclusion based on its review of the statutory language, legislative history of the DFA, other relevant language in the DFA, principles of statutory construction, and judicial interpretation of the DFA."

Senators Take Issue with Treasury Preemption Interpretation

A [letter](#) from Sen. Tom Carper (D-DE) and Sen. Mark Warner (D-VA) to Treasury Secretary Timothy Geithner expressed "surprise and disappointment" at Treasury's interpretation of the Dodd-Frank Act's preemption provision.

In a letter to the OCC late last month, Treasury took issue with the OCC's conclusion that the Dodd-Frank Act codifies the preemption standards articulated in the Barnett Bank case. ABA [supports](#) the OCC's interpretation.

"While we understand that the position of the Administration was to eliminate federal preemption for national banks, the fact is that Congress did not accept that position," Sen. Carper and Sen. Warner write. "Our amendment maintaining the Barnett standard passed the Senate by an overwhelming vote of 80 to 18. Both the language of the final law and its

legislative history clearly demonstrate that the Barnett standard is maintained, and the Treasury position in this comment process was, in fact, rejected by Congress.”

Comments Sought on AMTPA

The Bureau of Consumer Financial Protection (CFPB) published for comment an interim final rule establishing Regulation D (Alternative Mortgage Transaction Parity) pursuant to the Alternative Mortgage Transaction Parity Act (AMTPA) and the Truth in Lending Act.

The Dodd-Frank Act amended AMTPA to update it and to provide states more room to regulate certain features of adjustable rate mortgages. The CFPB proposed the interim rule to permit state lenders to continue to rely on AMTPA to make alternative mortgages because of concerns about the effect on small rural lenders that rely on AMTPA and consumers whose access to mortgages from those lenders would be suddenly limited. The Bureau wrote "Today's rule also reflects the Dodd-Frank Act's amendments to AMTPA, and the CFPB will continue to work to implement Congress' goals. But the full process will take time. We are asking for public feedback on the temporary rule we are issuing today. This input will help ABA develop a proposal for a permanent regulation, which we will issue for public comment and then revise before finalizing. In the meantime, the interim rule will prevent disruptions of mortgage lending and allow orderly implementation of the Dodd-Frank amendments."

Comments are due September 22. To join ABA's working group, contact ABA's [Joe Pigg](#).

FTC Finalizes Rule on Mortgage Acts and Practices

On July 19, 2011, the Federal Trade Commission (“FTC”) issued final regulations—the Mortgage Acts and Practices-Advertising Rule ([MAPS Rule](#))—aimed at banning deceptive mortgage advertising. The rule would ban material misrepresentation, either express or implicit, in any commercial communication, regarding any term of any mortgage credit product. The rule includes a list of 19 misrepresentations that would expressly violate the rule, and imposes a 24 month record keeping requirement.

The FTC's jurisdiction does not extend to banks, savings and loan institutions, or federal credit unions. The rule would, however, extend to bank affiliated mortgage lenders, brokers and servicers. In terms of non-bank coverage, the MAPS Rule would cover all companies that engage in advertising for mortgage credit products, including non-bank mortgage lenders, mortgage brokers, mortgage servicers, real estate brokers, advertising agencies, home builders, lead generators, rate aggregators.

The rule is enforceable by the CFPB, the FTC and state attorneys general.

To access the rule and ABA's summary, go [here](#). For more information, contact ABA's [Ginny O'Neill](#).

LEGISLATIVE

House Passes Flood Insurance Bill

The House passed the ABA-supported flood insurance reform legislation (H.R. 1309) on July 12, by a vote of [406-22](#). The bill now goes to the Senate.

The bill includes both a long-term reauthorization and important reforms that will optimize the current program with important coverage and rate changes and needed improvements to the floodplain mapping and appeals processes.

The NFIP authorization will expire on Sept. 30 unless Congress acts. ABA and ABIA have emphasized to lawmakers that a long-term program extension is needed to provide certainty to recovering real estate, insurance and financial markets -- along with every other participant in the economy the program affects.

For more information, contact ABA's [Joe Pigg](#).

House Panel Approves GSE Bills

The House Financial Services Committee [approved](#), on July 12, a series of narrowly focused bills on the housing-related government-sponsored enterprises (GSEs).

The Committee approved, by voice vote, bills to direct the Federal Housing Finance Agency to require Fannie Mae and Freddie Mac to dispose of all of its non-mission-critical assets (H.R. 2440), to subject Fannie and Freddie to the Freedom of Information Act (H.R. 463), to prevent Treasury from lowering the 10 percent dividend payment to taxpayers on senior preferred stock (H.R. 2436), to limit the amount of additional bailout funds to Fannie and Freddie (H.R. 2462), and to allow the FHFA to revoke Fannie's and Freddie's charters (H.R. 2439).

The Committee also approved, by a vote of 18-14, a bill (H.R. 2441) to eliminate the Affordable Housing Trust Fund.

For more information, contact ABA's [Joe Pigg](#).

House Passes ABA-Supported CFPB Bill

On July 21, the House of Representatives passed ABA-supported legislation (H.R. 1315), by a vote of [241-173](#), that would make needed reforms to the Consumer Financial Protection Bureau (CFPB), including changing the voting standard for the Financial Stability Oversight Council (FSOC) from the two-thirds majority vote currently required to a simple majority vote and replacing the Director of the CFPB with a five person commission.

The House approved an amendment by Rep. Scott Rigell (R-VA), by a vote of 246-167, that would require the CFPB to submit to the Financial Stability Oversight Council analyses on the impact of its proposals on the financial industry and on consumers' and small businesses' access to credit.

The House also approved an amendment by Rep. James Lankford (R-OK), by voice vote that would require the CFPB Inspector General to submit an annual report to Congress identifying all new guidance and regulations rules prescribed by the Bureau, any Bureau authority which overlaps with other federal agencies or departments, the CFPB's administrative expenses, and its unobligated balances.

ABA Testifies on Need for CFPB Accountability

On July 19, ABA testified on the need to strengthen accountability at the new Consumer Financial Protection Bureau by creating a board or commission structure to address the agency director's unchecked authority to impose new rules. Albert C. Kelly, Jr., chairman and chief executive officer of SpiritBank in Bristow, Okla., testified on behalf of ABA before the Senate Committee on Banking, Housing and Urban Affairs. Kelly is also ABA's chairman-elect.

"ABA supports the creation of a board or commission that would be responsible for the Bureau's actions rather than giving the head of the Bureau sole authority to make decisions that could fundamentally alter the financial choices available for customers," Kelly said. "It also provides the needed balance and appropriate checks in the exercise of the Bureau's significant authority. We urge the Congress to pass statutory provisions that ensure such accountability before the Bureau is established with a single director."

Kelly also called for the board or commission to include members with consumer finance business experience and direct safety and soundness regulatory expertise.

In his testimony, Kelly conveyed the industry's support for changing the voting standard for the Financial Stability Oversight Council's review of

rule-making to a simple majority rather than a two-thirds vote and urged Congress to recalibrate the review standard by which the FSOC may act in setting aside a Bureau rule so action may take place on less than system-wide impacts or risks.

For a copy of Kelly's full testimony, please click [here](#).

For more information, contact ABA's [Joe Pigg](#).

House Lawmakers Introduce Bill to Extend Conforming Loan Limits

Reps. John Campbell (R-Calif.) and Gary Ackerman (D-N.Y.) on Friday introduced a bill (H.R. 2508) that would extend for two years -- through fiscal year 2013 -- the maximum conforming loan limits for mortgages backed by Fannie Mae, Freddie Mac and the Federal Housing Administration.

Those limits vary by region, but they currently peak at \$729,750 for single-family homes in the highest-cost areas. If Congress does not pass the bill, the maximum mortgage amount will drop to \$625,500 on Oct. 1. Congress raised the conforming loans limits in 2008 to allow the government-sponsored enterprises to insure, guarantee and buy more mortgages when private funding froze during the financial crisis.

"H.R. 2508 ... will ensure that qualified homebuyers in this country continue to have access to the financing they need at a time when there are few alternatives," Campbell said in a press release. "This will not only help to stabilize home prices, but would also provide for continued recovery in the broader economy."

[Read more.](#)

Keating: DFA Burden Hurting Community Banks' Ability to Lend

The Dodd-Frank Act's implementation burden and concern about regulators' sanctions has fostered an atmosphere of uncertainty that is hurting community banks' lending, ABA President and CEO Frank Keating said during an interview last Thursday night on Fox Business Network's "America's Nightly Scoreboard."

Keating explained that community banks don't have the resources needed to handle the massive flood of new Dodd-Frank rules. "We're facing the prospect -- the reality, really -- of rules and anticipated rules of nearly 4,000 Federal Register pages in length," he said. "That's a lot of Danielle Steele novels ... a lot of Tolstoy or Dostoevsky novels. The average community bank has about 37 employees. Who's going to read all that stuff?"

“So there’s hesitancy, there’s uncertainty,” Keating said. “Until this regulatory climate eases, until [the situation] becomes more clear, it’s going to be difficult for a lot of people ... to figure it out and they’re going to be hesitant [to lend].” [Watch the interview.](#)

OTHER

Forbearance Period for Unemployed Extended to One Year

The forbearance period for unemployed homeowners will be extended to 12 months under the Making Home Affordable Program and the Federal Housing Administration's Special Forbearance Program, the Department of Housing and Urban Development announced yesterday. The forbearance periods under the two programs had been three and four months, respectively.

Mortgage servicers participating in MHA or handling FHA mortgages must grant the forbearances to unemployed homeowners who meet eligibility criteria, subject to investor and regulatory guidelines, officials said. Borrowers who are employed, yet seriously delinquent on their loans, also may qualify for a 12-month forbearance under the MHA, they said.

The initiatives do not apply to borrowers with loans owned or guaranteed by that Fannie Mae or Freddie Mac, which have their own forbearance programs.

[Read more.](#) [Read a fact sheet.](#)

FHA Issues Guidance on Small-Bank Waiver of Audit Requirements

The Federal Housing Administration on Friday issued ABA-requested guidance for FHA direct lenders with under \$500 million in assets who in April had been granted a waiver on full audit requirements. ABA had worked hard to obtain the April waiver for small banks, and since then had repeatedly asked the agency for a mortgagee letter containing guidance on compliance details.

ABA President and CEO Frank Keating in a recent letter to Department of Housing and Urban Development Secretary Shaun Donovan emphasized that the lack of FHA guidance left small banks “not knowing how to comply with FHA requirements, and without the ability to plan for any required compliance audit that may be necessary.”

Keating urged the agency “to move forward expeditiously” on the guidance. “The continued efficacy of FHA for community banks, and the

customers and communities they serve, depends upon it," he said.

The mortgagee letter issued Friday contains the requested guidance details -- including the need to submit audits of compliance with HUD/FHA policies and procedures -- and is accompanied by frequently asked questions that expand on the letter's content. [Read the mortgagee letter.](#) [Read the FAQs.](#) [Read Keating's letter.](#)

For more information, contact ABA's [Joe Pigg](#).

CFPB Issues Report on Credit Score Differences

The CFPB released a [report](#) yesterday that examines the differences between credit scores sold to consumers and scores used by lenders to make credit decisions. The report, required by the Dodd-Frank Act, studied the process of developing credit scoring models, why different scoring models may produce different scores for the same consumer, how different scoring models are used by creditors in the marketplace, what credit scores are available to consumers for purchase, and ways that differences between the scores provided to creditors and consumers may disadvantage consumers.

Cordray Nominated to Head CFPB; GOP Senators Repeat Vow To Force Changes

Following President Obama's formal nomination of Richard Cordray to serve as Director of the Consumer Financial Protection Bureau (CFPB), Senate Minority Leader Mitch McConnell (R-KY) [reiterated](#) his conference's concerns about the CFPB's lack of accountability and renewed their pledge to block any nomination unless changes are made to the Bureau's structure and funding.

"I would remind [the President] that Senate Republicans still aren't interested in approving any one to the position until the President agrees to make this massive new government bureaucracy more accountable and transparent to the American people," Sen. McConnell said.

The President has [pledged](#) to "fight any efforts to repeal or undermine the important changes that we passed."

ABA Subsidiary Selects Aklero as Exclusive Mortgage Quality Control Services Provider

Business Solutions, an ABA subsidiary, has selected Aklero Risk Analytics, Fort Washington, Pa., to provide mortgage quality control services to association members. Aklero's automated platform centralizes

the data, documents and details associated with an audited mortgage file, enabling banks to receive the most accurate quality control results in the industry.

“We believe the quality control services and loan quality management platform offered by Aklero uniquely distinguish the firm from its competition,” Business Solutions President Bill Kroll said. “We’re excited that our members now have the ability to access these services at very competitive prices.”

[Read more.](#)

For more information, contact ABA's [Jerry Sebold](#).