



KEEPING AN EYE ON THE STATES

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At NHEMA's annual Legislative Conference in Washington this fall, we focused on developments at the federal level. However, unless and until we have federal preemption, we must keep a close eye on developments in the states. There are several relating to mortgage lending that continue to demand attention and to be hot topics at the state level. I have organized the items into six categories.

APPRAISALS AND HOME IMPROVEMENT CONTRACTS. State regulators and legislators continue their focus on the problems caused for homeowners and mortgage lenders by inflated appraisals and fraudulent home improvement contracts. The results of this hurricane season have a potential to greatly exacerbate this problem. Inflated appraisals can lead to egregious problems for homeowners and lenders alike. More effective licensing can help weed out unethical and unscrupulous actors. The states continue their focus on more effective licensing for appraisers and contractors.

MINI-RESPA DISCLOSURE STATUTES. Regardless of how HUID elects to deal with RESPA reform — and the jury is still out on that - the states are free to regulate broker compensation and yield-spread disclosures within their jurisdictions. RESPA has long provided that the states may legislate even more restrictively in the same areas addressed by RESPA. Some states have acted by passing their own versions of disclosure requirements. Others may do so. Of course, such action only complicates an already complicated landscape of laws, rules and regulations applicable to mortgage lending.

SUITABILITY/AFFORDABILITY. Perhaps the latest idea to gain traction in the states is that the state has a role in monitoring the suitability and affordability of mortgage loans within its jurisdiction. Illinois has a new statute that denominates parts of Cook County as a crucible, or testing ground, to determine the effects of such a law. Depending upon a borrower's FICO score or income, the law mandates a consumer education requirement before closing may occur. It remains to be seen whether lenders can operate in such an environment, and whether borrowers will reject the limitations placed upon their rights to borrow money.

LICENSING, AUDIT AND EXAMINATION. The regulator's role in ensuring a safe and efficient mortgage lending market has long been the domain of the states. So, continued attention to these regulatory functions is to be expected. Licensing is the first defense against predatory lenders. Audit and examination are close seconds. States are beefing up the training of regulators. NT-IEMA has long endorsed stronger enforcement of licensing, disclosure and substantive law as an effective means of reining in predatory practices.

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SO-CALLED INDICIA OF PREDATORY LENDING. Some state legislatures are being urged to pass substantive restrictions against points, pre-payment fees, balloon payments and mandatory arbitration provisions, as these provisions are touted as indicators of predatory loans. We know that this characterization is incorrect and that there is a routine place for all of these provisions in mortgage loans. We continue to battle this misconception that is promoted by misguided consumer advocates. A recent study conducted by the University of Virginia's McIntire School of Commerce proves the inverse relationship between prepayment fee and interest rate across all classes of loans. Studies of mandatory arbitration also prove that consumers benefit from quick, efficient and fair arbitration. Nevertheless, industry continues to see state legislatures attempt to restrict loan terms that actually benefit consumers in the aggregate.

UNIFORM MORTGAGE SATISFACTION ACT A recent state initiative comes from the National Conference of Commissioners on Uniform State Laws. This initiative is known as the Uniform Mortgage Satisfaction Act. It is designed to simplify the mortgage satisfaction process. With the frequency of mortgage assignment brought about by the transfer of loans in the secondary market, and the widespread use of independent mortgage servicing agents, the act of satisfying of record paid mortgages has become more complicated. The NCCUSL effort is designed to promote a uniform statutory system that states may adopt. This effort is similar to other uniform state laws including the Uniform Commercial Code and the Uniform Electronic Transactions Act, both of which have been enacted in almost every state in the country.

These are the types of matters that state legislatures will be confronting in the coming days. The need for uniform national lending standards and federal preemption is evidenced by the potentially conflicting rules that may result in the several states.