Understanding*

the Housing and Economic Recovery Act of 2008 (HERA) and new regulations under the Home Ownership and Equity Protection Act (HOEPA)

*connectedthinking

PRICEWATERHOUSECOOPERS

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The heart of the matter

New regulation brings sweeping change to the mortgage lending industry

Last month, two significant pieces of regulation for the mortgage industry became a reality: The Housing and Economic Recovery Act of 2008 (HERA) was signed into law and new regulations were issued under the Home Ownership and Equity Protection Act (HOEPA).

HERA is a comprehensive legislative package that brings changes to the regulation of government sponsored entities (GSEs), modernizes the Federal Housing Administration (FHA), and authorizes a new refinance program for troubled mortgage loans (Hope for Homeowners). It creates a series of new requirements for mortgage lenders related to licensing, counseling and disclosures.

The Federal Reserve approved the highly anticipated amendment to Regulation Z, the Truth in Lending Act, adopted under (HOEPA) as a separate regulation. This addition to the Mortgage Lending Rules is designed to protect consumers from unfair, abusive, and deceptive lending practices. The Federal Reserve's ultimate goal is to create an environment that facilitates responsible lending, reduces future home foreclosures and restores confidence in the housing market. The Federal Reserve also believes the new Mortgage Lending Rules will prevent borrowers from entering into loans that they might not be able to afford and reduce the probability of a future housing crisis.

This document summarizes hundreds of pages of legislation and regulation and presents a point of view on what steps mortgage executives need to consider as they start drafting a plan to comply with the new rules and potentially take advantage of the new FHA Hope for Homeowners program.

An in-depth discussion

The Housing and Economic Recovery Act (HERA)

The recently enacted legislation is expected to result in significant changes in how the mortgage industry operates. The new legislation's primary objectives are to:

- Establish the Federal Housing Finance Agency (FHFA) to help set housing goals for regulated entities and increase investment in low-income housing to help serve underserved markets.
- Drive down foreclosures and rehabilitate communities by implementing FHA refinancing abilities for distressed assets. Additional appropriations are made for state grants to purchase foreclosed or abandoned properties; provide counseling programs to advise borrowers on mortgage financing and loss mitigation rights; and enhance the protection of veterans returning from military service abroad.
- Introduce additional lender disclosure requirements and originator licensing requirements.
- Authorize the Department of Treasury to purchase obligations issued by the GSEs and reform the regulatory supervision of them.

Hope for Homeowners Act of 2008

This Act establishes a new $300 billion FHA program to back the insurance of refinanced troubled mortgage loans that meet specific requirements. The program is voluntary for both the borrower and the existing lienholders. An estimated 400,000 at-risk homeowners could take advantage of the new program (according to the Senate/Banking Committee summary that accompanies the bill). The program begins October 1, 2008 and runs through September 30, 2011.

The program's purpose is to:

- Create a voluntary FHA program for homeowners and existing loan holders that insures the refinanced loans of distressed borrowers to support long-term, sustainable homeownership.
- Allow homeowners to avoid foreclosure on their primary residence by reducing the principal outstanding balance and the interest rate charged on their mortgages.
- Provide servicers of delinquent mortgages with additional methods and approaches to avoid foreclosures.

The program's conditions include:

- To be insured, mortgages eligible for refinancing should bear a single, fixed interest rate for the entire term of the mortgage and have a maturity of 30 years from the amortization start date.
- In exchange for the opportunity to refinance their mortgages, borrowers agree to entitlement of only a portion of any equity realized as a direct result of a sale or disposition of the property, or upon the subsequent refinancing of such mortgages according to the following schedule:

Period	Borrower Share	FHA Share
Between issuance and 1 year	0%	100%
Between 1 and 2 years	10%	90%
Between 2 and 3 years	20%	80%
Between 3 and 4 years	30%	70%
Between 4 and 5 years	40%	60%
After 5 years	50%	50%

- Borrowers may not grant a second lien on the mortgaged property during the first five years of the refinanced mortgage term. Exceptions are made if the program's oversight board determines a second lien is needed to maintain the property and provided that new outstanding liens do not reduce the value of the government's equity in the borrower's home. When combined with the existing mortgage, the second lien may not exceed 95 percent of the home's appraised value.
- For each loan refinanced, the FHA will collect a single premium payment of 3 percent of the principal balance of the refinanced mortgage. This premium would be paid from the proceeds of the mortgage being insured. In addition, a 1.5 percent annual premium based on the remaining principal balance will be charged.
- Lenders and investors who voluntarily take advantage of the program must recognize loan write-downs in exchange for the government assuming a majority of the ongoing risk. Lenders will originate the new loans at 15 percent below the current appraised value of the home and forgive any incurred prepayment penalties from the original mortgage. The new loan will also have a maximum loan to value (LTV) less than or equal to 90 percent of the current appraised value. If this balance still results in a monthly payment that is too high for the borrower, the balance of the new loan must be lowered further to meet the FHA's affordability requirements; debt-to-income ratio requirement of 31 percent; and additional requirements to be determined by the program's oversight board.
- The borrower must be at risk of foreclosure and reside at the property securing the mortgage. The borrower must also not have investment or ownership of any other property. The existing mortgage must have been closed before January 1, 2008.
- The lender must conduct a criminal background check to verify that the borrower has not been convicted of mortgage fraud in the past seven years.
- Claims will not be paid to lenders if the borrower defaults on the first monthly payment.

- The lender must document and verify the borrower's income, or nonfiling status, by obtaining an income tax return transcript of the income tax returns of the mortgagor, or copies of the IRS income tax returns for the past two years.
- Lenders and investors must agree to substantially reduce the borrower's monthly payments through a combination of reduced balance, reduced fixed interest rate compared with the original mortgage loan, and the extension of the loan term to 30 years. Over the next few months, the program's oversight board will establish policies and procedures to ensure interest rates are commensurate with prevailing market rates.
- The eligible mortgages to be insured must not exceed 132 percent of the FHA dollar amount limitation for 2007.

Fiduciary duty for servicers of pooled residential mortgages

The Hope for Homeowners Act also amends the Truth in Lending Act by inserting a section on the fiduciary duty of servicers of pooled residential mortgages. Except as may be otherwise provided in a contract with an investor, servicers owe any duty to maximize the net present value of the pooled mortgages in an investment to all investors and not to any individual party or group.

It also specifies that servicers act in the best interests of all investors if they agree to implement a modification or workout plan providing that:

- Default on the payment of the mortgage has occurred or is reasonably foreseeable.
- The property securing the mortgage is occupied by the borrower of the mortgage.
- The anticipated recovery under the modification or workout plan exceeds on a net present value basis the anticipated recovery if the loan goes into foreclosure.

What the Hope for Homeowners Act of 2008 means to the mortgage lending industry

Several aspects of the law should be considered before mortgage lenders take advantage of the program. The act establishes requirements not only for the initial refinance and insurance of the mortgage loan but also for monitoring several aspects of the refinanced loan throughout its life:

- Determining eligibility for the program and ongoing maintenance will require changes to existing loan origination and servicing systems. Lenders should be prepared to meet the challenges of the new eligibility and underwriting criteria of the FHA Hope program. This includes the criminal background check and debt to income ratio verification.
- In some cases customers may be incented to modify their payment patterns to qualify for this program. Congress has appropriated $32 million to enhance existing inter-agency task forces aimed at detecting and prosecuting fraud. However, lenders should consider a strategy to minimize and recognize situations where a borrower intentionally defaults to qualify for the program.
- Mortgage lenders should take steps to ensure they have the production staff needed to accommodate the potential increase of refinance requests. At this point, the post-production insuring process that lenders will need to manage is unknown.
- Lenders should consider which loans are the best candidates for the FHA Hope program based upon their likelihood to be sustained in their current state versus possible refinancing under Hope or other loss mitigation strategies. A cost benefit analysis for loans grouped by different attributes is strongly advised.
- As with loan modifications, careful consideration should be given to the arrangements with subordinate lien holders.
- Lenders should be prepared to address challenges surrounding accurate property appraisals in the current market because the appraisal is a direct factor in the balance of the FHA insured loan.
- Lenders should be prepared to underwrite monitoring by the program’s oversight board to ensure compliance with program requirements including delinquency rates, claim rates, and loss rates.

- The act leaves to the board of directors of the Hope for Homeowners Program to set reasonable limitations on origination fees and also to establish procedures that ensure that interest rates are commensurate with market rates.
- The act emphasizes the need to perform a net present value analysis to compare the anticipated cash flows under a refinance or workout with the anticipated cash flows under a foreclosure. Given the expected increase in the number of refinances under the new FHA program, lenders should assess whether they need a more sophisticated tool to do the evaluation than what they have been using to assess recent modifications.

Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E.)

The goal of the Secure and Fair Enforcement (S.A.F.E.) for Mortgage Licensing Act is to establish a nationwide mortgage licensing system and registry for the residential mortgage industry that provides:

- Uniform license applications and reporting requirements for state-licensed loan originators.
- A comprehensive licensing and supervisory database.
- An aggregated and improved flow of information to and among regulators.
- Increased accountability and tracking of loan originations.
- A streamlined licensing process and reduced regulatory burden.
- Enhanced consumer protections and anti-fraud measures.
- Information about loan originators to consumers.

The act defines the term loan originator as an individual who takes a residential mortgage application and offers or negotiates the mortgage terms (rates, fees, costs). Individuals who perform purely administrative or clerical tasks are excluded as are those who perform only real estate brokerage activities.

Individuals will not be able to engage in loan originator activities without obtaining and maintaining an annual registration as a registered loan originator or a license and registration as a state-licensed loan originator.

During the next 12 months, if an originator is federally regulated, that originator will register through a nationwide system. Non-federally regulated originators will register through state or US Department of Housing and Urban Development (HUD) systems. Originators will be required to meet education requirements, satisfy background checks, and undergo testing. Borrowers and lenders will have access to the background and origination history of registered originators.

What the S.A.F.E. Mortgage Licensing Act of 2008 means to the mortgage lending industry

The requirement to register as a loan originator at a federal level does not eliminate the need to follow state-specific rules related to mortgage brokers and mortgage originators. Several details surrounding the requirements of this licensing system have not been defined.

Although there are many benefits to a national registration system, costs also will be generated including registration fees and the expense of providing employees with training to meet specific initial or continuing education requirements.

Foreclosure Prevention Act of 2008

In addition to creating the FHA Hope mortgage loan program, Congress passed legislation with provisions aimed at preventing foreclosures. These provisions include: enhancements to the FHA; assistance for states and local governments to improve areas devastated by foreclosure and abandonment; funding for pre-foreclosure counseling; enhanced lender disclosure requirements and penalties; and considerations for men and women who have served in the military.

A modernization of the FHA expands the agency's ability to reach distressed homeowners and provide access to the new FHA program. The FHA loan limit will be increased from 95 percent to 115 percent of the property area's median home price. The criteria used to determine the property's median home price will be defined by the oversight board in the coming months.

Additionally, a 3.5 percent down payment will be required for all FHA loans, and the existing seller-funded down payment program will be abolished. Thus, the borrower will need to have access to the required down payment before an FHA loan can be granted.

To stabilize neighborhoods and reduce the impact of abandoned homes on neighboring properties, Congress has appropriated nearly $4 billion in supplemental community development block grants to the states and local governments. These grants will be used for the discounted purchase and rehabilitation of foreclosed or abandoned homes. The funds will be allocated based upon a formula that provides the greatest allocation to the areas most significantly impacted by foreclosures. The Secretary of HUD will devise the exact formula within 60 days of the enactment of the legislation. The formula will be based on need and will consider the following for each state or local governing agency:

- Percentage of foreclosures.
- Number or percentage of homes financed with subprime loans.
- Number or percentage of loans in default.

Each state will receive a minimum of 0.5 percent of the $4 billion appropriation.

The later sale of these properties will be limited to the sum of the cost of the purchase and rehabilitation expenses. Any profits realized from the rental, sale, or rehabilitation of the properties will be returned to the US Treasury after a five-year period.

To further prevent foreclosure, the government has appropriated $150 million to ensure borrower access to housing counseling. An additional $30 million is appropriated for legal services for distressed homeowners. In addition to the funding for counseling agencies, the office of housing counseling is to be established for:

- Certification of software/systems to be used by consumers to evaluate residential mortgage loan proposals (including development of new systems if existing systems are not adequate).
- Creation of media programs to reach borrowers facing foreclosure to make them aware of counseling services.
- Establishment of educational programs for borrowers through state and local offices.
- Creation of foreclosure prevention hotlines (national and statewide).

The act also places a moratorium on the previously approved plans to implement risk-based premiums designed to offer pricing based on the risk that the insurance contract represents.

A series of new disclosures for mortgage loan origination (including home equity loans) will be required as a result of the Foreclosure Prevention Act. These requirements are aimed at improving the borrower's understanding of the contractual obligation surrounding a mortgage loan, the terms of the loan, and the borrower's rights and responsibilities. The lender must comply

with the disclosure requirements as outlined by the Truth in Lending Act. This includes the disclosure of the following:

- Statement that payment will vary for variable rate mortgages.
- Examples of typical adjustments to the regular monthly payment based on the contractually defined interest rate terms.
- Maximum monthly payment possible.
- Notice of counseling agency.
- Final loan maturity date.
- Prepayment penalty rules.
- Total closing costs.

Penalties for lender disclosure violations have been doubled under the new legislation. They now range from $400 to $4,000.

What the Foreclosure Prevention Act of 2008 means to the mortgage lending industry

This section of the housing bill further refines the characteristics that mortgage loans need to possess to be eligible for FHA insurance and expands the types of home loans subject to early disclosures (by specifically saying that refinances and home equity loans are included).

Lenders should carefully review their existing systems, policies, and procedures to ensure they comply with the new FHA program as well as the new or enhanced disclosure requirements.

Enhanced regulation of the Government Sponsored Entities (GSEs)

The Housing and Economic Recovery Act of 2008 establishes the Federal Housing Finance Board (FHFA) as a new, independent regulator for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks (the GSEs). The legislation provides this regulator with broad new authority equivalent to the authority of other federal financial regulators, to ensure the safe and sound operation of the GSEs.

The housing and mortgage industries are most concerned about whether these regulatory changes will affect the GSE's roles in the mortgage market.

A single regulator of the GSEs

The act also shifts to the FHFA the setting of housing goals for Fannie Mae and Freddie Mac, which previously had been done by the Department of Housing and Urban Development (HUD). HUD does, however, retain its right to enforce fair lending laws against the GSEs. For the first time, the Federal Home Loan Banks (FHLBanks) also will be subject to compliance with housing goals established by the FHFA.

The act also establishes a FHFA oversight board responsible for advising the agency's director concerning overall strategies and policies. The oversight board will be headed by the director and include as members the Secretary of Treasury, the secretary of HUD, and the chairman of the Securities and Exchange Commission.

This move toward a single regulator raises the question of whether the FHLBanks will be regulated in the same manner as Fannie Mae and Freddie Mac.

To address this issue, the act includes a provision that requires the director—in exercising his or her regulatory authority—to consider the differences between the FHLBanks and Fannie Mae and Freddie Mac with respect to the following:

- Cooperative ownership structure.
- Mission of providing liquidity to members.
- Affordable housing and community development mission.
- Capital structure.
- Joint and several liability.

Enhancing prudential regulation

The act confers on the director a number of new authorities directed at ensuring the safe and sound operation of the GSEs. These include establishment of prudential criteria regarding portfolio holdings and prudential standards for a broad range of operations. Prior regulatory approval will be required for new products and the FHFA may increase minimum capital requirements. The FHFA has also been given enforcement powers similar to those enjoyed by the other federal financial regulators.

These new regulatory authorities are not intended to undermine the GSEs' housing mission—which is to foster liquid, efficient, competitive and resilient national housing finance markets—but rather to ensure that the GSEs, even in times of market disruption and economic distress, have the financial strength to accomplish their mission.

To stabilize and increase confidence in the US housing market, the act also provides the Secretary of the Treasury with temporary authority to backstop the GSEs if necessary by purchasing obligations or securities issued by the GSEs.

The Secretary of the Treasury has this authority until Dec. 31, 2009. Any purchases must provide stability to the financial markets, prevent disruptions in the availability of mortgage finance, and protect taxpayers.

Meeting housing goals

The mission of Fannie Mae and Freddie Mac has included meeting annual affordable housing goals set periodically by HUD. The FHLBanks are also required under the act to establish housing goals for the first time. As noted earlier, this authority has been shifted to the FHFA. The housing goals in effect for 2008 for Fannie Mae and Freddie Mac remain in effect for 2009, except that within 270 days of enactment, FHFA, with an opportunity for public comment, is to determine the feasibility of such goals in light of current market conditions. To facilitate an orderly transition to goals for the FHLBanks, the FHFA must establish interim target goals for two calendar years after the date of enactment.

For 2010 and after, FHFA must establish annual housing goals for the purchase of conventional, conforming, owner-occupied, purchase money mortgage financing for (i) low-income families, (ii) families that reside in low-income areas, and (iii) very low-income families. The goal has to be established as a percentage of total single-family dwelling units financed by single-family purchase money mortgages. The FHFA is also to establish goals for mortgages that are used to prepay an existing mortgage on the same property for low-income families. In addition, the FHFA must establish a goal, that can be either by units or dollar volume, that finance dwelling units available to low-income families.

The act allows a GSE to petition the FHFA at any time for a reduction in any goal or subgoal and authorizes the FHFA to reduce goals only if market conditions or the condition of the GSE require such a reduction or if efforts to meet the goal would constrain liquidity, create over-investment in certain market segments, or bring other consequences contrary to the intent of the goals or purposes of the GSEs.

The FHFA must establish, by regulation, annual targets for each of the required goals. However, FHFA may change annual targets by regulation, to reflect market conditions and subsequent available data.

Finally, the legislation requires the GSEs to support underserved markets by providing leadership in developing loan products and flexible underwriting standards to facilitate the development of a secondary market.

What enhanced GSE regulation means for the mortgage lending industry

The GSEs have played a critical role in the development of a highly liquid, efficient and competitive national housing finance market. The act continues to support strongly that mission of the GSEs and seeks to enhance it through the establishment of what the congress has called a "world class regulator" for these institutions.

The act provides a regulatory architecture built on principles of safety and soundness. But what will really count is the construction of regulatory requirements under that architecture, most of which will be accomplished through the traditional administrative procedure of public notice and comment. Too conservative or rigid an approach could limit the ability of the GSEs to grow, offer new products, meet housing goals and be responsive to changes in the marketplace. The mortgage industry will thus need to review and comment on the FHFA GSE regulatory proposals as they emerge. Accordingly, the need for balance, flexibility and reasonableness are likely to be key industry themes.

Tax provisions

The housing legislation includes a 10-year, $15.1 billion package of tax incentives that is more than fully offset by $18.5 billion in revenue-raising tax provisions.[1]

Housing tax relief

The new law provides a temporary, refundable first-time homebuyer credit equal to 10 percent of the purchase price of a principal residence; the credit is limited to $7,500. Homes purchased on or after April 9, 2008, and before July 1, 2009, are eligible for the credit, which is recaptured over 15 years. In addition, the credit is phased out for individuals with modified adjusted gross income between $75,000 and $95,000 (between $150,000 and $170,000 for joint returns). For 2008 only, the legislation also provides a standard deduction (up to $500 for singles and $1,000 for joint returns) for state and local real property taxes.

The act also contains several modifications to the low-income housing tax credit (LIHTC) and tax-exempt housing bond rules. For example, the legislation increases the LIHTC volume limits in 2008 and 2009 and repeals the alternative minimum tax (AMT) limitations on the LIHTC, the rehabilitation tax credit, and tax-exempt housing bonds. In addition, the measure includes a real estate investment trust tax simplification package and other housing-related tax provisions.[2]

Business tax relief

Under the new law, companies can elect to accelerate a portion of their unused AMT and research tax credits in lieu of the 50-percent "bonus" depreciation enacted this year as part of economic stimulus legislation. In particular, companies can claim pre-2006 unused AMT and research credits equal to 20 percent of bonus depreciation that otherwise could be claimed

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[1] Link to Joint Committee on Taxation staff technical explanation of tax provisions: http://www.jct.gov/x-63-08.pdf

[2] Link to Joint Committee on Taxation staff revenue estimate of tax provisions: http://www.jct.gov/x-64-08.pdf

on property placed in service after March 31, 2008. The amount of credits that can be used under this provision is limited to the lesser of $30 million or 6 percent of outstanding and unused pre-2006 AMT and research credits.

The legislation also extends and expands certain Gulf Opportunity Zone (GO Zone) tax incentives for those affected by Hurricanes Katrina, Rita, and Wilma. Among other incentives, the law removes the January 1, 2008, commencement date for self-constructed GO Zone extension property eligible for bonus depreciation.

Revenue offsets

The new law delays for two years (from 2009 to 2011) the implementation of worldwide interest expense allocation rules enacted as part of the American Jobs Creation Act of 2004. The legislation also limits the first year of worldwide interest allocation to 30 percent.

Beginning in 2011, banks and other organizations that make payments to merchants in settlement of payment card transactions (e.g., debit and credit cards) must file information returns with the IRS. The act also requires reporting on third-party network transactions (e.g., online sales). Backup withholding requirements apply to amounts paid after 2012.

Another revenue offset limits the exclusion of gain on the sale of a principal residence, beginning in 2009. In particular, the provision denies the exclusion for gain that is allocated to periods after 2008 when the property was not used as principal residence (e.g., was rented out). The amount of gain allocated to periods of “nonqualified use” is calculated on a pro rata basis.

The legislation also modifies the corporate estimated tax payment rules for corporations with assets of at least $1 billion. Payments dues in July, August, and September 2013 are increased by 16.75 percentage points of the payment otherwise due and the next payment is reduced accordingly. Increased payments due in July, August, and September 2012 are repealed.

New regulations under the Home Ownership and Equity Protection Act (HOEPA)

On July 14, 2008, the Federal Reserve approved the highly anticipated amendment to Regulation Z, the Truth in Lending Act, adopted under the Home Ownership and Equity Protection Act (HOEPA). The update to the mortgage lending rules is designed to protect consumers from unfair, abusive, and deceptive lending practices. The Federal Reserve's ultimate goal is to create an environment that promotes responsible lending, reduces the rate of home foreclosures and restores confidence in the housing market. The Federal Reserve also believes the new mortgage lending rules will prevent borrowers from entering into loans they might not be able to afford and reduce the probability of a future housing crisis.

The new rules go into effect October 1, 2009, with the exception of the escrow provision, which will be phased in during 2010—April 1 for site-built homes and October 1 for manufactured homes. The Federal Reserve is working with state and federal regulators to coordinate oversight of the rules.

The new mortgage lending rules define a new category of "higher-priced mortgage loans secured by the borrower's dwelling." Higher-priced mortgages are defined as those first-lien mortgages with an APR of 1.5 points or more over the average prime rate, or those second-lien mortgages with an APR of 3.5 points or more over the average prime rate. With this updated definition, the Federal Reserve hopes to address industry complaints that the definition could capture non-subprime loans.

For those loans deemed as "higher priced mortgages," the new regulation:

- Prohibits a lender from making a loan without regard to borrowers' ability to repay the loan from income and assets other than the home's value. A lender would comply, in part, by assessing repayment ability based on the highest scheduled payment in the first seven years of the loan.
- Requires creditors to verify the income and assets they rely on to determine repayment ability.
- Bans any prepayment penalties if the payment can change in the initial four years. For other higher-priced loans, a prepayment penalty period cannot last more than two years.

- Requires creditors to establish escrow accounts for property taxes and homeowner's insurance for all first-lien mortgage loans.

Additionally, the Federal Reserve has defined new rules that apply to all mortgage loans securing a borrower's principal dwelling, regardless of its price.

- Creditors and mortgage brokers are prohibited from coercing a real estate appraiser to misstate a home's value.
- Companies that service mortgage loans are prohibited from engaging in certain practices, such as pyramiding late fees. In addition, servicers are required to credit consumers' loan payments as of the date they are received and provide a payoff statement within a reasonable time of request.
- Creditors must provide a good faith estimate of the loan costs, including a schedule of payments, within three days after a consumer applies for any mortgage loan, such as a home improvement loan or a loan to refinance an existing loan, secured by a consumer's principal dwelling. Currently, early cost estimates are required only for home-purchase loans. Consumers cannot be charged a fee until after they receive the early disclosures, except a reasonable fee for obtaining the consumer's credit history.

The amendment to the Truth in Lending Act also contains new mortgage lending rules that establish advertising standards applicable to all mortgage loans. The goal of these advertising standards is to create an environment where loan advertisements are accurate and disclosures are transparent. The Federal Reserve bans seven deceptive lending practices:

- Advertisements that state "fixed" rates or payments for loans but do not adequately disclose that the interest rate or payment amounts are "fixed" only for a limited period of time, rather than for the full term of the loan.

- Advertisements that promise payments or interest rates lower than an actual or hypothetical rate, unless that low payment or interest rate will apply over the full term of the loan Advertisements that characterize the products offered as “government loan programs,” “government-supported loans,” or otherwise endorsed or sponsored by a federal or state government entity even though the advertised products are not government-supported or -sponsored loans.
- Advertisements, such as solicitation letters, that display the name of the consumer’s current mortgage lender, unless the advertisement also prominently discloses that the advertisement is from a mortgage lender not affiliated with the consumer’s current lender.
- Advertisements that make claims of debt elimination if the product advertised would merely replace one debt obligation with another.
- Advertisements that create a false impression that the mortgage broker or lender is a counselor for the consumer.
- Foreign-language advertisements in which certain information, such as a low introductory teaser rate, is provided in a foreign language, but required disclosures are provided only in English.

What HOEPA means for the mortgage lending industry

- Mortgage lenders should reassess their relationships with appraisers to ensure that appraisers are declaring the property's value independently by adopting the right valuation approach (i.e. cost, income, or market approach) and not in the interest of the mortgage lenders.
- Mortgage lenders need to redefine their marketing and advertising strategy to ensure they are in compliance with the new regulations.
- Mortgage lenders and servicers should determine whether compliance with the new rules will require modifications to their loan processing systems including:
  - Originating and underwriting systems
    - Loan applications
    - Disclosures (to be printed and provided to borrowers who apply for any mortgage loan secured by a consumer's principal dwelling (including home improvement loan or a loan to refinance an existing loan)
    - Income and asset documentation
    - Underwriting matrix/guidelines
    - Escrow account setup (so it becomes a mandatory and not an optional step in the underwriting process)
    - Loan payment calculation methodology (to determine the highest scheduled loan payment in the first seven years of the loan and to include escrow expected payment)
  - Servicing systems
    - Review the methodology used to assess and credit late fees in the system
    - Changes in MSR multiples calculation that take into consideration the elimination of prepayment penalties

What this means for your business

As the most significant housing law in decades goes into effect, it is imperative that mortgage lenders become familiar with its relevant provisions and take steps to be in full compliance and take advantage of programs such as Hope for Homeowners. Several details on how certain programs or guidelines will be implemented by the FHA will become available through mortgagee letters in the coming weeks so it is also important to stay up-to-date as these guidelines are published.

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