

2010 MBA
Legal Issues Conference

HUD Enforcement
New Sheriff in Town

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Background

- A. It's All About Risk Management
 - 1. Past decade: Laissez Faire Attitude
 - 2. Atmosphere: Easy Money
 - 3. Bubble had to burst

Background (cont'd)

B. Result

1. Congress and regulators forced to address issues **ill-equipped** to manage
2. Over regulation
 - every aspect of risk controlled
 - **“Gotcha Attitude”**
3. Pendulum 180

Background (cont'd)

C. How These Changes Are Manifested

1. RESPA Reform

- new GFE
- tolerances
- new HUD-1
- lender accountability

2. Proposed TIL Regulations

- overhaul disclosures
- threaten YSPs and overages

Background (cont'd)

3. Super Enforcement Agency
 - Consumer Financial Protection Agency
 - Super Regulator at Treasury
4. States Up the Ante
 - multi-state SWAT teams
 - 100% file reviews

Background (cont'd)

D. FHA also All About Risk Management

1. Market share skyrockets

- statutory reserves threatened

2. Remember when HUD wooed lenders

- relaxed appraisal requirements
- Baby K program
- LI Authority
- relaxed enforcement

3. Those days are gone

Background (cont'd)

E. New FHA Risk Management

1. Supervised mortgagees must now submit audited financials
2. Streamlined Refi procedures tightened
3. FHA version of HVCC
4. Reduced Appraisal validity period
5. HECMs take a 10% haircut

Background (cont'd)

F. Peace de Resistance = New FHA Regulations

1. Mortgagee Approval and Participation Modified

- goodbye Loan Correspondent
- hello lender liability
- HUD adopts GSE model

2. HUD Shrinks Gene Pool

- increased net worth requirements
- \$1.0 million/\$2.5 million

Eliminating Risk

- A. Unprecedented Increase in Enforcement Activities
 - 1. 28 lenders withdrawn in 2008
 - 2. 354 lenders withdrawn in past 15 months
 - 3. 6 X more MRB proceedings in last year then last 10 years
 - 4. New Sheriff in town

Eliminating Risk (cont'd)

B. HUD's Approach More Intense

1. Hawkish

- less interest in indemnifications
- more about terminating offenders

2. Examples

- underwriting deficiencies earned one lender an Immediate and Permanent withdrawal
- improper net branch structure earned another an Immediate and Permanent withdrawal
- HUD logo on lender website earned trip to Mortgagee Review Board

3. Publicity stepped up too

HUD Enforcement Tools

- A. Lots of Weapons in HUD Arsenal
 - 1. Credit Watch proceedings
 - 2. Office of Fair Housing and Equal Opportunity
 - 3. Office of Consumer and Regulatory Affairs
 - 4. HUD Enforcement Center
 - 5. Mortgagee Review Board
 - 6. OIG
 - 7. State Agencies

HUD Enforcement Tools (cont'd)

B. Top 3 Ways HUD Assures Compliance

1. Quality Assurance Division
 - HOCs
 - periodic reviews
 - indems, principal reductions
 - consumer refunds

2. Mortgagee Review Board
 - highest ranking officials at HUD
 - suspension and withdrawals of approval
 - indemnifications
 - CMPs

HUD Enforcement Tools (cont'd)

3. Office of Inspector General

- independent agency within HUD
- audits and investigates
- findings inflammatory and public

C. OIG SWAT Team

- 15 lenders subpoenaed
- press conference 2 hours later
- probe
- names released to public

Top 10 Pitfalls

1. Mortgage Broker Fees
 - originate fees ok
 - mortgage brokers are not
2. Discount Points
 - better be for buying down interest rate
3. Borrower Credit
 - imprudent underwriting
 - failure to document delinquent accounts
4. Qualifying Ratios and Compensating Factors
 - 31/43
 - better document comp factors

Top 10 Pitfalls (cont'd)

5. Source of Funds

- need sufficient paper trail
- scrutinize bank accounts, gift funds

6. Income and Employment

- document gaps
- documents part-time and overtime

7. Quality Control

- QC Plan
- QC Reports

Top 10 Pitfalls (cont'd)

8. Branch Offices and Employment
 - net branching big deal
 - W-2 and exclusive employment
9. Fees
 - customary and reasonable
 - must reflect actual charges
10. Missing Documentation
 - no tolerance from HUD
 - no files = indemnification

Top Takeaway: FHA is Rules Based

Credit Watch Proceedings

A. HUD Serious About Compare Ratios

1. Default/claims data monitored each quarter (24 mo. sample)
2. 200% and out
3. Used to be just Originators
4. ML-10-03 Underwriters now a target
 - phase-in over 12 mos.
 - 300% down to 200%

Preventive Medicine

A. Quality Control

1. Assures compliance
2. Independent department
 - not associated w/production

B. Good QC Plan

1. Identifies deficiencies
2. Takes corrective action
3. Maintains records to verify both

C. 2010

1. All About: Accountability, Responsibility and Liability
2. New Sheriff in Town
3. Remember what Crosby, Stills and Nash said