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MEMORANDUM

FROM: Loretta Salzano
DATE: September 1, 2009
SUBJECT: Legal Update

Legal Update

The legislators and regulators in Georgia and Washington, D.C. have been working diligently on a flurry of new statutes and regulations. MBAG has been receiving many questions about recently enacted changes as well as those which are coming down the pike. Here is a snapshot of what is going on in Georgia and under federal law. MBAG is planning educational events to educate our members and ensure that you stay ahead of the curve.

Many members have asked about what we are doing and what they can do to thwart efforts to ban loan officer compensation based on interest rates and loan terms. **Get involved!** We strongly encourage you to contribute to MBAG's Good Government Fund, join our national association (Mortgage Bankers Association of America), sign up for the Mortgage Action Alliance at www.mortgageactionalliance.com and support MORPAC. On the federal level MBA is extremely involved in protecting our industry, which it does with the support of MBAG, while MBAG's lobbying efforts concentrate on Georgia.

GEORGIA

On August 17, 2009, the Georgia Department of Banking and Finance adopted new regulations under the Georgia Residential Mortgage Act which, in essence, implement the SAFE Act. You should have received notice of the final rules from the DBF which we encourage you to study. The new rules are effective on September 7, 2009, and can be found on the Department of Banking's website. In summary, the new rules:

- address loan originator licensing and recordkeeping requirements;
- address initial and renewal applications, timing, and license fees;
- supplement advertising requirements and extend them to business cards;
- address experience and education requirements;
- address surety bonds;
- add mortgage loan originators to the rule prohibiting doing business with unlicensed persons;
- add unique identifiers to the Mortgage Transaction Journal; and
- require loan originators to maintain their own Mortgage Transaction Journal.

FEDERAL

Regulation Z amendments effective July 30, 2009

The Mortgage Disclosure Improvement Act (“MDIA”) which modified the Truth in Lending Act and Regulation Z is already effective. Please visit www.mbag.org for a summary of the MDIA available only to MBAG members.

Regulation Z amendments effective October 1, 2009

The MDIA accelerated to July, 2009, the effective date of many of the Regulation Z amendments originally slated to become effective on October 1, 2009; however, other changes will become effective on October 1, 2009.

In summary, the new Regulation Z amendments:

- address protections for “higher-priced mortgage” loan appraisal restrictions for closed-end loans secured by a consumer’s principal dwelling;
- establish new advertising deceptive practices; and
- Impose establishment of an escrow account for taxes and insurance for “higher-priced” mortgage loans effective (April 1, 2010).

Higher-priced mortgage loans are consumer-purpose, closed-end loans secured by a consumer’s principal dwelling and having an annual percentage rate (APR) that exceeds the average prime offer rates for a comparable transaction published by the Board by at least 1.5 percentage points for first-lien loans, or 3.5 percentage points for subordinate-lien loans.

Impending Regulation Z Changes

The Federal Reserve Board recently proposed significant changes to Regulation Z. The 120 day comment period just started, and MBAG will be working with MBA and our membership to draft a comment letter. We encourage you, too, to submit a comment letter and will later advise on how to do so.

The stated purpose of the proposed rules is to assist consumers in shopping for credit and understanding the key terms of their mortgage loans. As such, the Board proposes revising closed-end mortgage disclosures to highlight “potentially risky features” such as adjustable rates, prepayment penalties and negative amortization. The Board’s proposal would:

- improve the disclosure of the APR to capture most fees and settlement costs paid by consumers;
- require lenders to show how the consumer’s APR compares to the average rate offered to borrowers with excellent credit;
- require lenders to provide the final TILA disclosures at least three business days before closing; and
- require lenders to show consumers how much their monthly payments might increase for ARMs.

Perhaps more importantly, the Board is concerned that disclosures alone are not always sufficient to protect consumers from unfair practices. Therefore, in order to prevent originators from steering consumers to more expensive loans, the Board’s proposal would:

- **Prohibit payments to a mortgage broker or a loan officer that are based on the loan's interest rate or other terms; and**
- **Prohibit a mortgage broker or loan officer from "steering" consumers to transactions that are not in their interest in order to increase the mortgage broker's or loan officer's compensation.**

The proposed rules also address HELOCs.

RESPA's Regulation X

The new GFE and HUD-1 settlement statements become effective on January 1, 2010. To learn more about the new RESPA rules, please visit www.mbag.org for seminar materials originally presented to MBAG members which are available exclusively to MBAG members.