



Mortgage Lending Bulletin



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Top Ten Mortgage Reform Issues for 2012

ABA has issued a list of the top [10 mortgage reform issues for 2012](#). Topics include the final, combined RESPA/Truth-in-Lending-Act form and a revised proposal specifying which “qualified residential mortgages” will be exempt from new risk-retention requirements.

“It’s unfortunate that just when the housing market appears on the cusp of recovery, Washington has its greatest opportunity to derail it,” said ABA’s Bob Davis. “But given that a record number of mortgage regulations will be rolled out in 2012, that is the situation we find ourselves in.” ABA advises that bankers stay vigilant over the next several months as rules with a high potential impact on their mortgage businesses are proposed, revised or finalized.

Register for the ABA Real Estate Lending Conference

The [Real Estate Lending Conference](#) designed by bankers for bankers, is a unique event bringing together commercial and residential lending experts, regulators, and thought leaders. No other conference covers more ground or give you the tools, knowledge and contacts to succeed in perhaps the most challenging real estate market of modern times.

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CFPB Director Testifies Before House Subcommittee

On Tuesday, January 24, the newly appointed Director of the Consumer Financial Protection Bureau, Richard Cordray, offered testimony before the House Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs. Cordray asserted that the Bureau will be active on the consumer protection front through all tools it has available-- investigative, enforcement and regulatory.

Cordray told lawmakers that the Bureau's "biggest" rulemaking effort is the RESPA-TILA merger effort, and stated that he intends to issue a proposed rule by this summer. He stated that the CFPB is creating shorter and more useful disclosure forms for the loan estimate received at mortgage application. Cordray intends to "reduce regulatory burdens" and "make the costs and risks of a loan clearer" so consumers can choose products that best meet their needs.

In his written testimony, Cordray defined his visions for the Bureau. First, the Bureau will benefit consumers by clarifying the prices and risks of consumer financial products and services. He stressed that if true costs, benefits, and risks of competing products are clear, consumers will be able to make good decisions. Second, the Consumer Bureau will benefit "honest businesses by leveling the playing field" and ensuring all play by the same set of rules.

Finally, the Bureau's efforts can help strengthen the economy by resolving "gross imbalances in consumer financial markets," most notably in the mortgage markets. Finally, upon questioning from subcommittee members, Cordray accepted that the issuance of a regulatory agenda to describe the rulemaking efforts of the Bureau would be "a reasonable request," and pledged to make this happen.

[Read Cordray's testimony.](#)

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

ABA, Trade Groups File a Brief in High Court Disparate-Impact Case

The Fair Housing Act does not permit disparate-impact claims, ABA and a coalition of national and state financial services trade groups asserted in a friend-of-the-court (amicus) brief recently submitted to the U.S. Supreme Court.

The FHA provision at issue in the case -- *Magner v. Gallagher* -- "prohibits only intentional discrimination ... ," the brief said. It "does not refer to conduct that 'adversely affects' or 'tends to deprive' members of a protected class -- language that substantiates the basis for disparate-impact causes of action."

appraisals and more.

[Updates on ABA Mortgage Resources](#)

Receive periodic updates about mortgage resources from ABA's subsidiary, Business Solutions.

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The case centers on rental property owners who alleged that St. Paul, Minnesota, housing code requirements increased their costs and decreased the number of properties they could rent to African Americans, who make up a disproportionate number of low-income households.

The St. Louis-based, Eighth U.S. Circuit Court of Appeals upheld the landlords' claim, even though there was no evidence that the city intended to discriminate. The Supreme Court will review whether disparate-impact claims are allowed under the FHA and, if so, what test should be used to analyze them.

[Read the friend-of-the-court \(amicus\) brief.](#)

For more information, contact ABA's [Rich Riese](#).

ABA, Trade Groups Urge HUD to Revise 'Disparate Impact' Proposal

On January 17, 2012, ABA and five other trade groups urged the Department of Housing and Urban Development (HUD) to revise a proposed rule that would impose a disparate impact standard for discrimination under the Fair Housing Act. The FHA's plain language "requires proof of intentional discrimination and does not envision a violation founded on disparate impact," the trade groups said in a comment letter.

They also said that HUD should postpone action on the proposed rule until the U.S. Supreme Court hands down a decision in the *Magner v. Gallagher* case. {See story above.}

"[A] short continuance in the rulemaking process will allow HUD to make use of the court's guidance [on] how the [act] is to be interpreted and will not materially delay the promulgation of any rule," the trade groups said. "If the court rules that the [act] does not recognize disparate-impact claims, the continuance would spare HUD the burden of amending a final rule ... and save businesses from the ... expense of attempting to understand [an inapplicable] rule" [Read the letter.](#)

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

ABA Files Brief in High Court RESPA Case

ABA and six other financial trade groups this week filed a friend-of-the-court (amicus) brief with the U.S. Supreme Court in a case that centers on whether the Real Estate Settlement Procedures Act bars mortgage lenders from charging "unearned fees" at closing.

The case -- *Freeman v. Quicken Loans Inc.* -- consolidates three separate lawsuits from Louisiana in which borrowers alleged Detroit-based Quicken

charged them loan-discount fees but did not provide reduced interest rates in return. They asserted that the discount fees, as “unearned fees” for settlement services, were illegal under RESPA. Quicken countered that discount fees are points, and constitute upfront money paid to the lender, which is part of the interest rate—or price component—of a loan.

In the brief, the trade groups rejected the borrowers' legal interpretation, which would allow RESPA to serve as the basis for price-based challenges to any mortgage-settlement-related charge, including a loan's interest rate.

The groups emphasized that RESPA does not govern the reasonableness of fees or charges imposed in mortgage transactions. It “prohibits only divided charges for which no service is provided,” they said. It does not ... “regulate the amount that a borrower can be charged for any particular service.”

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

CFPB Issues Mortgage Origination Exams Guide

The Consumer Financial Protection Bureau (CFPB) has published examination procedures for mortgage origination operations. The document, entitled Mortgage Origination Examination Procedures, will guide CFPB staff conducting examinations over mortgage operations in bank and non-bank sectors.

Agency officials consider the guide's publication a key initial step in implementing the CFPB's nonbank supervision program. “The mortgage market cannot work well for consumers if the spotlight shines only on one part of it, while the rest is left in darkness. Our supervision program will illuminate the entire marketplace by making nonbanks play by the same rules as the banks,” agency Director Richard Cordray said in a press release.

The new examination manual consists of modules covering the various elements of the mortgage origination process; each module identifies specific matters for review. The following modules are included--Company Business Model; Advertising and Marketing; Loan Disclosures and Terms; Underwriting, Appraisals, and Originator Compensation; Closing; and Fair Lending.

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

Freddie Mac Updates Mortgage and Appraisal Requirements

Freddie Mac has announced updates to its Single-Family Seller/Servicer Guide under Bulletin 2011-25. The updates affect: (1) mortgage eligibility and credit underwriting requirements (new requirements for mortgages to

pay off balances for land contracts/contracts for deed, updates for certain requirements to permit cash-out refinances), (2) property eligibility and appraisal requirements (requiring use of specific appraisal forms, updating guidance on reconciling multiple opinions on market values, and updating language to ensure consistency with the Uniform Standards of Professional Appraisal Practice), and (3) conforming maximum loan limits.

This issuance is effective immediately.

See a copy of the Bulletin [here](#).

Fannie Mae Announces Numerous Selling Guide Updates

Fannie Mae has published a Selling Guide Announcement to update certain Selling Guide topics. The Announcement covers: (1) underwriting requirements related to Refi Plus and DU Refi Plus, (2) requirements applicable to borrowers on temporary leave, (3) lender application, inactivity, and reactivation fees, (4) insurance requirements applicable to condo projects, as well as authorization for master or blanket insurance for unaffiliated condo associations or projects, and (5) methodology to calculate back-end buyout fees.

The updates are effective on varying dates, ranging from immediately to January 2013.

For a copy of the Bulletin, please see [here](#)

Elements of HARP II Program Not Yet Available

The enhancements to the Home Affordable Refinance Program (HARP), announced in October 2011 and aimed at assisting more borrowers refinance loans held by Fannie Mae and Freddie Mac, were scheduled to become operational by January 2012. Participating banks report that although most elements of the program have been implemented, there are certain deficiencies that prevent the program from being fully operational.

Fannie Mae has communicated to participating banks that enhancements necessary to incorporate the new program's underwriting and pricing to DU systems are not yet available. As confirmed by Fannie Mae's Selling Guide Announcement SEL-2011-12 (November 15, 2011), "the changes to the LTV ratio limits ... will be implemented in DU in March 2012. Until such time as DU is updated, DU loan casefiles that receive an Ineligible recommendation due to an LTV ratio above 125% will not be eligible for delivery."

This delay means that until March, lenders can offer enhanced HARP II loans for high LTV Fannie Mae loans only under the manual underwriting option, and those transactions that require DU for approval (outside or

expanded approval loans) cannot be completed.

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

Freddie Mac Expands Forbearance for Jobless Homeowners

Freddie Mac is giving mortgage servicers the authority to offer up to one year of mortgage forbearance to unemployed homeowners who have Freddie-backed mortgages, the company said Friday. The change, which takes effect February 1, 2012, means loan servicers can offer six months of forbearance to jobless borrowers without Freddie's approval and another six months with its approval.

Servicers currently can grant up to three months of forbearance with no payments without prior approval, or six months of reduced payments with approval. Fannie Mae this week is expected to announce guidelines that will align with Freddie's new ones. The Federal Housing Finance Agency directed Freddie to expand the forbearance options.

Read [more](#).

FHA To Issue Indemnification Rules

On Friday, January 20, the Federal Housing Administration announced new regulations intended to strengthen the process by which FHA requires certain lenders to indemnify the U.S. Department of Housing and Urban Development (HUD) for insurance claims paid on mortgages that are found not to meet the agency's guidelines. The final rule, expected to be published in the *Federal Register* this week, requires that lenders insure mortgages on HUD's behalf ("Lender Insurance" mortgagee) to meet stricter performance standards to gain and maintain their approval status. More than 80 percent of all FHA forward mortgage loans are insured by Lender Insurance lenders.

For those loans insured by Lender Insurance lenders, HUD may require indemnification for 'serious and material' violations of FHA origination requirements and for fraud and misrepresentation such that the mortgage never should have been endorsed by the lender. Additionally, the regulation changes the basis under which lenders qualify for Lender Insurance authority.

A Lender Insurance mortgagee must demonstrate a two-year seriously delinquent and claim rate at or below 150 percent of the aggregate rate for the states in which the lender does business. Further, FHA will also monitor lender performance on an ongoing basis to ensure that participating lenders continue to meet the program's eligibility standards. Finally, the regulation establishes a process by which new HUD-approved lenders created through corporate mergers, acquisitions or reorganizations

may be considered for Lender Insurance authority.

FHA also announced that in a separate Federal Register notice to be published soon, the FHA will propose to reduce the maximum allowable seller concession from its current level to one more in line with industry norms. The current level exposes the FHA to excess risk by creating incentives to inflate appraised value. The revised proposal reflects public comments received on an earlier proposal published in a Federal Register notice on July, 15, 2010. The revised proposal calls for a 30 day comment period. Following an analysis of the public comments received, a final rule will be issued.

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