



The New World of Mortgage Lending

by Tom Heath • published in the May 2009 issue

Who would have predicted one aspect of our real estate bust would include the complete overhaul of our mortgage system? It is quite logical, considering the staggering financial losses the world economic system has taken. Word on high came down, fix the system, heads rolled, laws passed on Sundays.

The Federal Government has never moved so fast to implemented changes. Now speed at the legislative level is scary folks, there isn't enough review and response time to understand what these laws actually do. So let's take a tour of the changes in place now and those yet to come through which the mortgage industry will have to navigate:

1. The S.A.F.E. Mortgage Licensing Act of 2008—Nationwide Mortgage License System (NMLS).
2. Effective May 1, 2009 Home Valuation Code of Conduct (HVCC).
3. Effective May 1, 2009 new Regulations for Identity Theft.
4. Effective October, 2009 new Truth-in-Lending (RESPA) statutes.
5. Effective January 1, 2010 new 3-page Good Faith Estimate and HUD-1 Settlement Statement.
6. Effective January 1, 2010 Arizona Loan Officer Licensing. (Note: Amended legislation is pending to extend this deadline to June 30, 2010).
7. HB 1728, the Mortgage Reform and Predatory Lending Bill of 2009.

The HUD-1, that venerable and unchanging staple of the real estate industry is soon gone and replaced by something really different. NMLS and Loan Officer Licensing—soon we'll all be signing up at Hogan's to take continuing education hours. The mortgage world is under siege, the foundations are being rattled.

The most immediate and threatening issue, however, is not a regulation or a law: it is an agreement between the Attorney General of New York and Fannie Mae/Freddie Mac. The Home Valuation Code of Conduct (HVCC) will be effective by the time you read this. HVCC is a direct result of an investigation by Andrew Cuomo into alleged improprieties between a large national lender and their subsidiary Appraisal Management Company. The "Code" was designed to prevent appraisal coercion by loan originators and prohibits Fannie Mae or Freddie Mac from purchasing loans in which the appraisal was ordered by a loan originator, mortgage broker or real estate agent.

The "Code" requires lenders to set up departments outside of the origination chain to select and compensate appraisers. In lieu of this department, a lender may choose to work with an Appraisal Management Company (AMC). Big boys like Countrywide already own provider companies like this, in Countrywide's case it is Landsafe. Big boys make things happen and the "Code" has now been amended from its original verbiage to allow the AMC to be owned by the lender, as long as the lender can show that it is independent of the origination process.

The result of the "Code" will not be a better appraisal process, however. By strictly prohibiting conversation between loan professionals and appraisers, the "Code" blocks consumers from making informed decisions about the value of their home and the decision to proceed with the loan. The "Code" does not allow a mortgage broker to

use an AMC, but requires that the lender they are submitting the loan to place the order. This will make it difficult to switch lenders, as the appraisal is tied directly to the first company. A borrower may face the decision to change lenders and pay for a new appraisal or stay with a lender they are not happy with.

AMC's typically charge a higher cost for appraisals and typically pay appraisers a lower fee for performing the work. Many, long time, quality appraisers will struggle to stay in business once they are forced to work for AMCs or leave the conventional market. The quality of appraisals is likely to deteriorate with work being sent to the lowest bidder with the quickest response time. The net result of the HVCC will be to drive small business owners out of the mortgage and appraiser industry and create a new revenue source for larger banks and push business to unregulated AMCs.

The result, however, is not as inexcusable as the manner by which the code is likely to be implemented. The HVCC was done without any regulatory or legislative oversight. Because the "Code" is the product of an agreement, it was not subjected to debate or scrutiny. At the time of the agreement, Fannie Mae and Freddie Mac were privately held companies and therefore, claimed that they were not subject to the process of regulation or legislation as a government entity would be. The National Association of Mortgage Brokers was recently forced to withdraw a lawsuit to stop the HVCC because Fannie and Freddie now claim to be a government agency and not bound by a court's decision.

There have been calls from many small business owners to their congressional representatives to support an amendment that would delay the implementation of HVCC for 12 months while its effects could be truly examined. Congress has introduced HR1728, the Mortgage Reform and Anti Predatory Lending Act, which contains a delay provision. As of time of writing, the Bill had passed through committee and appears headed to the House floor for a vote. But the damage is done, just ask your favorite appraiser.

The mortgage industry is going through a metamorphosis in an effort to stabilize our national financial system and convince the world we can prevent a future one. Rates are great, but be warned, the cost of doing mortgages just went up.

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