

Welcome to the sixth issue of our quarterly newsletter. Visit our website at www.franzen-salzano.com where you can find more information about our firm, our published articles, and special client services. As always, we invite your suggestions of topics you would like to see covered in the newsletter. **AND PLEASE SEND US YOUR E-MAIL ADDRESS!** We frequently send periodic updates via e-mail and would like to add you to our list.

LEGISLATIVE AND REGULATORY CHANGES

by Leslie Howell

Leslie is an associate attorney with Franzén and Salzano, P.C. She regularly advises brokers and lenders on compliance issues. She monitors federal and state legislation concerning our industry and assists clients in complying with new laws. This article contains excerpts from an article Leslie prepared for the Fall 2000 issue of *Equity Magazine*.

PRIVACY REGULATIONS IMPLEMENT GRAMM-LEACH-BLILEY ACT

In May, several federal agencies promulgated regulations implementing the Gramm-Leach-Bliley Act (the "GLB Act"). The regulations apply to mortgage lenders and brokers, as well as many other entities.

In general, the regulations:

Require notice to "customers" concerning privacy policies;
Establish an "opt-out" right, notice and procedure regarding disclosure of certain information to nonaffiliated third parties; and:

Describe the conditions under which an institution may disclose certain information to nonaffiliates.

"TALKING THE TALK"

Terry Franzén is speaking in **October** at the NHEMA Attorneys' Roundtable. She is also addressing the Conference on Consumer Finance's Electronic Commerce Conference in **December** in Dallas.

Loretta Salzano is speaking at the Southeastern Mortgage Brokers Conference in Memphis on **October 20, 2000**.

The notices required will often depend upon whether the individual is a "consumer" or a "customer." The requirements also may vary depending upon whether the institution intends to disclose certain information to nonaffiliates.



Before July 2, 2001, financial institutions must deliver all initial privacy notices (with opt-out language) to "customers." "Consumers" whose nonpublic personal information is to be disclosed must be given a reasonable opportunity to opt-out prior to July 1, 2001.

STATE ANTI-PREDATORY LENDING EFFORTS

Following **North Carolina's** adoption of "anti-predatory lending" legislation last year, several states considered legislation regulating high-cost home loans during the 1999-2000 legislative session. In most of those states, that legislation has died. In a few states, however, regulatory agencies have adopted, or have proposed, administrative regulations concerning high-cost home loans.

High-cost home loan legislation failed to pass in **Maryland, Minnesota** and **Missouri**. **California** and **South Carolina** originally considered "predatory lending" legislation, but the legislation was eventually rejected in those states in favor of the creation of study committees. The **Illinois** legislature did not pass legislation, but the Illinois Office of Banks and Department of Financial Institutions has proposed rules on the subject. As of late this summer, legislation is still pending in **Massachusetts**. Similar legislation is expected to be introduced in the 2001 legislative session in many other states, including **Ohio, Pennsylvania** and **Georgia**.

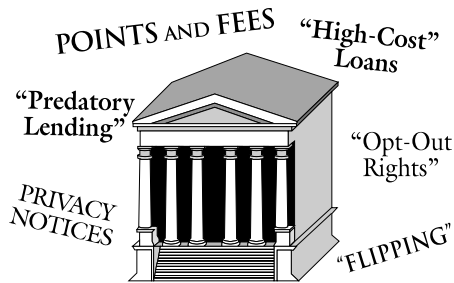
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In **New York**, the Banking Department has adopted administrative regulations concerning high-cost home loans. Under the new regulations, mortgage loans are termed “high-cost” if the APR exceeds by 8% for first mortgages, and by 9% for second mortgages, the yield on U.S. Treasury securities (compared to HOEPA’s threshold of 10%). For both first and second mortgages, the loan is “high-cost” if the non-discount points and fees exceed five percent (compared to HOEPA’s 8% threshold). Unlike HOEPA, the regulations apply to purchase money mortgages and home equity lines.

The **New York** regulations include a number of restrictions for high-cost home loans.

Points and fees are prohibited when less than 2 years have elapsed since the last refinancing. Loan “flipping” is punishable by revocation of the lender’s license. The regulations prohibit lending without due regard for repayment ability. Repayment ability will be presumed if the payment does not exceed 50% of the borrower’s “verifiable” monthly gross income.

The financing of points and fees is limited to five percent plus specified third party fees. Financing of insurance is restricted. In addition to requiring a disclosure at application urging the borrowers to consider financial counseling, lenders must give a disclosure advising borrowers to “shop around.”



Other prohibited terms include call provisions, “oppressive” mandatory arbitration clauses, packing, and negative amortization. Balloon mortgages must have a minimum term of seven years (compared to five years under HOEPA). The **New York** regulations can be accessed at www.banking.state.ny.us/41.htm.

FEDERAL ELECTRONIC SIGNATURE LAW ENACTED

A new federal law allowing electronic signatures and disclosures has finally been enacted. This new law will significantly impact online mortgage lending. Not only will it permit digital signatures, but it will allow almost all consumer disclosures to be given electronically if the creditor meets the new law’s requirements.

A number of states have enacted versions of the Uniform Electronic Transaction Act, including **Arizona, California, Idaho, Indiana, Kansas, Kentucky, Maine, Maryland, Nebraska, Ohio, Oklahoma, Pennsylvania and Virginia.**

STATE LICENSING CHANGES

During the year 2000 legislative session, **Mississippi, Utah, and West Virginia** enacted legislation regulating mortgage lenders and brokers. **Mississippi** will now license mortgage lenders and brokers and require an in-state office. **West Virginia** expanded the provisions of its Secondary Mortgage Loan Act so that it now applies to first mortgages as well as second mortgages. **Utah’s** new law requires registration for first mortgage lenders and brokers.

Publisher’s Note:

Points of Interest is published by Franzén and Salzano, P.C. for clients and colleagues in the lending industry and should not be construed as legal advice. The contents are for general information purposes only. You are urged to consult legal counsel concerning any specific situation or legal issue.

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