Lawsuits: Ocwen/CFPB Case Settled; Major Buyback Ruling in Favor of lenders; MBA Rolls Out QM Guide

By: Rob Chrisman | Fri, Dec 20 2013, 10:44 AM

Borrowers have saved countless billions by refinancing over the last few years. But they aren't the only ones saving money: the Treasury Department reports that *the average interest rate paid by the US government on the country's interest-bearing debt has been cut in half* over the last 6 years, dropping from 5.034% on 12/31/06 to 2.534% as of 11/30/12 - and I am sure this continued into 2013. The bulk of that debt is fixed, as it is for mortgages in the U.S., but the latest MBA numbers showed ARM applications making up 8% of the survey of retail lenders.

Following lawsuits, or preparing for them, is the name of the game for many lenders - and **here's a ruling that helps originators**. Yesterday the First Department of the New York state Supreme Court, Appellate Division held that a $330 million mortgage securities lawsuit brought against a unit of Deutsche Bank AG was barred by New York's six-year statute of limitations, ruling that the statute of limitations began to run at the time of execution of the contract between the parties, "when any breach of the representations and warranties contained therein occurred." The decision overturned a May, 2013 ruling which had held that the statute of limitations did not begin to run until the bank refused its investor's demands that it repurchase allegedly defective loans. The impact of this ruling is significant in that it directly supports the argument that many suits brought stemming from loans originated during the financial crisis are untimely and reverses a decision which investors have relied on heavily since its entry in May 2013. The case is entitled ACE Securities Corp v. DB Structured Products Inc., --N.Y.S. 2d ---, 2013 N.Y. Slip Op. 08517.

"Rob, **this a huge development** in mortgage buyback cases: the statute of limitations for putback claims begins running when representations are made, not when a repurchase demand is refused, according to this New York appeals court decision." So wrote attorney Phil Stein, with Bilzin Sumberg Baena Price & Axelrod LLP; if you want to reach him to discuss how this important ruling could be to your advantage, write him at PStein@bilzin.com.

Earlier this month (on the 13th and 16th), Residential Funding Company, LLC ("RFC") filed approximately sixty-six (66) lawsuits in the United States District Court of Minnesota, alleging in each case that the defendant(s) breached the **representations and warranties** of the contract by selling defective mortgage loans to RFC. As a result, RFC alleges, amongst other allegations, that it suffered substantial losses/damages and that it was forced to file bankruptcy, at least in part, because of the dozens of lawsuits relating to the allegedly defective loans. Many of the originators are being defended by the American Mortgage Law Group, P.C., and it, along with the Community Mortgage Lenders of America (CMLA) is will be hosting a complimentary national webinar on how to defend your companies against the recent spike in repurchase/make-whole demands and litigation going into 2014 (e.g., concerning GMAC/RFC, Bank of America, Lehman Bros., FDIC, Flagstar, Wells Fargo, etc.). In the event you are interested in attending this complimentary national webinar, please feel free to contact the AMLG's Managing Member, James W. Brody (jbrody@americanmlg.com), and/or register by following the instructions contained within the attached webinar overview.

Speaking of lawsuits, yesterday **Ocwen announced** that it had entered into an agreement with the Consumer Finance Protection Board (CFPB) and other regulators related to its servicing practices - or perhaps pertaining more to the practices of companies Ocwen has acquired. Ocwen is required to make a cash payment of $127.3 million, which includes a payment for administrative expenses, to a consumer relief fund. The cash will be distributed to borrowers by an independent administrator. As a result of indemnification and loss sharing agreements, about half the cost will be shifted to sellers of the servicing portfolios. In 2Q13, Ocwen had established a $66.4 million reserve and the company expects this to cover all but around $0.5 million of its portion of the required cash payment. Ocwen also committed to continue its principal forgiveness modification program for delinquent and underwater borrowers in an aggregate amount of $2 billion over the next three years. This will not involve an expense to Ocwen. Since principal reduction modifications are net present value (NPV) positive, they benefit investors as well as Ocwen since re-default risk is reduced and therefore extends the life of the loan which helps offset the impact of the principal reduction. Lastly, Ocwen will also commit to meeting specified servicing guidelines and will be subject to oversight by a national monitor. The company is already subject to similar guidelines on the portion of its portfolio that it purchased from ResCap in early 2013. This agreement essentially brings Ocwen under the servicing requirements of the national servicing settlement.

But other servicers are wary. Special servicers like Nationstar and Walter could be subject to similar settlements. While this is possible, the modest size of Ocwen's settlement suggests that any settlement costs for those companies are also likely to be small. In fact, the Ocwen agreement prompted one broker to write, "I'd call that a victory for Ocwen, the servicer. You lie to borrowers to get them out of the house and then you have to pay them about $1,100 each. Heck BofA was paying borrowers up to $5k alone for moving expenses."

We have 13 business days until QM, and MBA Education unveiled its **Compliance Essentials** Ability to Repay (ATR)/Qualified Mortgage (QM)

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Resource Guide, the only manual currently available that explains not only the effects of the ATR/QM rule on the real estate finance industry but also how organizations should adjust and operationalize to comply with this new federal regulation. "The complexity and obligations under the ATR/QM rule will be burdensome for many companies in the real estate finance industry," said David Stevens, president and CEO of the Mortgage Bankers Association. "Because of this, MBA Education has created the only resource manual that helps organizations understand and adjust to this new reality. The January 10 deadline for compliance is fast approaching, making it critical for those affected by this new regulation to get up to speed immediately and begin properly conforming to these requirements."

The guide is worth a gander, since it includes a clear understanding of what is required for all employees including loan officers, processors and underwriters, a basis for training staff to be aware of the new demands to better support organizations and reduce their risk, and a description of how to operationalize the rule requirements in an organization's day-to-day business. "The MBA has worked with a leading law firm, **Weiner Brodsky Kider PC**, to produce this useful and affordable guide. This book is the equivalent of many hours of legal consultation and is available to MBA members at a reasonable cost, considering its value." The ATR/QM resource guide can be purchased and downloaded here. To view other recent rules and resources, please visit the Compliance Essentials homepage. MBA Education is the education division of the association and enables companies the ability to increase their efficiency and productivity in order to stay competitive in the real estate finance industry.

Let's keep catching up with vendor, agency, lender, and investor updates!

FHA lender **Greystone** has provided $24.3 million in HUD financing for the Belmere Luxury Apartments in Houma, LA in the form of a 40-year fully amortizing 223(a)7 loan. The complex contains 249 rental units and lies within the New Orleans MSA.

Blackstone is asking for investors in its properties. Let's hope they don't start selling them on a widespread basis.

As a reminder, the FHFA published a **request for comment** for its plan to gradually reduce the GSE maximum purchase limit. In areas where the statutory maximum loan limit for one-unit properties is currently $417,000, the plan being contemplated would set the loan purchase limit at $400,000-approximately a four percent reduction. The loan purchase limit would be reduced by the same percentage in other parts of the country, including those areas where current limits are at $625,500. Those loan purchase limits would be set at $600,000.

In anticipation of QM, **EverBank** is eliminating its Interest Only option and is no longer accepting locks. All transactions locked before December 2nd must have an EverBank file received date by the close of business on December 13th (last Friday) and fund within their original lock period. In addition, EverBank has ceased to originate any loans that fall under the HPML umbrella, any of which were locked before December are subject to the December 13th deadline.

EverBank has aligned its policy on private transfer fees covenants with that of the Agencies; effective immediately for loans not closed as of November 15th, mortgages on properties encumbered by select covenants are ineligible for purchase.

To prepare for the implementation of QM and ATR, EverBank has implemented new 5/1 ARM product codes that reflect the revised 2/2/5 cap structure, which will be replacing the current 5/2/5 on January 10th. As a reminder, all loans locked under the 2/2/5 cap structure are subject to an adjustment of -.375, and the option to lock under 5/2/5 will remain available until January 9th. Any loans that currently use the 5/2/5 structure may be switched but will incur the same pricing hit.

Software provider **ValuTrac** has integrated **CoreLogic Flood Services** into its platform, which allows users to streamline the flood determination ordering and retrieval process by loading the results directly to their individual portal. The new integration is available with ValuTrac Pro and ValuTracPro Plus products, which allow for automated submission and retrieval. For more information, contact John Lovallo at jlovallo@levick.com.

Chase has revised its flood insurance policies such that lenders are required to provide an in-force insurance policy or acceptable Declarations page as a trailing in instances where the loan is purchased 60 days or more after the note date. The address required for a Mortgagee Clause has been updated as well. The changes went into effect for all Best Efforts locks and Mandatory commitments dated December 10th or after.

Per Dodd-Frank, Chase has revised the qualifying rate for 7/1 and 10/1 Non-Agency and FHLMC ARM transactions to the higher of note rate or fully indexed rate (the qualifying rate for 7/1 and 10/1 ARMs run through DU is subject to the changes that went into effect on November 16th with the implementation of Version 9.1). As LP is not programmed to qualify 7/1 and 10/1s at the higher of the note rate or fully indexed rate, the rate must be entered manually. This goes into effect on December 9th for Non-Agency transactions and on January 10th for FHLMC transactions.

Effective immediately, Chase is no longer purchasing loans associated with current or former non-United States officials (Foreign Politically Exposed Persons), their immediate families, or close associates.

As of January 10th, Chase will apply a minimum FICO requirement of 60 and a maximum DTI of 45% to all Chase-serviced DU Refi Plus HPML transactions.

Chase will be revising the calculation used for Best Efforts renegotiation pricing to use the base price (current 60 days pricing) minus the cost to break the lock (25bps); the price adjustments, including extended rate lock fees; and prior extension and re-lock fees; plus the SRP. This went into effect for all renegotiation requests received December 17th and after.

Christmas is right around the corner, but lenders aren't seeing much to celebrate. Agency MBS prices were worse Thursday about .125 - although that was an improvement over where things began in the morning. Here on the Friday before Christmas, we wrap up with the final reading of 3rd quarter GDP. Expected to come in at 3.6%, it came in at 4.1% - much of it attributed to increasing inventories. Looking at prices and yields, the 10-yr closed Thursday with a yield of 2.92% and this morning we're up to 2.96%; agency MBS prices are worse about .250.

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