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USAP, ACC and AGs

Mortgage Banking

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A "big time bomb" is waiting to explode for mortgage servicers affected by new federal regulations (Reg AB) intended to make securitized loans more transparent to investors, according to Richard Simonds Jr., a partner with Thatcher Profitt & Wood LLP, New York, a panelist at the Mortgage Bankers Association's (MBA's) National secondary Market Conference & Expo in Chicago in May. Simonds said, "If you're a primary servicer," the new regs are "comparable to USAP [the Uniform Standard Audit Program]; if you're a servicer who also happens to be doing other functions, it's much more involved in terms of additional work you'll have to do." He tells servicers to engage their accountants "as soon as you can- it's the only way they'll get this done on time," which is next March.

At issue is Regulation AB, a Securities and Exchange Commission (SEC) requirement intended to make the marketplace generally-and securitization specifically-more transparent to investors. The regulation codifies and expands rules and regulations for registered assetbacked securities (ABS) sold to the general public.

According to Simonds, "There's some concern based on SEC comments as to the amount of liability that they'll force back on issuers and then primary servicers. They are adamant about full compliance with this," he warned with a foreboding tone. "If someone fails to file timely and with full disclosure-all the attestations-we may see our ability to issue securities shut down. That would be fairly catastrophic. I don't think anyone wants to call the SEC's bluff on this to see whether they'll play hardball."

"Foreclosure-rescue fraud" is the "fastest-growing and newest trend out there," according to Rachel Dollar of Santa Rosa, California, an attorney specializing in mortgage fraud and a speaker at the MBA National Fraud Issues Conference in Chicago in May. "[Investors] seldom realize they're putting money into foreclosure properties," noted Dollar, adding: "It always ends in eviction or foreclosure and loss of the house."

Servicers are urged to emphasize education, so borrowers will be less prone to come-ons from cheats. But those in the trenches say borrowers ignore loss-mitigation efforts. Marge Stanish, loan default manager for Mid-America Mortgage, Downers Grove, Illinois, lamented that despite a servicer's efforts, the debtor "tells the judge they were never contacted. Still, if the fraudsters are the only ones telling borrowers what they want to hear, says Bruce Gottschall, executive director of the Neighborhood Housing Service in Chicago, "they're likely to listen."

After his initial trip to India last winter, Craig Focardi, research director of consumer lending for TowerGroup, Needham, Massachusetts, came back with more than some interesting first impressions of the subcontinent. He also returned with a solid conviction that American financial institutions would likely be sending more work to the growing number of companies springing up there to handle offshoring assignments.

Sharing those beliefs at TowerGroup's annual Financial Services Business & Technology Conference

& Exhibition in June in Boston, Focardi said he was "amazed that there are 20-plus vendors serving the U.S. and U.K. markets providing back-office-processing data services focusing on the mortgage industry. Clearly there's a need, and the supply is growing," he concluded. "Many of these organizations, by 2010, will exceed 10,000 employees and many will have more than 1,000 concentrating just on mortgage business."

On the loan origination side, that could total up to \$9 billion in assignments-an equal mix of technology and business operations work-equal to about one-quarter of all spending on U.S. mortgage loan origination. Focardi offered assurances about internal security at Indian firms, calling it "ahead of the U.S. in many ways." He ticked off several examples to support this contention, and said, "There is much less concern than some might think."

Reaching customers in new markets-whether they be immigrant, unbanked, minority or first-time homebuyers-requires new techniques. One is identifying "trust advisers" to reach those groups. According to Bonnie Wolferd, director of emerging markets-Western region, AIG United Guaranty, Houston, "The trust adviser is the pathway of homeownership for many people. It's the Realtor, it's the broker, it's the nonprofit [agency] that is a bridge for language or culture, family, friends and others."

Wolferd warned: "If you're not churning around in this loop, you're at risk [of losing business] to the people who are there and who are going to be bringing in [that] business."

Speaking at MBA's National Fraud Issues Conference in Chicago in May, Wolferd also said, "Be careful whom you hire." To reach a specific culture, she advised: "Hire someone who is bi-cultural. That's a great way to build business." However, she cautioned listeners "to do a lot of due diligence to get the right people in. You don't hire [just] because they have the language and cultural background; you have to know who you are dealing with."

Attorney John Culhane Jr. of Ballard Spahr Andrews & Ingersoll LLP, Philadelphia, does not expect the Ameriquest settlement to be the last of its kind. "There has been a sea change in the way state attorneys general [AGs] do business," Culhane told an audience at the 4th Subprime Lending Symposium sponsored by New York-based SourceMedia Inc., in May in Las Vegas. Ameriquest's parent, ACC Capital Holdings, Orange, California, agreed to pay \$325 million to some 240,000 people nationwide in settlement of allegations that the company engaged in abusive lending practices.

The settlement will have a ripple effect, according to Culhane. "When a consortium of state attorneys general settle over particular issues, individual [AGs] will then take that settlement and use it as the basis for challenging practices that other lenders are engaging in," he said. Culhane cited other areas of litigation, noting that plaintiffs' attorneys "particularly like the Fair Credit Reporting Act, because unlike some of the other federal laws there's no cap on the award of damages in class-action litigation. So, they are really searching for new theories and new ways to bring that kind of litigation, and they've seized on whether a firm offer of credit's being made-whether the disclosures are proper, whether there's enough money on the table to make it a real offer, whether there's any ability to pull the offer off the table," he said.

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