

Wright Andrews' Discussion Outline

AEI Program – 10-9-03

- ✓ **Access to Affordable Housing Credit is VERY Important**
 - “American Dream”
 - Critically important to American economy
 - Home equity wealth now at \$7.7 trillion, up \$2 billion in last several years
 - In 2003, families drew out \$100 billion in equity to meet needs, and by refinancing, saved about \$100 month average in mortgage costs (per Freddie Mac)
 - This has helped keep our economy going during weak period
 - Non-prime borrowers especially need credit access
- ✓ **Non-Prime Mortgage Credit Very Beneficial**
 - Relatively low rates / much lower than in past / only about 2% more than prime
 - Tremendous growth in market has given credit to millions who would not otherwise get it
 - About \$213 Billion in 2002
 - Stereotype non-prime borrower vs. Reality
- ✓ **Capital Markets Vital, Integral Part of Credit Access – Availability & Low Rates**
 - Since 1990s, have made credit available
 - Greatly increased credit availability and lowered cost
 - 62.5% of the \$213 billion were securitized in 2002 (vs. 44% in 2001)
 - Easily disrupted, especially by assignee liability (e.g., GA; will be seeing in NJ)
- ✓ **Mortgage Lending, Including Non-Prime Segment, Is Nationwide Market & Industry**
 - Dominated increasingly by nationwide lenders / servicers
 - Heavily dependent on securitization & global capital markets
 - Low rates are closely linked to standardization / commoditization
- ✓ **State & Local Patchwork Regulation is Unworkable**
 - About 40 such laws already and scores are pending; every one is different; generally “not a better mousetrap, just a different one”
 - Many states do not have additional protections that are needed; some do, but are too weak or too strong
 - Allowing cities/counties to pass their own differing laws greatly compounds the problems (“experimentation gone wild”)
 - Significant compliance costs & burdens & very inefficient
 - Standardization is essential to lower costs
 - Capital market disruption by assignee liability
 - GA example
 - How can pension fund, securitizer, etc. know?
 - Why take risk of putting money into housing?

- Even when can rate, rating may be so bad it kills deal
 - NJ would not listen & about to have another train wreck
- In fact, many such proposals limit access to credit or increase cost to borrower
 - Legitimate loans not being made
 - De facto usury ceilings “and then some” (i.e., uncertainty/risk causing many not to take risk at all); frustrates federal usury preemption
 - Many “non-victims” are being victimized by “predatory legislating”
- Smaller lenders are facing impossible compliance burdens and will be increasingly forced out of the market
- Difficult for many state / local legislators to have adequate expertise and understanding of the non-prime business or how capital markets can be upset by poorly drafted proposals
- States already often not enforcing existing laws that prohibit many of abusive practices (e.g., fraud), and states have serious budget problems that hinder enforcement
- Pending litigation nightmare – easy to sue due to unclear provisions, etc. and cost will be passed on to consumers
- Not simply a matter of consumers in only one state being hurt by their poorly crafted state law-----the collective effect of so many states having so many different laws is undercutting national housing finance
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- ✓ **Compliance & Market Functioning Would Be Much Better With Uniform Standards**
 - Lenders / Brokers could comply easier, with less costs
 - Secondary market would not be disrupted
 - Enforcement would be easier and more consistent
 - Protections would actually be increased in many/most states
- ✓ **States Could Still Play Important Role**
 - Still could enforce the uniform standards, and hopefully could have more resources through a federal fee / funding mechanism
 - Also can by helping further consumer education
- ✓ **Unlevel Playing Field Exists**
 - Federally chartered entities and operating subsidiaries being exempted via statute / OCC / OTS rulings
 - Consumers do not often know or care how a mortgage lender is structured and will be confused and may pay more by different regulatory regimes
 - Non-federally chartered lenders should have same rules; this is better for fair competition and pricing and ensures all consumers have uniform, effective protections
- ✓ **Congress Clearly Has Power to Mandate Uniform Rules for Non-Prime Lending**

- Commerce Clause
- Many Prior Actions recognizing housing is national market, etc.
 - Minimizing administrative and compliance burdens of conflicting laws
 - Example - preemption of state usury laws – legislative history noted national housing policies programs and importance of national secondary market
- ✓ **Congress Is Best Positioned To Pass Standards & Can Do So**
 - Congress has expertise, overall national perspective
 - Special recognition of capital markets role / impact
 - Amending HOEPA to effectively address concerns is not that difficult to do
 - Believe enough reasonable Republicans and Democrats to work out bill with strong protections & uniformity
- ✓ **Real Agendas of Critics May Be Other Than Stated**
 - Turf protection by state legislators/regulators
 - Political grandstanding by political candidates
 - Advocates’ fears that Republican controlled Congress will not produce a strong bill
 - Trial lawyers’ desire to preserve “easy to sue” atmosphere created by unclear state laws
 - Some advocates’ desire to so limit non-prime credit availability to make government credit subsidies more viable
 - Paternalism of some advocates who think people are too dumb to use credit responsibly and must be protected from themselves
 - Desire to have de facto usury limits

Bottom Line: Federal Uniform Standards Are Needed And Appropriate Here