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A Message from Stephen Moye:

"Sometimes its the information that can slip under the radar that has the biggest impact on our industry."

Treasury Weighs in With Mortgage Industry Recommendations

The Treasury Department has **recommended some sweeping changes** for consumer financial services including some **directly impacting the mortgage industry**. A new report recognizes the growing importance of non-depository institutions in the mortgage system, attributing it in part to various factors that have raised the cost of doing business such as the False Claims Act enforcement and the costs of default mortgage servicing. The report also acknowledges that many among the growing ranks of non-bank mortgage originators have been early adopters of technology that has speeded up the mortgage lending process.

As indicated by the title of report, Nonbank Financials, Fintech, and Innovation, many of its recommendations are focused on the area of technology.

The report notes that financial and digital technology have the potential to improve the customer experience, shorten origination timelines, and deliver a more reliable, lower cost mortgage product, and delays throughout the production process could be relieved through policy changes to enable the adoption of time and cost-saving technology.

In the area of loan closings, Treasury makes some specific recommendations. They advocate for a **transition from paper-based promissory notes** which require pen and ink signatures and physical storage **to electronic notes** (eNotes). This would permit greater uniformity and quality control, speed up origination times and ease secondary market transfers. Use of these notes is currently hampered by a lack of capability in the primary market and of acceptance by some secondary market participants.

National Average Mortgage Rates

	Rate	Change	Points
Mortgage News Daily			
30 Yr. Fixed	6.43%	+0.02	0.00
15 Yr. Fixed	5.95%	0.00	0.00
30 Yr. FHA	5.82%	+0.02	0.00
30 Yr. Jumbo	6.62%	0.00	0.00
5/1 ARM	6.28%	-0.01	0.00
Freddie Mac			
30 Yr. Fixed	6.35%	-0.51	0.00
15 Yr. Fixed	5.51%	-0.65	0.00
Mortgage Bankers Assoc.			
30 Yr. Fixed	6.44%	-0.06	0.54
15 Yr. Fixed	5.88%	-0.16	0.68
30 Yr. FHA	6.36%	-0.06	0.85
30 Yr. Jumbo	6.75%	+0.07	0.39
5/1 ARM	5.98%	-0.27	0.65

Rates as of: 8/30

Recent Housing Data

		Value	Change
Mortgage Apps	Aug 28	226.9	+0.49%
Building Permits	Mar	1.46M	-3.95%
Housing Starts	Mar	1.32M	-13.15%
New Home Sales	Mar	693K	+4.68%

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		Value	Change
Pending Home Sales	Feb	75.6	+1.75%
Existing Home Sales	Feb	3.97M	-0.75%
Builder Confidence	Mar	51	+6.25%

To facilitate the transition Treasury recommends greater encouragement from government actors like Ginnie Mae and the Federal Home Loan Banks for lender acceptance, increased Congressional funding to develop technical capacity for FHA digitization of loan files, and the development of shared technology programs for FHA, VA, and USDA to use for certain origination and servicing activities.

Notarization methods now permit webcam interaction along with a form of identification that allow a notary to confirm the borrower's identity. Existing eNotarization laws on the state level need clarification and the Uniform Law Commission needs to promulgate a framework to further acceptance of both in-person and electronic notarization.

While 33 states and U.S. territories have enacted the Uniform Real Property Electronic Recording Act (URPERA), not all of their counties are onboard. States that have not yet authorized eNotarization should do so as well as permitting its interstate use. Congress should also **consider enacting a minimum national standard**, facilitating electronic closings, but not requiring their use.

Appraisals are another area in which Treasury sees a need for improvement, noting that changes in appraisal requirements enacted in response to the housing crisis have greatly affected the appraisal industry, causing delays and extended timelines for originations. Again, use of technology can remove some of these problems.

Specific recommendations include an update of the Title XI FIRREA appraisal requirements. Congress should look at the progress in automated and hybrid appraisals and permit their use where appropriate. The report supports Freddie Mac and Fannie Mae's (the GSEs') efforts to standardize appraisal reporting as well as their limited use of appraisal waivers and, along with FHA, of their adoption of electronic portals to submit appraisal forms. The report recommends that FHA and other government programs also develop automated appraisal capabilities and targeted appraisal waivers. The report advises a **cautious approach to digital and automated valuations**, balancing convenience against risk.

The report cites the role played by civil actions against lenders brought under the False Claims Act (FCA) by the Department of Justice (DOJ) as a factor in depository institutions leaving the mortgage business. This shift, it maintains, has also **negatively affected borrowers' access to credit**. FCA claims that lenders supplied loans to government insurance programs that did not meet standards have resulted in $7 billion in fines to date.

The report says material errors in origination and servicing should be penalized but expresses concerns with the way DOJ and FHA determine violations and calculate damages. They say they should strike a balance between loan requirements an agency deems material and appropriate for enforcement and those that are not material and could be addressed outside of the FCA. Establishing more transparent standards should be a HUD task which would provide information to DOJ on appropriate remedies and liabilities for lenders and servicers such as indemnification or premium adjustments.

Lenders that make immaterial errors should be granted safe harbor from a denial of claim and forfeiture of premiums as should lenders who cure material violations based on FHA remedies. Appropriate remedies should consider the systemic nature of the problem, the lender's overall quality of originations, the extent to which the defect may have created or increased the severity of default, and the involvement of senior management in the incident. The two agencies should ensure they have a process to reach a mutual agreement on claim resolution.

The report notes the absence of any federal regulations regarding a national loss mitigation standard. There is a Consumer Financial Protection Bureau (CFPB) regulation that mandates a standard for evaluating delinquent borrowers for loss mitigation and recent efforts from the GSEs, the Mortgage Bankers Association, and FHA to use crisis-era programs as a foundation for standards. But the industry is dealing with loss mitigation offerings that vary across guarantors and servicers of both government and private sector loans. The results in inefficiencies and **uneven treatment of borrowers needing relief.**

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Federal mortgage programs should work toward standardizing the most effective loss mitigation features. They should align best practices to facilitate the most effective and efficient modifications; ones that are in the interest of borrower and investor, promote transparency, reduce costs, and mitigate the impact of defaults. There should be standard parameters including the application package, affordability standards, waterfall standards, and referrals to financial counseling, but no requirement for a specific modification product.

Recommendations specific to FHA include a review of its servicing requirements and changes to its multi-part foreclosure process that **would allow servicers to miss some intermediate deadlines** without penalty while sticking to the broader timeline. FHA should also reevaluate its property conveyance framework and continue using while expanding programs to reduce the transfer of foreclosed properties to HUD.

State foreclosure processes received a lot of attention in the report. Treasury says the variations across states have been highly problematic for servicers. The average timeline for completing a foreclosure was about six months in 2007 but reached 33 months ten years later, with the judicial states requiring even more time. While the volume of loans in the foreclosure inventory nationwide is back to pre-crisis levels, the foreclosure rate remains high in judicial states, exceeding three years on average in some.

Borrowers, according to the report, pay a portion of the costs of those delays due to the risk premium embedded in the interest rates for states with protracted foreclosure timelines. It also maintains that for federal housing programs, where there is some national pricing, the cost of long foreclosure times is born by borrowers in states with shorter ones. The extended process also negatively affects property values and appreciation of nearby homes. Treasury says that housing prices in nonjudicial states have appreciated **twice as much since their pre-crisis peak** than have those in judicial states and maintains that judicial review leads to higher rates of persistent delinquency without appreciably improving borrower outcomes.

States should seek establishment of a model foreclosure law and amend their foreclosure statues accordingly. Federally supported programs should consider a guarantee and insurance fee surcharge for those states with foreclosure timelines significantly exceeding the national average to cover the additional costs.

When investors fled the market after the housing crisis Ginnie Mae experienced a surge in volume and also a change in its issuer base as non-depository issuers rushed into the void left by depository institutions. Somewhat the same occurred in the GSEs seller-servicer counterparty population. This shift, with nondepositories' less standardized approach to safety and soundness regulation, **may create increased risk.** While they are subject to federal financial oversight they are not subject to the uniform safety and soundness standards imposed on banks. They also do not have access to the liquidity sources of banks and this is of particular concern with nonbank servicers. Counterparty risk represents Ginnie Mae's primary financial exposure.

While Ginnie Mae and the GSEs have various counterparty risk-management tools, the data quality and reporting fields may not be sufficient to assess counterparty financial health. Further, despite the dramatic increase in Ginnie Mae's portfolio, it lacks the flexibility to adjust its MBS fees and hire additional staff for risk management.

Treasury recommends that Ginnie Mae, along with the Federal Housing Finance Agency (FHFA), the GSEs, and the Conference of State Bank Supervisors work to develop standardized, detailed reporting requirements on nonbank financial health including details around funding structures and that Ginnie Mae be encouraged to consider further counterparty risk mitigation including stress-testing requirements. The agency should also be **given the ability to charge risk-sufficient guaranty fees** and should undergo an assessment of its staffing and contracting policies and enabled to pay salaries comparable to other financial agencies to attract personnel with the necessary expertise.

Nondepositories should be required to provide greater more information about their financial health. Greater standardization of requirements and reporting could benefit them as well by eliminating variations across the states of counterparty requirements.

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