Regulatory and Market Developments in Mortgage Lending and Housing Finance

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Agenda



Market and Regulatory Backdrop



Origination Developments



Servicing and Loss-Mitigation Developments



Fair Lending Developments



Transactional and Secondary Market Developments



Housing Financing Developments



Related Updates and Final Thoughts

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Market and Regulatory Backdrop

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Market and Regulatory Backdrop

What is shaping the conversation

- Affordability pressures continue to drive federal attention to the mortgage and housing markets.
- The CFPB's rulemaking apparatus remains relevant, even as it has pulled back from enforcement and supervision, with policy priorities and rhetoric evolving.
- Legal frameworks are starting to catch up to product innovations, including homeowner equity, digital mortgage processes, and alternative structures, among others.
- From the homebuilders' perspective, the tough housing market is putting pressure on profit margins, resulting in consolidation in the residential-construction industry.

Regulatory Posture and Market Conditions

- Federal policymakers continue to treat housing affordability and access to mortgage credit as priority issues.
- The CFPB remains a meaningful mortgage regulator, even if broader enforcement priorities have shifted.
- State legislators and regulators continue to monitor mortgage and other housing finance activity, and some are acting.
- Mortgage lending remains a focal point because it sits at the intersection of housing policy and consumer finance.
- Increased M&A activity in the homebuilding space, by both domestic and foreign acquirers.
- Markets for secondary market mortgage loan products (such as MBS and Mortgage Repos) remain strong

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Origination, Servicing, and Loss-Mitigation

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Origination

Federal Policy and Rulemaking Themes

- Administration emphasis on reducing the size of federal agencies and removing “discretionary” rules
- Also, there is a recognition of affordability concerns, particularly for mortgage credit (Executive Order 14393).
  - Regulatory relief primarily for community and smaller banks
  - Origination and ATR/QM reform for smaller banks (compare with Economic Growth, Regulatory Relief, and Consumer Protection Act sec. 101)
  - HMDA modernization leading to a narrowing of data reporting required by smaller banks
  - Changes to mortgage examination procedures
  - Also addresses appraisals, digital mortgage, servicing, enforcement, licensing
- There is a tension between administration priorities that may impact the pace of regulatory reform.

Origination (cont.)

Valuation and Process Modernization

- Appraisal Modernization
  - Interagency Automated Valuation Model (AVM) Final Rule effective on Oct. 1, 2025
    - Quality control standards focused on accuracy, data integrity, and anti-discrimination safeguards for AVMs
    - Practical takeaway: Users of AVMs must perform diligence on and exercise oversight over AVM service providers
  - EO 14393
    - Expand use of alternative valuation models (AVMs)
    - Simplify appraiser qualification requirements
    - Reduce appraisal requirements for low-risk transactions
- Digital Mortgage (EO 14393)
  - Eliminate unnecessary wet-signature requirements
  - Standardize acceptance of electronic signatures, e-notes, remote online notarization
  - Promote digital mortgage standards

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Origination (cont.)

Other Developments

- Homebuyers Privacy Protection Act ("Trigger Leads Rule")
  - Limits on consumer reporting agencies from selling consumer's data to third parties after mortgage credit inquiry
  - Exceptions: Preexisting relationship between homebuyer and third party; explicit, affirmative consent from consumer
  - Third party must provide a legitimate firm offer of credit
- State developments affecting origination
  - Nonbank CRA requirements in New York

Watch List

- Changes to loan originator compensation rules?
  - Previously, CFPB withdrew Bulletin 2012-02
- Crypto-assets in underwriting?

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Servicing and Loss-Mitigation

- Changes to Regulation X
  - Rescission of COVID-19 requirements
  - Streamlining of loss-mitigation requirements in "final rule stage"[1]
- CFPB is considering repeal of "discretionary" servicing rules
  - Looking at discretionary rules related to certain information provided to consumers
  - E.g., interest rate adjustment notices for variable-rate transactions
- HUD updated requirements for servicing of FHA-insured mortgages (ML 2025-06 and 2025-12)
  - Adoption of new permanent, streamlined servicing and loss mitigation procedures

[1] Michael M. Aphibal and Andrew E. Bigart, *Consumer Financial Protection Bureau Proposes Revamping Mortgage Servicing Rules*, REAL EST. FIN. J., Winter 2024, at 27, *available at* https://www.venable.com/insights/publications/2025/01/consumer-financial-protection-bureau-proposes.

Servicing and Loss-Mitigation (cont.)

Takeaways

- State servicing developments may become relatively more important as federal priorities evolve.
  - California subordinate-lien servicing legislation
  - Washington State enforcement action against mortgage servicer for various alleged servicing violations
- Investor, insurer, or GSE servicing expectations remain relevant.

Selected State Law Developments

California

- AB 130: Housing bill
- Addresses servicing and servicers of subordinate mortgages
- Requires certain communications with borrower, including before initiating nonjudicial foreclosure
- Certifications by servicers must be filed and recorded before nonjudicial foreclosure
- Currently effective

New York

- New regulation expanding state CRA requirements to nonbank mortgage lenders
- Applies to lenders that originated at least 200 loans in NY in previous year
- Lending test: Does lender serve all borrowers and neighborhoods in assessment area?
- Service test: Does lender promote community development?
- Effective date: July 7, 2026

Other States

- **TN**: Reverse Mortgage Innovation Act – allows private reverse mortgages
- **MN**: H.F. 3437 – partial deregulation of residential mortgage loans on investment property
- **CO**: Automated Decision-Making Technology Act – replaces Artificial Intelligence Act

Fair Lending

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Fair Lending

Recent Changes to Regulation B

- Final Rule published on April 22, 2026
- Three core changes:
  - ECOA no longer provides for disparate impact liability.
  - Narrowing of "discouragement" liability to only express communications that a creditor knows or should know would cause an applicant to believe that the creditor would deny the applicant credit or offer credit on less favorable terms on a prohibited basis.
  - Special-purpose credit program changes:
    - Removing race, color, national origin, or sex as potential eligibility criteria
    - Evidence that each SPCP participant would not receive the credit offered because of the participant's specific prohibited basis characteristic
- Consumer protection groups have sued the CFPB, raising various procedural objections and arguing that these changes are arbitrary and capricious based on the CFPB's cost-benefit analysis of the Final Rule.

Fair Lending (cont.)

Practical Impact for Mortgage Lenders and Servicers

- The practical impact is extremely limited because mortgage lenders and servicers are still subject to the Fair Housing Act.
  - *Inclusive Communities* case affirms that disparate impact claims may be brought under the Fair Housing Act.
  - Private right of action under ECOA and the Fair Housing Act
  - States are increasing their focus on fair lending and fair housing, given the federal government's pullback, as seen in Massachusetts and California.
- Given the Fair Housing Act, mortgage lenders should continue performing disparate impact testing of their underwriting models, and mortgage servicers should continue analyzing their services for instances of potential discrimination.

Fair Lending (cont.)

Other Recent Happenings

- HUD launched a fair housing investigation into the Washington State Housing Finance Commission's Covenant Homeownership Program.
  - The program offered downpayment and closing cost assistance for first-time homebuyers through zero-interest, secondary home loans, with low-income borrowers qualifying for complete loan forgiveness after owning a house for five years.
  - To qualify, applicants must have a parent or grandparent of Black, Hispanic, Native American, Pacific Islander, or Indian descent.
  - HUD has questioned the legality of race-based eligibility under the Fair Housing Act.

- AVM Final Rule became effective late last year.
  - Imposes requirements related to AVM use in credit decisions or securitization determinations.
  - Not fair lending per se, but includes requirement that an AVM provider's quality control standards must be designed to comply with antidiscrimination laws.
    - This requirement goes beyond the requirements of the underlying statute (as amended by Dodd-Frank).

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Transactional and Secondary Market

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Transactional and Secondary Market

Mortgage Loan Repurchase Facilities

- Mortgage repos are a significant source of financing for mortgage loans and mortgage-related assets.
- Mortgage repo typical structure involves a mortgage lender selling a pool of its mortgage loans to a buyer at a purchase price that reflects a discount from the face value of the mortgage loan.
- Seller is obligated to repurchase the mortgage loans at a repurchase price that is slightly higher than the buyer's purchase price and reflects the financing cost of the buyer.
- Mortgage repos are most commonly used to finance:
  - Individual residential mortgage loans held before securitization
  - Mortgage-backed securities (MBS)
  - Agency MBS guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae
  - Non-agency residential mortgage-backed securities
  - Commercial mortgage-backed securities

Transactional and Secondary Market

Interplay Between Consumer Mortgage Market and Mortgage Repo Market

- Increased liquidity allows mortgage lenders to recycle capital quickly, increasing the availability of mortgage loans for homebuyers.
  - Increases mortgage lender participant pool, increasing competition and availability of mortgage credit to homebuyers
  - Active secondary market into which lenders can sell mortgage loans incentivizes mortgage lenders to originate more loans
- Low-cost short-term financing to mortgage originators reduces their cost of capital, which in turn reduces mortgage rates offered by mortgage originators to homebuyers.

Transactional and Secondary Market

Residential Mortgage Repo Regulatory Landscape

- The residential mortgage repo market is not regulated by a single mortgage-specific regime, sitting instead at the intersection of banking regulation, securities regulation, bankruptcy law, housing finance regulation, and prudential oversight.
- Nonbank mortgage lenders are the primary users of residential mortgage repo products.
  - Since they are not banks, these mortgage lenders are not subject to capital retention rules applicable to banks.
  - However, nonbank mortgage lenders are still subject to:
    - State mortgage lender licensing requirements
    - Consumer finance regulation
    - Counterparty risk requirements imposed by repo purchasers, which tend to be banks subject to traditional banking regulations
    - Requirements imposed by government-sponsored enterprises
    - Regulators continue to be focused on nonbank mortgage lenders' reliance on short-term financing, which remains a regulatory concern, given that funding via the secondary repo market can diminish rapidly during market stress
      - Key areas of scrutiny include potential for margin calls, increased haircuts, liquidity runs on mortgage lenders, and forced sales of mortgage assets

Transactional and Secondary Market

Market Developments for Mortgage Lending to Consumers

- The average interest rate for 30-year fixed-rate mortgages with conforming balances of $832,750 or less and a 20% down payment was 6.57% as of June 3, 2026.
- Adjustable-Rate Mortgages (ARMs)
  - ARMs accounted for over 10% of mortgage originations in early 2026, up from under 2% in early 2021
  - ARMs typically gain popularity as current interest rates rise
  - The demand for ARMs is concentrated in high-cost markets and in loans more than $1 million
- According to the Mortgage Bankers Association's (MBA) Builder Application Survey, new-home purchase mortgage applications in April 2026 were down 2.4% from April 2025, a decrease driven by economic uncertainty and higher mortgage rates.
- While MBA forecasts a modest increase in mortgage originations in 2026 compared with 2025 in terms of dollar volume, according to real estate data firm ATTOM, home-purchase originations in Q1 2026 were approximately 8% lower than in Q1 2025, and total residential mortgage originations (purchase, refinance, and HELOC combined) fell by 13% quarter-over-quarter in Q1 2026.
  - The decrease reflects continued affordability challenges as a result of mortgage rates remaining above 6%, increased home prices, and constrained housing supply in key markets.

Transactional and Secondary Market

Regulatory-Transactional Developments

- Expanding Use of eNotes
  - Ginnie Mae announced in January that it would permit the issuance of MBS backed by eNotes in the Pools Issued for Immediate Transfer (PIIT) program.
  - Fannie Mae and Freddie Mac already have co-issue programs for the purchase and pooling of eNote-backed loans.
  - eNotes benefit mortgage lenders and homebuyers by improving operational efficiency, allowing for faster resale into the secondary market, providing lower funding costs and faster warehouse turnover (thus increasing mortgage lender liquidity and availability of mortgages), eliminating risk of lost notes, lowering per-loan costs, improving auditability, compliance, and pricing from investors.
- SEC RMBS disclosure modernization
  - In late 2025, the SEC published a concept release inviting public comment on potential reforms to the RMBS disclosure requirements.
  - General theme: Examine the impact of revising the Schedule AL asset-level disclosure regime for publicly listed deals to more closely mirror 144A deals.
  - SEC's stated goal: Determine whether asset-level disclosure requirements for RMBS are too onerous and whether they have become a barrier to public issuance.

Transactional and Secondary Market (cont.)

Maryland Mortgage Lender and Installment Loan Licensing Updates

- In April 2026, Maryland's governor signed a bill addressing the application of licensing requirements to entities that acquire or are assigned mortgage or installment loans.
- This bill resolves a period of uncertainty:
  - A court initially held that assignees of covered MD loans (including trusts) could be subject to licensing requirements, potentially calling the "trust purchasing" model into question.
  - Two pieces of legislation were subsequently enacted in 2025 that, in effect, excluded passive trusts from mortgage licensing but left other asset classes and other types of entities subject to licensing.
- Under the new bill, passive trusts do not require mortgage licensing, *and* other entities that acquire or hold loans do not appear to require licensing solely by virtue of taking assignment of loans, which is consistent with historical practice in Maryland (and other states).
  - This should cover most securitization and loan investor SPVs.
- Licensing exposure continues to remain for loan assignees that also engage in origination, servicing, and other licensable activities.

Housing Financing Products

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Home Equity and Alternative Products

Home Equity Products

- Home equity products are receiving more attention as borrowers seek liquidity without refinancing a low-rate first lien.
- A few examples:
  - Home equity investment products (e.g., homeowners receive a lump sum cash payment in exchange for a portion of their home's current value and future appreciation)
  - New flavors of home equity-secured products (e.g., credit cards)

Legal and Regulatory Issues: Home Equity Investment Products

- Some states have enacted laws and regulations that generally treat shared appreciation mortgage loans as mortgages:
  - Maine treats them as credit transactions subject to licensing, typical credit-related requirements, and classification as high-cost mortgage loans in certain cases.
  - Illinois treats them as mortgage loans subject to related licensing and related requirements.
- Legislation that would regulate HEIs has been introduced in a number of other states, including Massachusetts and Pennsylvania.

50-Year Mortgage

- The 50-year mortgage – a solution to home affordability?
  - In November 2025 the Trump administration backed a 50-year mortgage option to reduce the affordability issues residential homebuyers are facing.
    - Spreading the overall purchase price over a longer term would reduce monthly payments, making immediate home purchasing more affordable.
      - Assuming a $500,000 mortgage at an interest rate of 6.5%, the monthly payment on a 30-year mortgage would be about $3,160/month vs. $2,800/month on a 50-year mortgage.
      - Monthly reduction can also improve the debt-to-income ratios of potential homebuyers, allowing potential homebuyers to enter the housing market sooner, retain more monthly cash flow, and qualify for more expensive homes.
    - However, there are various disadvantages, including the following:
      - Given the longer term, the aggregate interest payments would increase exponentially. The total interest paid on a $500,000 mortgage with an interest rate of 6.5% in a 30-year mortgage would be about $638,000 vs. $1.18 million in a 50-year mortgage.
      - During the early years of a 50-year mortgage, most payments are applied to interest, with minimal reductions of interest. This results in homeowners building equity in their home much more slowly.
      - 50-year mortgages are bound to have higher interest rates than 30-year mortgages, given the longer duration of risks to the lender and slower principal repayment.
      - Historical limited appetite from secondary mortgage purchasers such as Fannie Mae, Freddie Mac, and Ginnie Mae for 50-year mortgages, which reduces liquidity for this product and therefore creates higher risks to potential originators.
  - In spite of the downsides, according to a recent TD Bank U.S. survey of Americans planning to buy their first home in 2026, about 74% of respondents would consider using a 50-year mortgage if available.

Other Alternative / Emerging Products

Other "alternative" products (including long-standing products) have seen increased popularity in recent years:

- Given housing affordability pressures, some other "alternative" products have seen increased popularity in recent years:
  - Fractional / co-ownership mortgages
  - Assumable mortgages
  - Rent-to-own agreements
- These products come with their own legal challenges – just a few notable examples:
  - Fractional / co-ownership mortgages:
    - Underwriting, pulling credit, and adverse actioning multiple borrowers
    - Loss mitigation and loan modifications across varying credit profiles
  - Rent-to-own agreements:
    - Contract classification (i.e., lease-option, installment sale, etc.)
    - Credit requirements in unique financing arrangement
    - Landlord-tenant laws applicable

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Related Updates, Final Thoughts

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Related Updates

- Congress considers legislation on banning institutional investors from purchasing single-family homes (H.R. 6644, 21st Century ROAD to Housing Act).
- Michigan issues bulletin on use of artificial intelligence systems by financial services providers.
- FTC issues ANPR on unfair, deceptive rental housing fee practices.
- Rohit Chopra remains involved in state-level consumer financial protection efforts.
  - Will serve as senior advisor to Consumer Protection and Affordability Working Group of the Progressive State Leaders Committee (policy affiliate at Democratic Attorneys General Association).
  - Appointed to lead California's new Business and Consumer Services Agency.

Final Thoughts

- Which developments could affect product mix, underwriting, or pricing in the next 6 to 12 months?
- Where do state overlays meaningfully increase mortgage compliance complexity?
- Do new product or digital-process initiatives require refreshed governance, vendor oversight, or consumer-facing disclosures?
- Mortgage regulation in 2026 is defined less by a single blockbuster issue than by multiple targeted developments across the life cycle.
- Affordability, modernization, and product innovation are shaping both regulatory attention and business strategy.
- A practical legal response means tracking change across origination, servicing, fair lending, product design, and secondary-market execution.

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