

A Framework for Consumer Protection in Home Mortgage Lending

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Description of Project

- Exercise in thinking through issues in the structure of mortgage regulation on the federal level
 - who? what? how?
- Not focusing on specific practices or terms that should be regulated



Mortgage Market: Constant Change

- Last 20 years: few brokers → broker dominated → few brokers today
- Structured finance and securitization
- Outsourcing of due diligence
- Regulatory structure needs to:
 - take into account new structure
 - be flexible enough to respond to future changes



Who Might be Subject to Mortgage Regulation?

- Origination channel
 - function, not name
- Assignees/ owners of notes
 - policing function



Preemption

- Federal law as floor or ceiling
 - pros and cons
- Regulatory pre-emption
 - OTS/ OCC preemption rules



Who Makes and Enforces the Rules?

- Rule-making: one or more agencies
- Enforcement
 - federal agency or agencies
 - states
 - Individuals
 - municipalities



What do the Rules Look Like?

- Hard v. soft law
- Rules v. standards
- Safe harbors
- Waivers



Conclusion

- Crafting structure of federal mortgage regulation is challenging
- Success depends on:
 - looking at the past
 - using information to inform structure (no more flying blind)
 - looking forward:
 - engaging in ongoing review of products and consumer disclosures (regulators can't fall behind the market)

