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)