



Washington Update On Lending
Paul Smith
ABA Sr. Counsel, Office of Regulatory Policy
Louisiana Bankers Association
Bank Counsel Conference
November 16, 2007



Congressional and Legislative Update

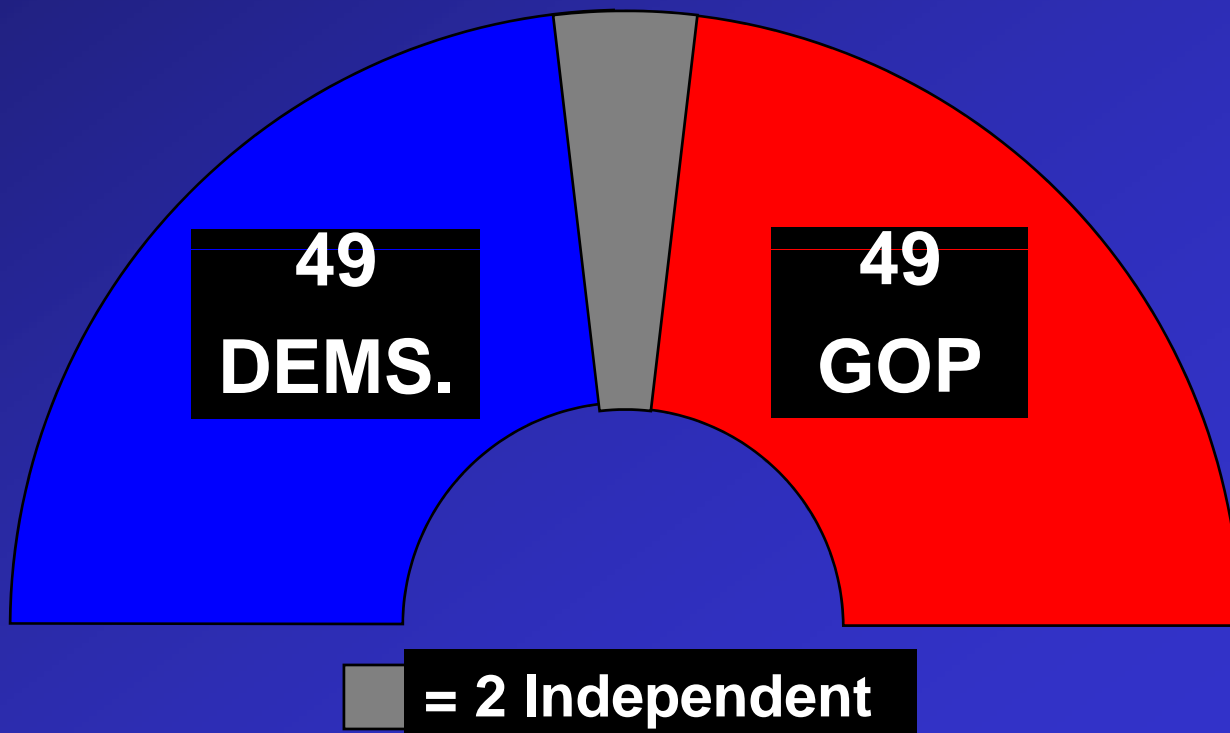
Results of the 2006 Congressional Elections

The 2006 elections gave Democrats control of Congress.

As a result, the legislative agenda has completely changed.

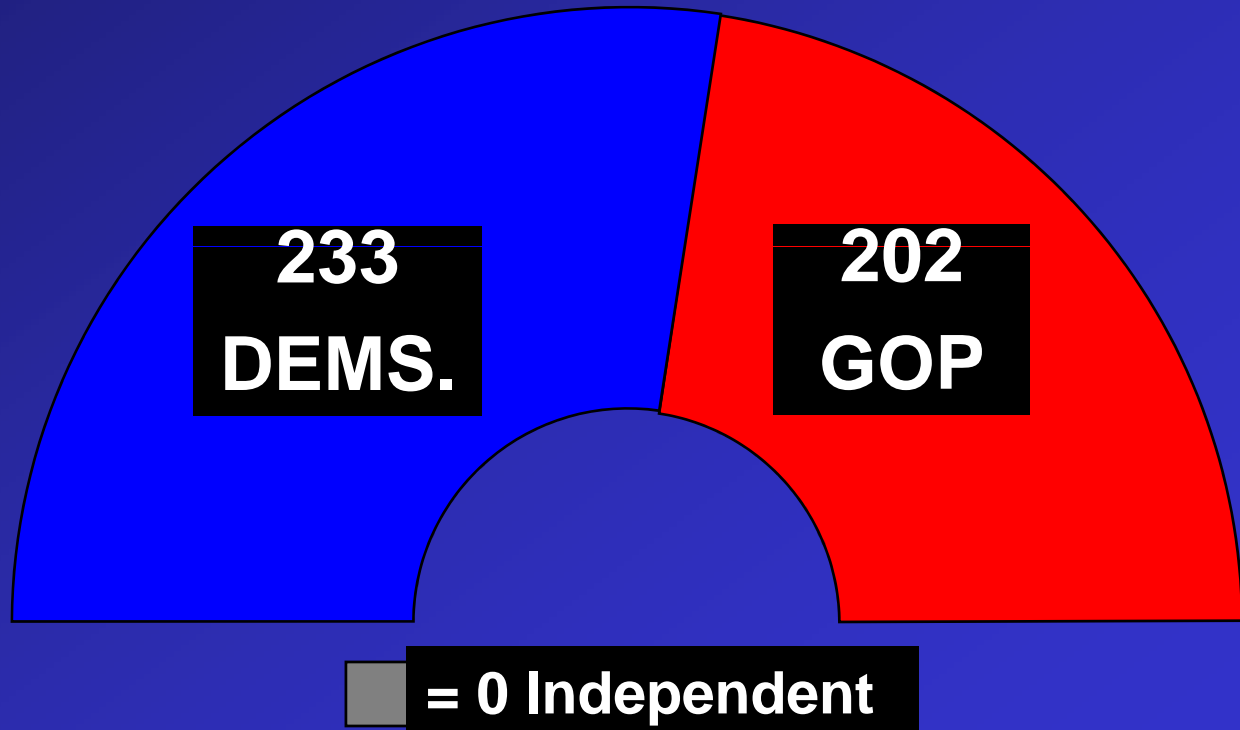
Results of the 2006 Senate Race

Democrats added five seats, and two Independents (caucusing with Democrats) were elected.



Results of the 2006 House Race

Democrats added 31 seats to take control.



New Democratic Congress

House Committee on Financial Services



Committee Chairman
Barney Frank, D - MA

Senate Committee on Banking, Housing and Urban Affairs



Senate Committee Chairman
Christopher Dodd, D - CT

The Agenda has changed

Hearings since January 2007

- Preemption, Watters v. Wachovia
- Subprime/predatory lending issues
- The subprime foreclosure crisis
- Credit Cards and consumer protection
- Consumer protection from overdraft fees
- Data breach

The Agenda has changed

Legislation that has been introduced or is actively being considered includes:

- **New restrictions on credit card practices.**
- **Cramdown on mortgages in bankruptcy.**
- **Federal regulation of mortgage lending and mortgage brokers.**
- **Protections against predatory lending and restrictions on subprime lending**
- **Restrictions on overdraft protection.**

The Agenda has changed

New restrictions on credit card practices.

- **Banning universal default.**
- **Banning double-cycle billing.**
- **More complete and visible disclosures.**
- **Changes to the billing statement to show the consumer the effect of making the minimum payment.**

The Agenda has changed

Federal regulation of mortgage brokers.

- Federal licensing or federal database.
- Fiduciary duty to borrower to obtain the best terms and conditions.
- Full disclosure of fees and terms.
- Probably requiring early disclosure.
- Minimum federal standards
- Preemption of state laws?
- Assignee liability/safe harbor

The Agenda has changed

Protections against predatory lending and restrictions on subprime lending

- An ability to repay standard.
- Much more extensive disclosure of terms, including taxes and insurance.
- Banning some terms, such as prepayment penalties.
- Requiring escrow for insurance and taxes on subprime loans.

The Agenda has changed

Other legislation being considered:

- **New restrictions on the use of SSNs and setting standards for response to data breach.**
- **Expansion of the Farm Credit System's lending authority.**
- **Restricting ownership of ILCs by commercial companies.**

The Agenda has changed

New restrictions on the use of SSNs

- Prohibit use of SSNs except as authorized by the Social Security Administration, or
- Prohibit use of SSNs except as provided by FTC, with
- Possible exemption of federally insured financial institutions, but not in all bills.

The Agenda has changed

Standards for response to data breach.

- **Would set a standard for determining that a data breach was serious enough to require notifying all possibly affected parties.**
- **Possible liability to the card issuers and consumers for costs.**
- **A number of different remedies being considered.**

Farm Credit System *Horizons Project*

The 2007 Farm Bill contains provisions that substantially expand the powers of the Farm Credit System (FCS) by authorizing it to make:

- Financing Main Street businesses and large corporate firms
- Home mortgage lending in towns with up to 6,000 residents

Recent Congressional Actions

“The Industrial Bank Holding Company Act” (H.R. 698) by Frank and Gillmor:

- Affiliations formed pre-1/29/07 are grandfathered, but subject to the jurisdiction of the FDIC
- Affiliations formed between 9/30/03 and 1/29/07 are also subject to branching and activity restrictions
- No new affiliations

Bill has passed the House and is pending in the Senate. There is a similar Senate bill.



Regulatory Update

Regulatory Update

This has been a very active year:

- **Guidance on CRE Concentrations**
- **Guidance on Nontraditional Mortgages**
- **Guidance on Subprime Lending**
- **DOD regulations on the Talent Amendment**
- **Reg Z/HOEPA proposals**
- **OTS UDAP ANPR**

Regulatory Update

Final Guidance on Concentrations of CRE. December, 2006

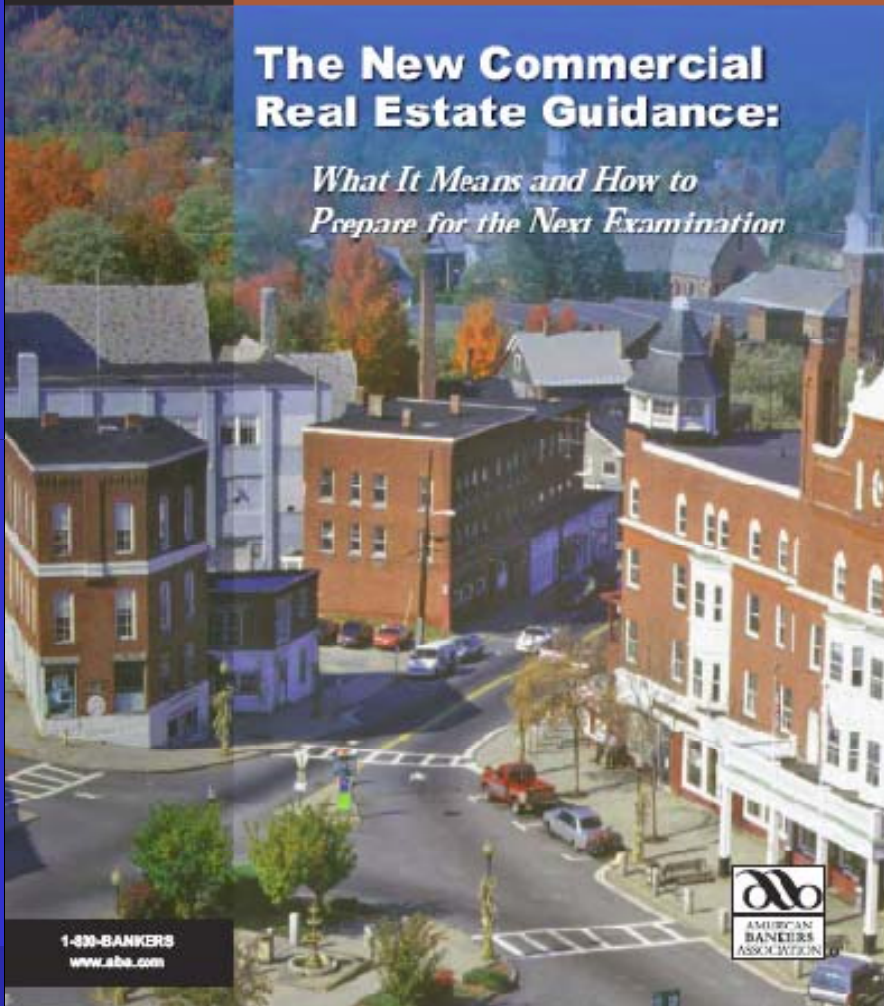
- **Significant changes were made as a result of the comment process.**
- **Overall, ABA has not heard much complaint from bankers about examinations until recently.**
- **Regulatory concern about CRE market.**
- **Review your policies and your market.**

ABAWorks
on Commercial Real Estate

ABA MEMBERS ONLY

The New Commercial Real Estate Guidance:

*What It Means and How to
Prepare for the Next Examination*



1-800-BANKERS
www.aba.com

ABA prepared
an ABAWorks
on the CRE
Guidance.

See ABA
website for
download by
ABA member
banks.

Regulatory Update

Guidance on Nontraditional Mortgages

- Applies to I/O and Option ARMs.
- Requires disclosures of terms that might lead to payment shock.
- Requires earlier disclosure than Reg Z: during the “shopping phase”.
- The Agencies issued suggested illustrations to use as models of disclosure.
- Requires determining the ability to pay on the fully indexed rate over the full amortization of the loan (see the footnotes).
- Warns against risk layering, such as low doc loans and piggyback second loans.

Regulatory Update

Subprime/Predatory Lending

- Hearings in Congress have placed considerable pressure on the federal banking regulators, especially the Federal Reserve Board.
- Congress has also placed pressure on the OCC to show it is protecting consumers because of the Watters v. Wachovia.

Regulatory Update

Statement on Subprime Lending (June 2007)

- **New subprime guidance that goes past the Nontraditional Mortgages Guidance.**

Anticipated rulemaking on mortgage lending by the Federal Reserve Board

- **The Fed has held a June 14 hearing on the need for additional regulation of the mortgage market under the Fed's powers to end abusive lending.**

Regulatory Update

Statement on Subprime Lending

- **Applies to ARMs with characteristics that might lead to payment shock made to subprime borrowers.**
- **Uses a broad definition of “subprime”**
- **Note that the definition goes to the borrower, not to the terms of the loan.**
- **Presume every applicant is subprime for ARMs with payment shock features, unless the borrower can be clearly documented as prime**

Regulatory Update

Talent Amendment regulations from DOD

- Applies to types of products, such as:
 - Payday loans
 - Vehicle title loans, and
 - Tax refund anticipation loans.
 - Does not exclude banks and savings associations from coverage.
- Now final for Oct. 1, 2007.

Regulatory Update

Proposed Reg Z – open-end credit revisions.

(a 199 page proposal in the Federal Register.)

- **Many more disclosures for credit cards.**
- **Significant changes to applications, billing statements, notice of change in terms.**
- **Additional disclosures for other open-end credit (not secured by a home).**
- **HELOCs will be the subject of a later proposal.**
- **Comment period closed in October 2007.**

Regulatory Update

FRB HOEPA Hearing/Request for Comment

- The Fed held a hearing on June 14 on whether it needed to issue additional regulations to prevent mortgage abuse - comments are due Aug. 14

Questions are on:

- Should prepayment penalties be banned on subprime or all mortgage loans? Should there be better disclosure?
- Should tax and insurance payments be included in underwriting calculations or should escrows be required on all subprime loans?

Regulatory Update

FRB HOEPA Hearing/Request for Comment

Questions for comment:

- **Should stated income or low doc loans be prohibited for certain loans, such subprime? Should stated income or low doc loans be prohibited for higher-risk loans, for example, for loans with high loan-to-value ratios?**
- **Should lenders be required to underwrite all loans based on the fully-indexed rate and fully amortizing payments? Is a loan unaffordable if the borrower's DTI ratio exceeds 50 percent? Are there specific consumer disclosures that would help address concerns about unaffordable loans?**

Regulatory Update

HMDA Developments

- Private NAACP suits on disparate impact discrimination of the use of broker percentages as payment.
- Private class actions against Countrywide for disparate impact
- Request from Reps. Watt, Maloney and Frank for a GAO study by early 2008 on the value of amending Reg B to require collection of race and gender data on other consumer and small business loans.

Regulatory Update

Additional regulatory actions:

CRA

ALLL Guidance revised

**Just announced pilot joint lending
compliance effort with the FRB, the
OTS, the FTC, the states through CSBS
and AARMR.**

Regulatory Update

Community Reinvestment Act

- **OTS realignment with the FDIC, OCC and FRB.**
- **Just proposed CRA Q&A revisions that include an option for banks and savings associations that are ISBs to classify qualifying affordable home mortgage loans and small business and small farm loans as “community development” loans.**

Regulatory Update

In December 2006, the Agencies issued a comprehensive revision of the Allowance for Loan and Lease Losses Guidance and an additional FAQ that eliminates suggested percentages and requires each bank to separately establish and document its methodology for establishing reserves.

This is largely the result of continuing conflict with the SEC and FASB over “using reserves to manage earnings” versus the Agencies’ concerns over reducing reserves to an unsafe and unsound level.

Regulatory Update

The FRB, OTS, FTC, CSBS, and AARMR pilot supervision program on non-depository lenders with significant subprime lending operations. The agencies will select a sample of entities for review or investigation.

Will be active in the 4th quarter of 2007.



Louisiana Bankers Association Bank Counsel Conference

What will the 2008 elections bring?

Questions?