Cross-Border Mortgage Regulation

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Canada – Legal Framework

- **Constitution Act, 1867**
  - Federal and provincial governments have power to enact laws respecting mortgages
  - Federal government has jurisdiction over banking and finance
  - Provincial governments have jurisdiction over property
Canada – Canadian Mortgage Lenders

<table>
<thead>
<tr>
<th>Federally regulated financial institutions</th>
<th>Provincially regulated</th>
<th>Mortgage finance companies</th>
<th>Mortgage investment companies</th>
<th>Alternative/other lenders</th>
</tr>
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<tbody>
<tr>
<td>Federally regulated financial institutions include banks, loan companies, and trust companies.</td>
<td>Credit unions or other lenders subject to provincial regulatory oversight.</td>
<td>Includes underwriters and service broker-originated mortgages. Quasi-regulated as they usually meet federal mortgage requirements (large amount of funding from government-sponsored securitization programs).</td>
<td>Investment and lending companies.</td>
<td>Private lenders such as corporations or individuals.</td>
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<td>Banks provide the majority of residential mortgage financing in Canada.</td>
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Canada – Mortgage originations by lender type (Toronto) Source: Bank of Canada

Chart 6: Mortgage originations in Toronto have decreased for all lender types, with a small shift in market share away from banks

Year-over-year change in volume and market share of various lender types in the Greater Toronto Area

- Big Six banks
  - From 77.5% to 72.6%
- Smaller banks
  - From 8.6% to 9%
- Credit unions
  - From 2% to 2.6%
- Mortgage finance companies
  - From 6.2% to 7%
- Private lenders
  - From 5.9% to 8.7%

- Year-over-year change in volume, 2018Q2 (left scale)
- Year-over-year absolute change in market share, 2018Q2 (right scale)
Canada - OSFI

- Office of the Superintendent of Financial Institutions (OSFI)
  - independent federal government agency
  - regulates and supervises federally regulated financial institutions (FRFIs) and federally regulated private pension plans
  - interprets legislation and regulation, develops rules, ensures FRFIs are meeting requirements and are in sound financial condition
Guideline B-20 – Residential Mortgage Underwriting Practices and Procedures

- Sets out OSFI’s expectations for prudent residential mortgage underwriting
- Applicable to all FRFI’s engaged in residential mortgage underwriting and/or the acquisition of residential mortgage loan assets in Canada
Guideline B-20 sets out five fundamental principles for sound residential mortgage underwriting

Principle 3: FRFIs should adequately assess the borrower’s capacity to service his/her debt obligations on a timely basis

New stress test requirement under Principle 3 came into effect in Canada on January 1, 2018
Canada – Stress test rule

- Applies to borrowers with uninsured mortgages
  - Borrowers must prove they can make payments if interest rates rise
    - Borrowers must have the ability to afford payments based on the greater of the Bank of Canada’s five-year benchmark rate or the Borrower’s current mortgage rate plus two percentage points

- Prior to the new stress test rule, only insured borrowers were subject to the test
Canada – Uninsured vs Insured

- **Insured borrower** → Borrower with a down payment of **under 20%** must purchase mortgage insurance
  - Adds to cost of loan as insurance premiums may be high & the beneficiary is the lender (to protect the lender in the event of default)
  - Mortgage insurance is purchased from the Canada Mortgage and Housing Corporation (CMHC) or other private insurers (e.g., Genworth Financial, Canada Guaranty)

- **Uninsured borrower** → Borrower with a down payment of **more than 20%** does not have to purchase mortgage insurance
Canada: Impact of stress test

- Mortgage Professionals Canada 2018 survey
  - 54% of would be home buyers expect the stress test to have “significant negative impacts” on their ability to buy
  - Markets outside of the “hot” markets of Toronto and Vancouver have been “aggravated” by the stress tests, resulting in weaker housing activity
Canada: Other changes under Guideline B-20

- **Loan-to-value (LTV) ratios**
  - FRFIs required to establish and adhere to LTV ratio limits that are reflective of risk and updated as the housing and economic markets evolve.

- **Restrictions on certain lending arrangements**
  - FRFIs are prohibited from arranging with another lender a mortgage or combination of a mortgage and other lending products where the result is the circumvention of the FRFI’s LTV ratio or other limits in the FRFI’s policies or under law.
Canada: Outlook re stress tests

- Industry stakeholder concerns that the stress test rule is far reaching and is having negative implications on the housing and economic market.
  - Banks and other lobbyists asking for stress test to be flexible and adjusted to account for current housing market conditions and changes in interest rates.
  - OSFI may consider amending the stress test as it “monitors the environment on a continual basis and will make adjustments to its guidance when appropriate”.
Cross-Border Mortgage Regulation
United States – Legal Framework

• Federal and State Laws Governing Particular Subject Matter:
  • Federal Truth-in-Lending Act, Electronic Funds Transfer Act
  • Federal Gramm-Leach-Bliley Act, state cybersecurity, privacy, and data breach laws
  • UDAP, UDAAP, and Unfair Trade Practices

• Federal and State Laws Governing Depository Institutions Only:
  • Each federal prudential regulator has an enabling act
  • Privacy standards, cybersecurity standards, safety and soundness standards

• Federal and State Laws Governing Nondepository Institutions Only:
  • SAFE Act
  • State licensing laws – money transmitters, consumer lenders, mortgage lenders, etc.
United States – Regulators

- Depository institutions may be subject to dual oversight:
  - OCC, FDIC, Federal Reserve Board, and NCUA
  - State banking regulators
  - Consumer Financial Protection Bureau
- CFPB – enumerated list of statutes related to consumer finance.
- FTC – privacy, cybersecurity, and trade practices.
- State regulators (and attorneys general):
  - Money transmission, payment instruments, etc.
  - Consumer lending laws;
  - UDAP and trade practices;
  - Licensing.
Ability to Repay and Qualified Mortgages

• Truth-in-Lending Act and Regulation Z requires lenders to determine a consumer has a reasonable ability to repay a loan.
  • Ability-to-repay – defined in Regulation Z.
  • Factors
  • Considerations

• Qualified mortgages:
  • Appendix Q
  • GSE provisions
  • FHA
  • VA
  • Sunset?
ATR/QM Challenges and Complications

• CFPB 5 Year Lookback Report.
• Sunset:
  • What happens when the patch expires?
  • GSE conservatorship
• FHA and VA loans
• Property Assessed Clean Energy Financing