Syllabus

ADMINISTRATIVE LAW
Fall 2008 – Room LAW 105
1:00-2:15 p.m. Tuesday and Friday

REQUIRED TEXT: Administrative Law: 2nd ed.
Roger Healy, Krotoszynski Aspen Pub, 2008,

RECOMMENDED READING: Administrative Law and Process in a Nutshell
Gellhorn & Levin West 6th ed. 2006,
ISBN-0-314-14436-6

PURPOSE: Administrative Law incorporates public policy, economic social values, politics, and basic democratic principles into an understanding of government decision making. Administrative law includes regulatory compliance and enforcement of legislation, rules/regulations and adjudications. Administrative Law also engages the legislature, the chief executive, government agencies and the judiciary. This course attempts to make students aware of current developments, and to inform students about the law of public administration and its impact on the interaction of individual citizens with government bureaucracy. In addition student attention will be directed to the ongoing constitutional dialogue that occurs in regard to agency policy, agency rulemaking and adjudication. Finally students will develop an understanding and appreciation for administrative powers, procedures and practices.

COVERAGE: Administrative Law will mean different things to different people. Practicing lawyers, judges, bureaucrats, students and citizens have different perspectives and points of view about government regulations, regulatory compliance, judicial oversight and legislative directives. One’s point of view, personal values and political orientation will influence how one responds to issues addressed by agencies and appellate courts. Administrative Law requires those studying this area of law to consider the particularities of the organic (enabling) statute, the rules and procedures of the agency; the historical, political economic and social factors; judicial decisions, agency procedures and constitutional standards. Specific attention will be given to the history and development of administrative regulations and the law associated with government agencies especially federal agencies. Special time and energy will be devoted to the Administrative Procedure Act which establishes standards for agency procedural requirements, rulemaking, adjudication and requirements for public participation in agency decision making. Attention and time will also be allocated to the Freedom of Information Act, The Open Meeting Act, Negotiated Rulemaking, The Role of Administrative Law Judges the Privacy Act, The Advisory Committee Act, and The ADR Act and Administrative “Due Process”. Time will also be devoted to practice aspects of Administrative Law.

CLASS FORMAT: Lectures, group participation, questions/answers, class discussion, case studies and study of appropriate statutes and case law. Includes reading assignments, preparation of an agency comment, optional research paper and a final exam.
OBJECTIVES: Introduce students to the regulatory role of agencies and their legal and political limits; provide a brief history and background for understanding the development of administrative law, quasi-legislative and quasi-judicial aspects of agency action; and the importance of informal aspects of administrative law. Provide students with a basic understanding of federal legislation important to administrative practices. Students should, when the class is complete be familiar with the classic cases of administrative law, the changing emphasis regarding standards within administrative law and recent developments in administrative law. Students will learn the importance of procedural questions and how procedure differs in rulemaking and adjudication, formal and informal actions and in how courts review administrative action. Finally students will learn about the powers of the executive and Congress and how they influence agency actions.

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FINAL EXAMINATION AND GRADING POLICY: Three-hour final examination. The exam accounts for two-thirds (2/3) of the final grade. The instructor reserves the right to increase the final exam grade by one half grade for any student making significant positive and regular contribution to class discussion. One third (1/3) of the final grade will be based upon a written assignment (comment).

WRITTEN ASSIGNMENT-REQUEST FOR RECONSIDERATION: On July 14, 2008 Chairman Ben S. Bernanke issued a short statement. This statement was followed by a press release from the Federal Reserve describing a recent final rule that amended Regulation Z (Truth in Lending) and was adopted under the Home Ownership and Equity Protection Act (HOEPA). Both releases are attached.

You represent a group known as Middle America Needs Help (MANH). This group argues the protection found in the final rule should also apply to Prime Market Home Loans. Your task is to submit a request for reconsideration of the final rule and to seek protections for prime market home loan recipients that are the same as the sub-prime market loans.

The request shall be six to eight 6-8 pages, typed and double-spaced pages. The text should be 12-point font. Margins should be 1” on the right side, top, bottom, and left margins should be 1 ¼”. The reconsideration is due in the Registrar's Office on Dec. 2, 2008.

OPTIONAL: Students may submit a research paper for a portion of their final grade. If the paper is C+ quality or better, the final course grade will be raised one-half grade. The topic of the paper must be approved by the instructor by October 30, 2008. A two-page description must be submitted to the instructor by November 11, 2008. The paper should be a typed, double-spaced, and 18-20 pages in length. Text should be in a 12-point font. Margins should be 1” on the right side and top; bottom, and left margins should be 1 ¼”. The paper should include a table of contents, footnotes, bibliography and a separate two page executive summary. The extra credit paper is due December 2, 2008. The final copy will not be returned.

ATTENDANCE: Students are expected to attend class and be prepared each day. According to school policy, students may miss six hours of class. When students miss the seventh hour of class a ten-page paper must be submitted to the instructor. If an eighth hour of class is missed, a second ten-page typed paper will be turned in. On the ninth hour missed, the name of the student will be submitted to the Dean’s office and the student will be dropped from the class. Remember each session is three hours. This policy becomes operational after you miss the two days of classes.

COMPUTER POLICY. You may use laptop computers or other electronic devices in class to take notes and access course related materials. You should not use your laptop or electronic devices for other purposes.

In addition to the usual courtesies due to your classmates, refrain from text-messaging and email, using cell phones, pagers, or any other communication device. Refrain also from displaying wallpaper, screen savers, or other material on your computer screen that can reasonably be expected to distract your classmates.
Statement by Chairman Ben S. Bernanke

July 14, 2008

We are meeting today to consider regulatory amendments to better protect consumers in their participation in the mortgage market. Rates of mortgage delinquencies and foreclosures have been increasing rapidly lately, imposing large costs on borrowers, their communities, and the national economy. Although the high rate of delinquency has a number of causes, it seems clear that unfair or deceptive acts and practices by lenders resulted in the extension of many loans, particularly high-cost loans, that were inappropriate for or misled the borrower. The proposed final rules we will discuss today are intended to protect consumers from unfair or deceptive acts and practices in mortgage lending, while keeping credit available to qualified borrowers and supporting sustainable homeownership.

Importantly, the new rules will apply to all mortgage lenders, not just those supervised and examined by the Federal Reserve. Besides offering broader protection for consumers, a uniform set of rules will level the playing field for lenders and increase competition in the mortgage market, to the ultimate benefit of borrowers. We will work collaboratively with our fellow regulators, both state and federal, to see that the rules are consistently applied and vigorously enforced.

The Board received extensive public comment on its proposed rulemaking, which we found very helpful. Much of that public input is reflected in the final rules that we will discuss today. I would also like to take this opportunity to thank the Federal Reserve staff members who developed and refined these rules for their hard work and dedication.

I will now turn to Governor Randall Kroszner to discuss the proposal in greater detail.
FEDERAL RESERVE press release

Release Date: July 14, 2008

For immediate release

The Federal Reserve Board on Monday approved a final rule for home mortgage loans to better protect consumers and facilitate responsible lending. The rule prohibits unfair, abusive or deceptive home mortgage lending practices and restricts certain other mortgage practices. The final rule also establishes advertising standards and requires certain mortgage disclosures to be given to consumers earlier in the transaction.

The final rule, which amends Regulation Z (Truth in Lending) and was adopted under the Home Ownership and Equity Protection Act (HOEPA), largely follows a proposal released by the Board in December 2007, with enhancements that address ensuing public comments, consumer testing, and further analysis.

"The proposed final rules are intended to protect consumers from unfair or deceptive acts and practices in mortgage lending, while keeping credit available to qualified borrowers and supporting sustainable homeownership," said Federal Reserve Chairman Ben S. Bernanke. "Importantly, the new rules will apply to all mortgage lenders, not just those supervised and examined by the Federal Reserve. Besides offering broader protection for consumers, a uniform set of rules will level the playing field for lenders and increase competition in the mortgage market, to the ultimate benefit of borrowers," the Chairman said.

The final rule adds four key protections for a newly defined category of "higher-priced mortgage loans" secured by a consumer's principal dwelling. For loans in this category, these protections will:

- Prohibit a lender from making a loan without regard to borrowers' ability to repay the loan from income and assets other than the home's value. A lender complies, in part, by assessing repayment ability based on the highest scheduled payment in the first seven years of the loan. To show that a lender violated this prohibition, a borrower does not need to demonstrate that it is part of a "pattern or practice."
- Require creditors to verify the income and assets they rely upon to determine repayment ability.
- Ban any prepayment penalty if the payment can change in the initial four years. For other higher-priced loans, a prepayment penalty period cannot last for more than two years. This rule is substantially more restrictive than originally proposed.
- Require creditors to establish escrow accounts for property taxes and homeowner's insurance for all first-lien mortgage loans.

"These changes have made for better rules that will go far in protecting consumers from unfair practices and restoring confidence in our mortgage system," said Governor Randall S. Kroszner.

In addition to the rules governing higher-priced loans, the rules adopt the following protections for loans secured by a consumer's principal dwelling, regardless of whether the loan is higher-priced:
- Creditors and mortgage brokers are prohibited from coercing a real estate appraiser to misstate a home's value.
- Companies that service mortgage loans are prohibited from engaging in certain practices, such as pyramiding late fees. In addition, servicers are required to credit consumers' loan payments as of the date of receipt and provide a payoff statement within a reasonable time of request.
- Creditors must provide a good faith estimate of the loan costs, including a schedule of payments, within three days after a consumer applies for any mortgage loan secured by a consumer's principal dwelling, such as a home improvement loan or a loan to refinance an existing loan. Currently, early cost estimates are only required for home-purchase loans. Consumers cannot be charged any fee until after they receive the early disclosures, except a reasonable fee for obtaining the consumer's credit history.

For all mortgages, the rule also sets additional advertising standards. Advertising rules now require additional information about rates, monthly payments, and other loan features. The final rule bans seven deceptive or misleading advertising practices, including representing that a rate or payment is "fixed" when it can change.

The rule's definition of "higher-priced mortgage loans" will capture virtually all loans in the subprime market, but generally exclude loans in the prime market. To provide an index, the Federal Reserve Board will publish the "average prime offer rate," based on a survey currently published by Freddie Mac. A loan is higher-priced if it is a first-lien mortgage and has an annual percentage rate that is 1.5 percentage points or more above this index, or 3.5 percentage points if it is a subordinate-lien mortgage. This definition overcomes certain technical problems with the original proposal, but the expected market coverage is similar.

One element of the original proposal has been withdrawn. The Federal Reserve Board had proposed for public comment certain requirements pertaining to so-called "yield-spread premiums." During the intervening period, the Board engaged in consumer testing that cast significant doubt on the effectiveness of the proposed rule. As part of its ongoing review of closed-end loan rules under Regulation Z, however, the Board will consider alternative approaches.

In finalizing the rule, the Board carefully considered information obtained from testimony, public hearings, consumer testing, and over 4,500 comment letters submitted during the comment period. "Listening carefully to the commenters, collecting and analyzing data, and undertaking consumer testing, has led to more effective and improved final rules," Governor Kroszner said.

The new rules take effect on October 1, 2009. The single exception is the escrow requirement, which will be phased in during 2010 to allow lenders to establish new systems as needed.

In a related move, the Board is publishing for public comment a proposal to revise the definition of "higher-priced mortgage loan" under Regulation C (Home Mortgage Disclosure), which requires lenders to report price information for such loans, to conform to the definition the Board is adopting under Regulation Z.
Release Date: July 14, 2008

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