

Dodd-Frank Wall Street Reform and Consumer Protection Act (H.R. 4173)

President Obama has signed into law H.R. 4173 (the “Dodd-Frank bill”), a massive legislative effort addressing multiple aspects of the financial sector. Following is a brief summary of Titles IX, X and XIV of the Dodd-Frank bill, which are of particular interest and relevance to the mortgage industry.

Title IX – Investor Protections and Improvements to the Regulation of Securities

- Contains a credit risk retention provision requiring securitizers to retain an economic interest of at least 5% of credit risk of assets they securitize.
- Exemption from risk retention requirement for “qualified residential mortgages” and loans insured or guaranteed by the U.S. government.

Title X – The Consumer Financial Protection Act of 2010

- Creates new regulatory agency – the Bureau of Consumer Financial Protection (the “Bureau”) to be housed within the Federal Reserve Board.
- The Bureau has authority to examine and enforce consumer protection regulations for all mortgage related businesses, large non-bank financial companies, and banks and credit unions with assets greater than \$10 billion.
- The Bureau will be responsible for enforcing “federal consumer financial law” – essentially, almost all existing federal laws regulating consumer financial products and service providers – including but not limited to TILA, FCRA (portions), RESPA, HMDA, HOEPA, FDCPA, ECOA.
- Bureau comes into existence upon the President’s signature. However, authorities and personnel must first be transferred to Bureau. This will not happen until a “designated transfer date” is determined by the Treasury Secretary.

Title XIV – The Mortgage Reform and Anti-Predatory Lending Act

- Expands TILA to apply to “mortgage originators” in addition to creditors (*i.e.* those that actually extend credit to consumers).
- “Mortgage originator” includes loan originators and brokers (also creditors in table-funded transactions for certain provisions).
- Requires licensure/registration of all mortgage originators in accordance with applicable state or federal law and the inclusion of the NMLS unique identifier of the mortgage originator on all loan documents.
- Prohibits payment of YSP under new anti-steering provisions. A mortgage originator is generally prohibited from receiving from any person, and any person is generally prohibited from paying to a mortgage originator, any compensation that varies based on the terms of the loan (other than the principal amount).
- Anti-steering provisions do not prohibit incentive payments to a mortgage originator based on the number of residential mortgage loans originated during a certain period of time.

- Generally prohibits a mortgage originator from receiving any compensation from any person other than the consumer, with certain limited exceptions.
- Includes new section requiring all creditors consider the borrower's ability to repay. Sets forth factors that must be considered in determining a borrower's ability to repay.
- Creates presumption of ability to repay for "qualified mortgage" loans, which is rebuttable. Sets forth definition of "qualified mortgage."
- Prohibits prepayment penalties for all loans that are not qualified mortgages. Prepayment penalties are limited and must be phased out for qualified mortgages.
- Prohibits mandatory arbitration provisions for loans secured by principal dwellings.
- Establishes new disclosure requirements regarding partial payments, ARM loans, fees and settlement charges, escrow payments, negative amortization, anti-deficiency protection provisions.
- Substantially revises HOEPA thresholds and definitions. Reduces both APR and points and fees thresholds. Ties APR threshold to APOR rather than Treasury securities. Adds third threshold regarding prepayment penalties – a loan will automatically be high-cost if it provides for a prepayment penalty more than 36 months after closing, or in excess of 2% of the amount prepaid.
- Revises points and fees definition to include (1) all compensation directly or indirectly paid by a consumer or creditor to a mortgage originator, including a creditor in a table-funded transaction; (2) credit life, disability, credit property, debt cancellation premiums and charges payable at or before closing; (3) all prepayment fees or penalties which may be charged under the terms of the loan, and all prepayment fees or penalties incurred if the loan refinances a previous loan made or currently held by the same creditor or an affiliate. Will exclude from points and fees calculation government agency insurance premiums and any private insurance premium up to a certain amount (provided certain conditions are met). Will also exclude up to two bona fide discount points under specific conditions.
- Adds new data elements for HMDA reporting.
- Requires mandatory escrow accounts for certain first lien loans for a minimum of five years.
- Amends TILA and RESPA relative to servicing practices
- Establishes new requirements regarding appraisals, appraiser independence, appraiser management companies.