

## Title XIV - Mortgage Reform and Anti-Predatory Lending Act

Short title: "Mortgage Reform and Anti-Predatory Lending Act"

Subtitles A, B, C, and E are designated as Enumerated Consumer Law under the Bureau of Consumer Financial Protection

Subtitle A - Residential Mortgage Loan Organization Standards

A "Residential Mortgage Originator" is defined as any person who either receives compensation for or represents to the public that they will take a residential loan application, assist a consumer in obtaining a loan, or negotiate terms for a loan. A residential Mortgage Originator is not a person who provides financing to an individual for the purchase of 3 or more properties in a year, or a licensed real estate broker/associate.

All Mortgage Originators are to include on all loan documents any unique identifier of the mortgage originator provided by the Registry described in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008

For any residential mortgage loan, no mortgage originator may receive compensation that varies based on the term of the loan, other than the principal amount. In general, the mortgage originator can only receive payment from the consumer, except as provided in rules that may be established by the Board. Additionally, the mortgage originator must verify the consumer's ability to pay. A violation of the "ability to repay" standard, or a mortgage that has excessive fees or abusive terms, may be raised as a foreclosure defense by a borrower against a lender without regard to any statute of limitations. The Act bans the payment of yield spread premiums or other originator compensation that is based on the interest rate or other terms of the loans.

Subtitle B - Minimum Standards for Mortgages

In effect, this section of the Act establishes national underwriting standards for residential loans. It is not the intent of this section to establish rules or regulations that would require a loan to be made that would not be regarded as acceptable or prudent by the appropriate regulator of the financial institution. However, the loan originator shall make a reasonable and good faith effort based on verified and documented information that "at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to the terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and other assessments." Also included in these calculations should be any payments for a second mortgage or other subordinate loans. Income verification is mandated for residential mortgages. Certain loan provisions, including prepayment penalties on some loans, and mandatory arbitration on all residential loans, are prohibited.

This section also defined a "Qualified Mortgage" as any residential mortgage loan that the regular periodic payments for the loan does not increase the principal balance or allow the consumer to defer repayment of principal (with some exceptions), and has points and fees being less than 3% of the loan amount. The Qualified Mortgage terms are important to the extent that the loan terms plus an "Ability to Pay" presumption create a safe harbor situation concerning certain technical provisions related to foreclosure.

Subtitle C - High-Cost Mortgages

A "High-Cost Mortgage" as well as a reverse mortgage are sometimes referred to as "certain home mortgage transactions" in the Fed's Regulation Z (the regulation used to implement various sections of the Truth in Lending Act) High-Cost Mortgage is redefined as a "consumer credit transaction that is secured by the consumer's principal dwelling" (excluding reverse mortgages which are covered in a separate sections), which include:

\* Credit Transactions secured by consumer's principal dwelling and interest rate is 6.5% more than the prime rate for comparable transactions

\* subordinated (ex. second mortgage) if secured by consumer's principal dwelling and interest

rate is 8.5% more than the prime rate for comparable transactions

- \* Points and Fees, excluding Mortgage Insurance, if the transaction is:
  - o less than \$20,000, total points and fees greater than 8% or \$1000
  - o greater than \$20,000, total points and fees greater than 6%

\* under certain conditions, if the fees and points may be collected more than 36 months after loan is executed

New provisions for calculating adjustable rates as well as definitions for points and fees are also included.

When receiving a High-Cost mortgage, the consumer must obtain pre-loan counseling from a certified counselor.

Requirements to Existing Residential Mortgages

It appears that this section of the code makes a few changes to existing contracts by:

- \* disallowing Balloon Payments
- \* disallowing prepayment penalties
- \* banning the practice of encouraging default on an existing loan when refinancing

Subtitle D - Office of Housing Counseling

Short title: "Expand and Preserve Home Ownership Through Counseling Act"

Within the department of Housing and Urban Development there is established the Office of Housing Counseling, whose director reports to the Secretary of Housing and Urban Development. The Director shall have primary responsibility within the Department for consumer oriented homeownership and rental housing counseling. To advise the Director, the Secretary shall appoint an advisory committee of not more than 12 individuals, equally representing mortgage and real estate industries, and including consumers and housing counseling agencies. Council members are appointed to 3 year terms. This department will coordinate media efforts to educate the general public in home ownership and home finance topics.

The Secretary of Housing and Urban Development is authorized to provide grants to HUD-approved housing counseling agencies and State Housing Finance Agencies to provide education assistance to various groups in home ownership.[174] The Secretary is also instructed, in consultation with other Federal agencies responsible for financial and banking regulation, to establish a database to track foreclosures and defaults on mortgage loans for 1 through 4 unit residential properties.

Subtitle E - Mortgage Servicing

Escrow and Settlement Procedures

In general, in connection with a residential mortgage there should be established an escrow or impound account for the payment of taxes, hazard insurance, and (if applicable) flood insurance, mortgage insurance, ground rents, and any other required periodic payments. Lender shall disclose to borrower at least three business days before closing the specifics of the amount required to be in the escrow account and the subsequent uses of the funds.

If an escrow, impound, or trust account is not established, or the consumer chooses to close the account, the servicer shall provide a timely and clearly written disclosure to the consumer that advises the consumer of the responsibilities of the consumer and implications for the consumer in the absence of any such account.

RESPA Amendments

This section offers several amendments to the Real Estate Settlement Procedures Act of 1974 (or RESPA) that describe how a Mortgage servicer (those who administer loans held by Fannie Mae, Freddie Mac, etc.) should interact with consumers.

Subtitle F - Appraisal Activities

## Property Appraisal Requirements

A creditor may not extend credit for a higher-risk mortgage to a consumer without first obtaining a written appraisal of the property with the following components:

- \* Physical Property Visit - including a visit of the interior of the property
- \* Second Appraisal Circumstances - creditor must obtain a second appraisal, with no cost to the applicant, if the original appraisal is over 180 days old or if the current acquisition price is lower than the previous sale price

A "certified or licensed appraiser" is defined as someone who:

- \* is certified or licensed by the State in which the property is located
- \* performs each appraisal in conformity with Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989

The Fed, Comptroller of the Currency, FDIC, National Credit Union Administration Board, Federal Housing Agency and Bureau of Consumer Financial Protection (created in this law) shall jointly prescribe regulations.

### Automated Valuation Models

This provision provides for the use of Automated Valuation Models to be used to estimate collateral value for mortgage lending purposes.

### Quality Standards

Automated valuation models shall adhere to quality control standards designed to

- \* ensure a high level of confidence in the estimates produced by automated valuation models;
- \* protect against the manipulation of data;
- \* seek to avoid conflicts of interest;
- \* require random sample testing and reviews; and
- \* account for any other such factor that those responsible for formulating regulations deem appropriate

### Regulations

The Fed, the Comptroller of the Currency, the FDIC, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection, in consultation with the staff of the Appraisal Subcommittee and the Appraisal Standards Board of The Appraisal Foundation, shall promulgate regulations to implement the quality control standards required under this section that devises Automated Valuation Models.

### Enforcement

- \* Residential and 1-to-4 unit single family residential real estate are enforced by: Federal Trade Commission, the Bureau of Consumer Financial Protection, and a State attorney general
- \* Commercial enforcement is by the Financial regulatory agency that supervised the financial institution originating the loan

### Broker Price Opinions

Broker Price Opinions may not be used as the primary basis to determine the value of a consumer's principal dwelling; but valuation generated by an automated valuation model is not considered a Broker Price Opinion.

### Real Estate Settlement Procedures

The standard settlement form (commonly known as the HUD 1) may include, in the case of an appraisal coordinated by an appraisal management company, a clear disclosure of:

- \* the fee paid directly to the appraiser by such company
- \* the administration fee charged by such company

#### GAO Appraisal Study

Within one year, the Government Accountability Office shall conduct a study on the effectiveness and impact of various appraisal methods, valuation models and distribution channels, and on the home valuation code of conduct and the appraisal subcommittee.[182]

#### Subtitle G - Mortgage Resolution and Modification Multifamily Mortgage Resolution Program

The Secretary of Housing and Urban Development is charged with developing a program to ensure protection of current and future tenants and at-risk multifamily (5 or more units) properties. The Secretary may coordinate the program development with the Secretary of the Treasury, the FDIC, the Fed, the Federal Housing Finance Agency, and any other Federal Government agency deemed appropriate. The criteria may include:[183]

- \* creating sustainable financing of such properties, that may take into consideration such factors as:
  - o the rental income generated by such properties
  - o the preservation of adequate operating reserves
- \* maintaining the current level of Federal, State, and city subsidies
- \* funds for rehabilitation
- \* facilitating the transfer of such properties, when appropriate and with the agreement of owners

#### Home Affordability Program Modifications

Previously the Treasury Department has created the Home Affordable Modification Program, set up to help eligible home owners with loan modifications on their home mortgage debt. This section requires every mortgage servicer participating in the program and denies a re-modification request to provide the borrower with any data used in a net present value (NPV) analysis. The Secretary of the Treasury is also directed to establish a Web-based site that explains NPV calculations.[184]

#### Public Information for Making Home Affordable Program

The secretary of the Treasury is instructed to develop a Web-based site to explain the Home Affordable Modification Program and associated programs, that also provides an evaluation of the impact of the program on home loan modifications.

#### Subtitle H - Miscellaneous Provisions

- \* It is the sense of the Congress that significant structural reforms of Fannie Mae and Freddie Mac are required
- \* GAO is commissioned to study current inter-agency efforts to reduce mortgage foreclosure and rescue scams and loan modification fraud.
- \* HUD is commissioned to study the impact of defective drywall imported from China from 2004 through 2007 and their effect on foreclosures.
- \* Additional funding for Mortgage Relief and Neighborhood Stabilization programs (\$1 billion each)
- \* HUD to establish legal assistance for foreclosure-related issues with \$35 million authorized for fiscal years 2011 through 2012.

#### Title XV - Miscellaneous Provisions

In keeping with Congressional tradition of including items of priority for authors of the bills, but have little or no relevance to the Act, the following sections have been added:

Restriction on U.S. Approval of Loans issued by International Monetary Fund  
International Monetary Fund

The US Executive Director at the International Monetary Fund is instructed to evaluate any loan to a country if

- \* The amount of the public debt of the country exceeds the annual gross domestic product of the country

- \* the country is not eligible for assistance from the International Development Association and to oppose any loans unlikely to be repaid in full.

#### Disclosures on Conflict Materials in or Near the Democratic Republic of the Congo

- \* The SEC is mandated to create rules that address potential Conflict materials (ex. Blood Diamond) and to assess whether materials originating in or near the Democratic Republic of the Congo are benefiting armed groups in the area.

- \* The Secretary of State and Administrator of the United States Agency for International Development are required to develop a strategy to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products, and promoted peace and security in the Democratic Republic of the Congo.

#### Reporting on Mine Safety

Requires the SEC to report on mine safety by gathering information on violations of health or safety standards, citations and orders issued to mine operators, number of flagrant violations, value of fines, number of mining-related fatalities, etc., to determine whether there is a pattern of violations.

#### Reporting on Payments by Oil, Gas and Minerals in Acquisition of Licenses

The Securities Exchange Act of 1934 is amended to require disclosure of payments relating to the acquisition of licenses for exploration, production, etc., where "payment" includes fees, production entitlements, bonuses, and other material benefits.

#### Study on Effectiveness of Inspectors General

Comptroller General is commissioned to assess the relative independence, effectiveness, and expertise of presidentially appointed inspectors general and inspectors general of Federal entities.

#### Study on Core Deposits and Brokered Deposits

The FDIC is instructed to conduct a study to evaluate:

- \* the definition of core deposits for the purpose of calculating the insurance premiums of banks;
- \* the potential impact on the Deposit Insurance Fund of revising the definitions of brokered deposits and core deposits to better distinguish between them;

- \* an assessment of the differences between core deposits and brokered deposits and their role in the economy and banking sector

- \* the potential stimulative effect on local economies of redefining core deposits; and

- \* the competitive parity between large institutions and community banks that could result from redefining core deposits.

#### Title XVI - Section 1256 Contracts

A Section 1256 Contract refers to a section of the IRC § 1256 that described tax treatment for any regulated futures contract, foreign currency contract or non-equity option. To calculate capital gains or losses, these trades have traditionally been marked to market on the last business day of the year. A "section 1256 contract" shall not include:

- \* any securities futures contract or option on such a contract unless such contract or option is a dealer securities futures contract

- \* swap form of a derivative, such as interest rate swaps, currency swaps, etc.