A Brief Analysis of Some Key Provisions of Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act

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Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Mortgage Reform and Anti-Predatory Lending Act [1], amends many existing federal consumer laws, including the Truth in Lending Act (TILA) [2] and Real Estate Settlement Procedures Act (RESPA). [3] There is no fixed effective date of this Act. Regulations implementing this title must be in final form within 18 months of the designated transfer date (the date which the Bureau of Consumer Financial Protection (CFPB) accepts the functions from other agencies.) The provisions of this Act must become effective whenever the regulations become effective, or not later than 18 months after the transfer date. [4]

Fundamentally, this Act changes statutes that primarily regulated disclosures, such as TILA and RESPA, to those that prohibit a wide range of conduct. While books could be written on the Dodd-Frank Act (and probably will), this article addresses some key provisions of Subtitles A and B of the Mortgage Reform and Anti-Predatory Lending Act relating to mortgage originators and minimum standards for residential loans.

Subtitle A of Title XIV addresses the duties and obligations of mortgage loan originators. The amendments to TILA add a definition of mortgage originator (TILA currently does not define a mortgage originator). As amended, TILA will define mortgage originator more broadly than a "mortgage loan originator" is under the SAFE Act. This leaves us with two varying definitions of mortgage loan originator under federal consumer protection laws.

Under the amendments to TILA, a mortgage originator may not steer a consumer to a loan in which the consumer lacks the ability to repay, or has predatory characteristics, such as equity stripping, excessive fees, or abusive terms. Further, a mortgage originator cannot steer a consumer *away* from a qualified mortgage. It is also prohibited for a mortgage loan originator to engage in abusive or unfair lending practices that promote disparities among consumers of equal creditworthiness but of different race, ethnicity, gender, or age; mischaracterize the credit history of the consumer or the loans available; or mischaracterize the appraised value of the property. [5] A mortgage loan originator is subject to the civil liability provisions of Section 130 of TILA for violating any of the above standards. [6]

The amendments to TILA contained in Subtitle A also change the definition of a residential mortgage loan (as used in TILA). As amended, a residential mortgage loan for TILA compliance purposes will mean: any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling. [7] Note that the definition is revised to remove reference to purchase money security interests retained in the consumer's principal dwelling. It appears to be Congress' intent that TILA will apply to both purchase money and non-purchase money transactions.

Subtitle B of the Mortgage Reform and Anti-Predatory Lending Act imposes a minimum standard for mortgages. All creditors will have to evaluate a borrower's ability to repay the loan. [8] The Act does provide a limited Safe Harbor for a "qualified mortgage," which is defined under Section 1412 of the Act. This Subtitle also prohibits prepayment penalties and mandatory arbitration; limits negative amortization, and requires new disclosures. [9] This Subtitle expands civil liability penalties under TILA as well. [10]

Similar to the 2009 revisions to open end credit contained in the CARD Act, the Mortgage Reform and Anti-Predatory Lending Act, and its amendments to TILA, have significantly altered the mortgage landscape.

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[1] Pub. L. No. 111-203 (2010).
[2] 15 U.S.C. § 1601 *et seq.*
[3] 12 U.S.C. § 2601 *et seq.*
[4] Section 1400 of the
[5] *Id.* at §1403.
[6]*Id.* at § 1404.
[7] *Id.* at §1401(cc)(5) and Reg Z 226.3(24).
[8] *Id.* at § 1411.
[9] *Id.* at §§ 1413, 1414, 1419.
[10] *Id.* at § 1416.