



Dodd-Frank Wall Street Reform and Consumer Protection Act — Summary of Mortgage Lending Provisions

By: Lesley Smith DeRamus

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act. This new law contains sweeping regulatory reforms many of which will significantly impact mortgage lenders. Over 200 pages of the 2,300 page Act are devoted to the Mortgage Reform and Anti-Predatory Lending Act.

We have briefly summarized below 10 key provisions of particular interest to mortgage lenders:

- 1. Loan Originator Compensation:** The law prohibits financial incentives for mortgage loans that encourage steering of borrowers into more costly loans, including yield spread premiums and other compensation to the originator that varies based upon terms of the loan. Compensation based upon the principal amount of the loan and not based on the loan's rate and terms is permissible.
- 2. Ability to Repay:** Creditors must ensure that borrowers can repay their residential mortgage loans based upon a reasonable and good faith determination that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms, including all taxes, insurance and assessments.
- 3. Qualified Mortgages:** Loans meeting several requirements are "qualified mortgages," and such mortgages are presumed to meet the ability to repay requirements. Requirements to be a "qualified mortgage" include: regular periodic payments which do not result in increase of principal; income and financial resources of consumer are verified; compliance with new regulations on debt-to-income ratios; total points and fees do not exceed 3 percent of total loan amount; and term does not exceed 30 years.
- 4. Liability for Mortgage Originators:** Liability for violations of certain provisions, including anti-steering provisions, is the greater of actual damages or an amount equal to 3 times total amount of compensation to mortgage originator, plus costs including a reasonable attorney's fee.
- 5. Prepayment Penalties:** Prepayment penalties are prohibited unless the loan is a "qualified mortgage" and are subject to other restrictions such as a phase out of the penalty during the first three years of the loan.
- 6. HOEPA:** The coverage of HOEPA's high cost loan restrictions is expanded to purchase money mortgages, and the APR and points and fees triggers for coverage are lowered.

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7. **Appraisals:** New regulations from regulatory agencies will replace HVCC. A creditor must furnish the applicant with a copy of all written appraisals and valuations in connection with the application for a loan no later than 3 days prior to closing.
8. **Servicing:** The law amends the Truth in Lending Act to require creditors to establish escrow accounts for certain mortgages for a minimum of 5 years until a certain equity level is reached.
9. **Duty of Care:** All mortgage originators must be qualified, and when required, licensed and registered and include on any loan documents their NMLS unique identifier.
10. **Home Mortgage Disclosure Act:** Data requirements are amended to include borrower gender and credit score, points and fees at origination, loan features and other data.

Regulatory changes to implement these new requirements should begin within the next year to 18 months. The status of these changes should be closely monitored in order to give institutions sufficient lead time to implement the new requirements. If you have any questions about this new Act, please contact one of the attorneys in our Financial Services Practice Group, www.babc.com/Banking-and-Financial-Services.

Upcoming Alerts will focus on other portions of this Act.

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