October 2010

Mortgage Lending Practice after the Dodd-Frank Act

I. Introduction

On July 21, 2010, the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), enacting numerous provisions intended to reform the mortgage lending industry with an eye towards consumer protection. Many of these provisions are contained within Title XIV of the Dodd-Frank Act, the Mortgage Reform and Anti-Predatory Lending Act (the "Mortgage Act" or the "Act"). In part, the economic and financial crisis stemmed from the subprime mortgage crisis, which was mostly caused by movement of creditors and mortgage originators away from traditional underwriting practices during the real estate boom, giving rise to risky mortgages and practices, such as allowing loans with "negative amortization" features, and to the proliferation of subprime mortgages. In an effort to prevent a recurrence of such misleading practices, Congress passed comprehensive mortgage reform legislation beginning in 2007 including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 *et seq.*, "SAFE Act"). The Mortgage Act continues these legislative efforts by amending provisions of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*, "TILA") in order to reform consumer mortgage practices and provide accountability for such practices.

II. Abstract of the Mortgage Act

The Mortgage Act covers various subject areas that Congress considered to be in need of reform, including increased lender accountability, enhanced consumer protections, legal assistance to consumers, and appraisal accuracy. The effective date of the provisions of the Mortgage Act requiring the issuance of regulations by Federal banking agencies to carry out the purpose of the respective provision is determined by a multi-stage implementation process that depends on (i) a designated transfer date, on which partial responsibility to enforce certain enumerated consumer protection statutes shall be transferred to the newly formed Consumer Financial Protection Bureau (the "Bureau"), and (ii) the issuance of final regulations by the Bureau and other Federal banking agencies specifying the statutory provisions. The Dodd-Frank Act defines in Title X a broad scope of functions that are transferred to the Bureau. It covers basically all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law. With respect to mortgage originating provisions, such authority of Federal banking agencies in the TILA and the SAFE Act will be given to the Bureau. Amendments that do not require regulations to be prescribed took effect one day after the date of enactment of the Dodd-Frank Act.

2.1 Residential Mortgage Loan Origination Standards

Subtitle A (*Residential Mortgage Loan Origination Standards*) of the Act prescribes fiduciary standards for originators of residential mortgage loans and regulates yield spread premiums. A federal duty of care is imposed requiring any mortgage originator[1] to be qualified and, if applicable, licensed as a mortgage originator in accordance with applicable State or Federal law, including the SAFE Act. A mortgage originator who fails to comply with any of the imposed requirements will be liable for damages up to a statutory defined amount. The Act adds new provisions to TILA prohibiting steering incentives for creditors. As a result, the Act restricts mortgage origination compensation practices that may steer the consumer to a residential mortgage loan that the consumer is not qualified to. Finally, a new TILA provision requires the Board of Governors of the Federal Reserve System (the "Board") to issue regulations that, *inter alia*, prohibit mortgage originators from steering consumers to residential mortgage loans without considering the consumers' ability to repay, and forbid abusive, unfair, deceptive, or predatory terms, acts or practices relating to residential mortgage loans. Mortgage originator compensation and anti-steering practices are subject to a final rule recently announced by the Board, which already implements some of the provisions set forth by the Act (see section 3.2 below).

2.2 Minimum Standards for Mortgages

Subtitle B (*Minimum Standards for Mortgages*) of the Act contains a variety of provisions intended to make substantive changes in mortgage extension practices. In particular and subject to a safe harbor rule, a new TILA provision requires the creditor to make a reasonable and good faith determination, based on verified and documented information concerning the consumer's financial situation, whether the consumer has a reasonable ability to repay a residential mortgage loan before extending the loan. The requirements set forth in Subtitle B apply to all residential mortgage loans without regard to the pricing. In this respect, the minimum standards have a broader scope compared to the current provisions of Regulation Z of TILA (12 C.F.R. Part 226, "Regulation Z"), which impose ability-to-repay standards only for high-cost loans and higher-priced mortgage loans. The Board must prescribe regulations to carry out the provisions of this subsection.

In the case of a judicial or non-judicial foreclosure, certain violations of the new TILA provisions may be asserted as a defense to foreclosure through recoupment or setoff. In order to prevent perceived abuses in connection with residential mortgage loans, the Act provides additional residential mortgage loan standards and requirements by, *inter alia*, prohibiting certain prepayment penalties, restricting mortgages with negative amortization, and protecting consumers against loss of anti-deficiency protection. In addition to a multitude of new disclosures for closed-end residential mortgage loans, the creditor, assignee, or servicer of a residential mortgage loan must transmit to the consumer, for each billing cycle, a statement setting forth certain items in a conspicuous and prominent manner, such as the amount of principal, the current interest rate on the loan, and the date on which the interest rate may next reset or adjust. The defense-to-foreclosure right, the additional residential mortgage loan standards, and the disclosure requirements took effect one day after the enactment of the Act.

2.3 High-Cost Mortgages

Subtitle C (*High-Cost Mortgages*) of the Act sets forth additional requirements for high-cost mortgages, including a prohibition on balloon payments, debt acceleration and modification or deferral fees, and restrictions on late charges. Many of the new high-cost mortgage TILA provisions will now be similar to respective State law provisions. Considering these restrictive amendments, creditors and the secondary market may act more cautiously in future when extending or purchasing high-cost mortgages. The Act also adds a new TILA provision prohibiting a creditor from extending credit to a

[1] The term "*mortgage originator*" includes any person (either an individual or entity) who for (or in expectation of) direct or indirect compensation or gain (i) takes a residential mortgage loan application; (ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or (iii) offers or negotiates terms of a residential mortgage loan, but does not include (besides other exceptions) the creditor (except in a table-funded transaction) itself or legal counsel to the creditor. See Sec. 103(cc) of TILA as modified by Sec. 1401 of the Act.

consumer secured by a high-cost mortgage without first receiving certification from an independent counselor approved by the Department of Housing and Urban Development ("HUD") or a State housing authority. Such certificate must confirm that the consumer has received pre-loan counseling on the advisability of the mortgage. The Act provides two limited rights to cure a creditor's unintentional violation of the high-cost provisions.

2.4 Office of Housing Counseling

Subtitle D (*Office of Housing Counseling*) of the Act, also cited as the Expand and Preserve Home Ownership Through Counseling Act (the "Counseling Act"), establishes within HUD the Office of Housing Counseling (the "OHC"), which is authorized to establish, coordinate and monitor counseling procedures, distribute information booklets, certify counselors, and provide capacity to provide housing services. The Counseling Act intends to protect consumers by providing financial counseling in connection with home ownership and residential mortgage loans. The OHC is required to develop, implement and conduct national public service multimedia campaigns to make consumers aware of the need for and the availability of counseling before seeking or maintaining a residential mortgage loan. Education programs must be conducted in areas that have a high density of foreclosures. In addition, the OHC is to make financial assistance available to HUD-approved and State housing counseling agencies to encourage successful counseling programs and to ensure adequate distribution of counseling in rural areas that have had traditionally low levels of access to counseling services. The legislation requires HUD to examine the causes of home loan defaults and foreclosures, and to establish and maintain a publicly available database of information on foreclosures and defaults on residential mortgage loans.

2.5 Mortgage Services

Subtitle E (*Mortgage Services*) of the Act reforms mortgage servicing practices addressed in TILA and the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*, "RESPA"). The Act requires creditors in connection with a consumer credit transaction secured by a first lien on the consumer's principal dwelling to establish an escrow or impound account in a federally insured depository institution for mandatory payments of taxes and insurances premiums. By regulation, the Board may exempt certain creditors from the requirement to establish an escrow or impound account. Such escrow accounts shall remain in existence for a minimum period of five (5) years. If the consumer waives the maintenance of such account in writing, the mortgage lender is required to provide a written disclosure advising on the consumer's responsibilities and implications in the absence of any such account. The Act amends RESPA by adding new servicer prohibitions and increasing the penalty amounts for violation. A new TILA provision requires the servicer of a consumer credit transaction secured by the consumer's principal dwelling to promptly credit payments to the consumer's loan account, and to send accurate payoff balance information upon written request by the consumer.

2.6 Appraisal Activities

Subtitle F (*Appraisal Activities*) of the Act introduces new appraisal requirements for the extension of higher-risk mortgage loans. A creditor is prohibited from making such loan without first obtaining a written appraisal of the property performed by a certified or licensed appraiser subject to new practice standards. The creditor is required to provide to the applicant, without charge, one copy of each appraisal that is conducted with respect to the higher-risk mortgage. Under the new provisions, it is unlawful to engage in acts or practices that violate appraisal independence, although a lender or others may ask the appraiser to consider further information regarding the appraisal or may provide such information to the appraiser. The appraiser is prohibited from having an interest in the involved property. The Dodd-Frank Act directs Federal banking agencies and the Bureau to jointly prescribe regulations implementing these provisions, and the Board to issue interim final regulations no later than 90 days after enactment. The Board has done so; see the discussion below at Section 3.8.

2.7 Mortgage Resolution and Modification; Miscellaneous

Subtitle G (*Mortgage Resolution and Modification*) of the Act mandates HUD to develop a program to protect tenants and at-risk multifamily properties, which includes creating sustainable financing, maintaining subsidies, providing funds for rehabilitation, and facilitating transfer of properties to new responsible owners while ensuring affordability. Additionally, the Dodd-Frank Act requires changes regarding the Home Affordable Modification Program. Subtitle H (*Miscellaneous Provisions*) contains an authorization of funds for emergency, redevelopment and grant programs.

III. Recent Regulations, Rules, and Guidance

Many of the Act's provisions, which amend existing or add new consumer protection rules, are effective only upon their implementation by final regulations. Implementing regulations are being proposed by the presently authorized Federal banking agencies and will continue to be proposed by them, until the date on which functions and authorization in connection with enumerated consumer protection laws are transferred to the Bureau (the "Transfer Date"), even though the authority to issue and enforce the rules will be transferred to the Bureau on the Transfer Date. July 21, 2011 was designated as the Transfer Date.[2] However, an 18-month deadline following the Transfer Date applies to the implementation process: after this deadline the provisions of the Mortgage Act will take effect regardless of prior implementation by final regulations. Given the lack of details in many of the statutory provisions, Federal banking agencies and the Bureau are expected to issue final implementing regulations before the Transfer Date. In the transition period between enactment of the Act and the Transfer Date, creditors, mortgage brokers, servicers, or other persons covered by the Act need to be aware of the preliminary rule-making authority.

Recently, the Board, along with, among others, the Office of the Comptroller of Currency (the "OCC"), the Federal Deposit Insurance Corporation (the "FDIC"), and the Office of Thrift Supervision (the "OTS"), issued a number of rules and guidance governing requirements for residential mortgage loans in connection with TILA, the SAFE Act, and RESPA.

3.1 Revision of Escrow Account Requirements for Jumbo Loans

In order to implement Sec. 1461 of Subtitle E (*Mortgage Services*) of the Act, the Board published for comment a proposed rule providing a different, higher threshold for the escrow requirement for so-called "jumbo" loans.[3]

A mortgage lender may not extend a consumer transaction credit secured by a first lien higher-priced mortgage on the consumer's principal dwelling ("jumbo" loans) unless an escrow account for payment of taxes and insurance fees is established. The Board proposes to revise Regulation Z by requiring a mandatory escrow account if the annual percentage rate ("APR") exceeds the "average prime offer rate"[4] for a comparable transaction by 2.50 or more percentage points for first-lien loans, rather than 1.50 percentage points currently. The scope of the proposed rule is limited to the Act's change to the APR threshold not affecting "jumbo" loan provisions of the Home Ownership and Equity Protection Act Final Rule of 2008. Other provisions of the Mortgage Act concerning escrow accounts are to be implemented in a separate rulemaking.

[2] 75 FR 57252 (September 20, 2010).

[3] 75 FR 58505 (September 24, 2010). The period for comments ended on October 25, 2010.

[4] "*Average prime offer rate*" means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Board publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Board uses to derive these rates. Sec. 226.35(a)(2) of Regulation Z (12 C.F.R. Part 226).

3.2 Loan Originator Compensation and Anti-Steering Practice

Authorized by the SAFE Act and based on the 2009 Closed-End Proposal, the Board announced on August 16th a final rule to amend Regulation Z that restricts loan originator compensation and steering practices for the purpose of protecting consumers in the mortgage market from unfair, abusive and deceptive lending practices, even though a subsequent rulemaking will be necessary to implement the Act.[5] As mentioned above, many provisions of the new TILA mortgage originator compensation provision imposed by the Act are similar to the final rule recently proposed by the Board. The final rule is effective on April 1, 2011. The definition of loan originator in Regulation Z covers mortgage brokers, employees of creditors and mortgage brokers obtaining an extension of consumer credit for the mortgage lender, and may apply to creditors making use of "table funding" by a third party. The term is somewhat similar to the TILA definition of mortgage originator.[6] The final rule applies to any consumer credit transaction secured by a consumer's dwelling, whether first or subordinate lien loans, and includes for instance the following prohibitions:

- No loan originator compensation in connection with a consumer credit transaction may be based on the transaction's terms and conditions (*e.g.*, interest rate or annual percentage rate), other than the amount of principal, unless the amounts are *bona fide* or reasonable third-party charges. The provision is directed at yield spread premiums paid by the creditor to the loan originator.
- In order to ensure that loan originators do not evade the consumer protection provision of Regulation Z, no loan originator may receive compensation from any person other than the consumer if the loan originator receives direct compensation payment from the consumer. The rule corresponds to the new TILA provision and establishes a "one or the other" rule with respect to loan originator compensation for specific consumer credit transactions. The restrictions of the TILA provision will be addressed in a subsequent rulemaking.
- No loan originator may direct or "steer" a consumer to consummate a consumer credit transaction secured by a dwelling based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions that the originator could have offered to the consumer, *unless* the consummated transaction is in the consumer's interest. The Board included a safe harbor rule intended to provide loan originators with clear guidance to ensure compliance with the anti-steering rule.

3.3 Consumer Notification of Mortgage Loan Sales or Transfers

The Board adopted a final rule to implement mortgage transfer disclosure requirements pursuant to a new TILA provision that became effective upon enactment of the Helping Families Save Their Homes Act 2009 and established a new requirement for notifying consumers of the sale or transfer of their mortgage loans.[7] The mandatory compliance date is January 1, 2011. A purchaser, assignee, or transferee of a consumer credit transaction secured by the consumer's principal dwelling (the "<u>Transferee</u>") is required to notify the borrower in writing of such transfer. A failure to comply may result in civil liability. The Transferee becoming the owner of an existing mortgage loan by acquiring legal title to the debt obligation must disclose in writing to the consumer within 30 days following the transfer, *inter alia*, information on the Transferee and

[5] 75 FR 58509 (September 24, 2010). The authority granted to the Board primarily results from Sec. 129(l)(2) of TILA (15 U.S.C. 1639(l)(2)). The 2009 Closed-End Proposal was published at 74 FR 43232 (August 26, 2009).

[6] The Board defines the term "loan originator" according to Sec. 226.36(a)(1) of Regulation Z in a broader manner than the definition in the SAFE Act although some commentary criticized the different definition. For instance, a loan originator within the meaning of the SAFE Act is by definition a natural person, but not an entity. See note 1.

[7] 75 FR 58489 (September 24, 2010).

the transfer, the agent or party authorized to receive consumer's rescission notice and resolve issues concerning the consumer's payments on the loan, and where the transfer of ownership of the debt to the Transferee is or may be recorded in public records.

A disclosure need not be given by the primary Transferee if (i) legal title to the mortgage loan is subsequently transferred to another Transferee within 30 days, (ii) a subsequent transfer of the mortgage loan includes a repurchase obligation, or (iii) the Transferee acquires only a partial interest in the mortgage loan and the party authorized to receive the consumer's rescission notice does not change as a result of the transfer.

3.4 Registration of Mortgage Loan Originators

The OCC, along with the Board, the FDIC, the OTS, the Farm Credit Administration, and the National Credit Union Administration ("NCUA"; in this paragraph collectively referred to as the "Agencies"), published a final rule on July 28, 2010, to implement sections of the SAFE Act.[8] These SAFE Act provisions require an employee of an Agency-regulated institution who acts as a residential mortgage loan originator to register, obtain a unique identifying number, and maintain this registration. The registration must be filed and annually renewed with the Nationwide Mortgage Licensing System and Registry ("Registry"), a database based on and renaming the current Nationwide Mortgage Licensing System. As part of the registration process, mortgage loan originators must furnish certain information and fingerprints for a background check. The SAFE Act does not require the Registry to screen or approve registrations, but acts as a repository of information. Mortgage loan originators and the Agency-regulated institution must provide the unique identifiers as assigned by the Registry to consumers in certain circumstances. An Agency-regulated institution must not permit an employee to act as a mortgage loan originator without the required registration. The rule contains a definition of a "mortgage loan originator" that deviates from the understanding in the Dodd-Frank Act, in particular, by covering only individuals and excluding assistance for loan application from the scope of covered services.

This final rule was effective on October 1, 2010. Compliance with the registration requirement of the final rule is required by 180 days after the date the Agencies provide in a public notice. The Agencies expect that the Registry will be capable of accepting Federal registrations in January 2011 at the earliest. However, the Dodd-Frank Act will transfer the Agencies' responsibilities under the SAFE Act to the Bureau on the Transfer Date.

Furthermore, the rule requires an Agency-regulated institution to adopt and follow written policies and procedures to assure compliance with the registration requirements. Such policies and procedures include the establishment of processes for the identification of employees to be registered, for furnishing correct information to the employees about the statutory registration requirements and for reviewing the employee's criminal background. Reasonable procedures shall be established for confirming the adequacy and accuracy of the submitted data and for monitoring the registration compliance.

It is worth mentioning that the Dodd-Frank Act establishes duty of care standards for mortgage originators which refer to the registration and identification requirements of the SAFE Act (see section 2.1 above). The duty of care provision mandates the Board to prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor compliance with such requirements under the SAFE Act. However, the regulation implementing compliance requirements as issued by the Board does not refer to the Dodd-Frank Act provisions.

[8] Registration on Mortgage Loan Originator, 75 FR 44656/ 51623 (July 28/ August 23, 2010), amending 12 C.F.R. Parts 34, 208 and 211, 365, 563, 610, and 741 and 761 to implement the requirements for federal registration by the respective agency. Each Agency's rule will amend a different part of the Code of Federal Regulations, but will have similar numbering.

3.5 Enhanced Consumer Protection and Disclosures for Home Mortgage Transactions

The Board proposes to amend Regulation Z as part of a comprehensive review of TILA's rules for home-secured credit and reverse mortgages.[9]

3.5.1 Home-Secured Credit

The goal of the proposed amendments to Regulation Z is to update, and make clarifying changes to, the rules regarding the consumer's right to rescind certain open- and closed-end loans secured by the consumer's principal dwelling. In order to reduce uncertainty and litigation costs, the proposed revisions would simplify and improve the notice of the right to rescind, revise the list of "material disclosures" that can trigger the extended right to rescind, and clarify the parties' obligations when the extended right to rescind is asserted. The amendments would also ensure that consumers receive TILA disclosures for certain modifications to key loan terms without reference to State contract law. The amendments would ensure that prime loans are not incorrectly classified as "higher-priced mortgage loans" subject to special protections or as loans under the Home Ownership and Equity Protection Act (HOEPA). The proposal would provide consumers a right to a refund of fees after early disclosures for closed-end mortgages. The proposal would require a creditor to refund any appraisal or other fees paid by the consumer (other than a credit report fee) if the consumer decides not to proceed with a closed-end mortgage transaction, and disclose the right to a refund of fees to consumers.

3.5.2 Reverse Mortgages

The amendments also would protect consumers from unfair practices in connection with reverse mortgages, including a prohibition on cross-selling. The proposal would prohibit a creditor from conditioning a reverse mortgage on the consumer's purchase of another financial or insurance product such as an annuity or long term care insurance, and provide a "safe harbor" for compliance. The proposal would prohibit a creditor or other person from originating a reverse mortgage or imposing a nonrefundable fee before the consumer has obtained independent counseling from a counselor that meets certain qualification standards established by HUD. The proposal would require a creditor to provide a consumer with new and revised reverse mortgage disclosures, including a new two-page notice summarizing basic information and risks regarding reverse mortgages and certain loan cost information specific to reverse mortgages for home-equity lines of credit ("HELOC") or closed-end mortgages. Finally, the amendments would ensure that advertisements for reverse mortgages contain accurate and balanced information and are not misleading. The proposal contains several further changes to the rules for HELOCs and closed-end mortgage loans.

3.6 Guidance for Managing Compliance and Reputation Risks Resulting from Reverse Mortgage Products

The OCC, the Board, the FDIC, the OTS, and the NCUA (in this paragraph collectively referred to as the "Agencies") issued on August 17th non-binding guidance intended to address compliance and reputation risks associated with reverse mortgages and to assist financial institutions in their effort to manage these risks (the "Guidance").[10] The Guidance primarily focuses on consumer protection concerns and covers a broad range of issues in a manner similar to the abovementioned proposed rule (see section 3.5.2 above):

- Financial institutions should provide reverse mortgage marketing materials which clearly and objectively describe the terms and conditions of the reverse mortgage product. Without imposing a suitability obligation on lenders, financial

[9] 75 FR 58539 (September 24, 2010). The period for comments ends on December 23, 2010.

[10] Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks, 75 FR 50801 (August 17, 2010).

institutions should review advertisements and other marketing materials to ensure disclosure of important and non-misleading information.

- The Guidance notes the importance of consumers obtaining counseling from qualified, independent counselors before a financial institution processes an application for a reverse mortgage loan or charges an application fee.
- Financial institutions should adopt clear written policies and internal controls to ensure compliance with any applicable anti-tying restrictions and to avoid conflicts of interest.

3.7 Disclosure Requirements for Closed-End Mortgage Loans under Regulation Z

The Board issued an interim rule amending Regulation Z in order to implement certain disclosure requirements of the Mortgage Disclosure Improvement Act of 2008 (the "MDIA"), which amended TILA, for closed-end mortgage loans.[11] Compliance with the interim rule is required for applications creditors receive on or after January 30, 2011, as specified in the MDIA. The Board is also soliciting comment on the interim rule until November 23, 2010 before considering the adoption of a permanent rule. The interim rule adopts the provisions of the 2009 Closed-End Proposal except with minor modifications for clarity and with provisions interpreting the statute's requirement to disclose "examples" of payment adjustments and the "no-guarantee-to-refinance" statement. The Board does not expect to finalize that proposal, however, before the January 30, 2011 statutory effective date of the MDIA requirement to disclose examples of payment adjustments. Under this interim rule, creditors will be required to disclose in a tabular format the contract interest rate together with the corresponding monthly payment, including any escrows for taxes and property and/or mortgage insurance. Special disclosure requirements are imposed for adjustable-rate or step-rate loans regarding interest rate and payments. Additional special disclosures are required for loans with negatively-amortizing payment options, introductory interest rates, interest-only payments, and balloon payments. Finally, the interim rule requires the disclosure of a statement that there is no guarantee the consumer will be able to refinance the loan with a new transaction in the future.

3.8 Requirements for Appraisal Independence

In order to implement Sec. 1472 of Subtitle F (*Appraisal Activities*) of the Act, the Board issued an interim rule providing appraisal independence requirements.[12] Sec. 1472 of the Mortgage Act essentially codifies the 2008 Appraisal Independence Rules and expands the scope of application to HELOCs.[13] The Board is soliciting comment on the interim rule during 60 days after the publication in the Federal Register before considering the adoption of a permanent rule. The interim rule is effective on April 1, 2011.

The interim rule applies to consumer credit transactions secured by a consumer's principal dwelling and covers persons who extend credit or provide services in connection with such transactions regardless of originating mortgage loans. It prohibits from engaging in coercion, bribery, and other similar actions, which may cause the assigned value to be based on other factors than the appraiser's independent judgment. In order to prevent conflicts of interest, the person preparing a valuation or performing valuation management services may not have a financial or other interest in the appraised property. In this respect, the interim rule clarifies when employees or affiliates of the creditor have such interest, and provides safe harbor rules. A creditor is prohibited from extending credit if he knows that unlawful conduct or a conflict of interest have occurred

[11] 75 FR 58470 (September 24, 2010).

[12] Regulation Z, Docket No. R-1394; released on October 18, 2010.

[13] 12 C.F.R. 226.36(b); 15 U.S.C. 1639(l)(2).

in connection with the appraisal. A creditor must report the failure to comply to the appropriate State licensing agency. Under the Rule, a creditor or its agent must pay a customary and reasonable rate of compensation to the appraiser.

IV. General Developments in Mortgage Regulation

Enactment of the Dodd-Frank Act and issuance by regulatory agencies of final and proposed rules or non-binding guidance in the field of mortgage lending either have or will make substantial changes in the home mortgage system that may be characterized as follows:

- The Dodd-Frank Act will transfer the authority of many of the issuing agencies to the Bureau whose start is expected between 2011 and 2013. It is mandated to take the steps necessary to make the Mortgage Act provisions effective. Consequently, all rules issued may only – if ever – be effective for a short period under the authority of the currently originating agencies.
- The regulations as recently issued only cover to a small extent the rules necessary for implementing the Mortgage Act. For the most part the authorization was given to the regulatory agencies by earlier acts, in particular by the SAFE Act or MDIA. The recent announcements were preceded by a period of discussion and consumer testing on the subject matters. To date, the current rulemaking focuses on disclosure and counseling requirements, steering practices and administrative proceedings regarding loan originators, and consumer protection in connection with higher risk, high cost and reverse mortgages.
- The regulations that have been issued recently and that are not based on the Mortgage Act should been viewed in the context of the Mortgage Act. Some provisions of the Mortgage Act require similar requirements to be implemented by rule. Some provisions deviate from the regulatory provisions.

The Mortgage Act advances the process of heightened regulation that was started earlier, in particular, by amendments to TILA and the SAFE Act. Such regulation was enacted for enhancing detailed information and disclosures furnished to the consumer, and preventing abusive practices. The Dodd-Frank Act takes regulations beyond the disclosure requirements by imposing minimum standards when extending a covered loan. The process of implementation has only started. The transition period may be expected to be characterized by increased regulation.

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