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# Mortgage Lending Issues Under Title XIV – Mortgage Reform and Anti- Predatory Lending Act

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# Subtitle A

## Residential Mortgage Loan Origination Standards

### Truth in Lending Amendments

#### 7 New Definitions

§103(cc) Definitions Relating to Mortgage Origination and Residential Mortgage Loans:

- Commission
- Mortgage Originator
- NMLSR
- Assists a consumer in obtaining or applying to obtain a residential mortgage loan
- Residential Mortgage Loan
- Secretary
- Servicer

# Definition of Mortgage Originator

(will the real mortgage loan originator please stand up?)

## TILA Mortgage Originator

any person who, for direct or indirect compensation or gain, or in the 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.

## SAFE Act Loan Originator

an individual who:

(i) takes a residential mortgage loan application; **and**

(ii) offers or negotiates terms of a residential mortgage loan for compensation or gain.



<http://www.youtube.com/watch?v=VxEa1hCxETA>

## Model State Law Mortgage Loan Originator

an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; **or**

(ii) offers or negotiates terms of a residential mortgage loan.

# Assisting a Consumer in Obtaining or Applying?

a person 'assists a consumer in obtaining or applying to obtain a residential mortgage loan by, among other things:

- advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages; or
- collecting information on behalf of the consumer with regard to a residential mortgage loan.

# Who is NOT a Mortgage Loan Originator?

- a person who performs purely administrative or clerical tasks
- an employee of a retailer of manufactured homes
- a person or entity that only performs real estate brokerage activities
- a person, estate, or trust providing financing for sale of 3 properties in any 12-month period
- a creditor (except in certain table-funded transactions)
- servicer or servicer employees  
(includes loan modifications)

# What is a Residential Mortgage Loan? (it's not a residential mortgage transaction)

## Residential Mortgage Loan TILA §103(cc)(5)

Any consumer credit transaction

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,

other than a consumer credit transaction under an open end credit plan.

## Residential Mortgage Transaction (Reg Z §226.3)

a transaction

in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in

the consumer's principal dwelling

to finance the acquisition or initial construction of that dwelling.

# We Know the Who

## Mortgage Originator

- take an application
- assist in obtaining or applying
- offer or negotiates terms

## for a Residential Mortgage Loan

- No apparent limitation on loan types (conventional, high priced, subprime, § 32)
- purchase money
- non purchase money
- principal dwelling
- second home (except timeshare)

# What's the What?

## Duty of Care

- must be licensed as a “mortgage originator”<sup>1</sup> in accordance with state or federal law, including SAFE Act.
- include unique id on all “loan documents”

1. Do we determine who is a mortgage originator for licensing purposes using the new TIL definition or SAFE or state law definition?

# No Steering Incentives

- No YSP
- No Origination Fees
- No Seller's Points
- May Pay Mortgage Originator 3<sup>rd</sup> party fees

Liability runs both ways – no paying and no receiving

# Mortgage Originator Prohibition on Steering

## Mortgage Originator May Not:

- steer a consumer to a loan
  - in which consumer lacks **ability to repay**
  - has predatory characteristics  
(equity stripping, excessive fees, abusive terms)
- steer consumer away from a qualified mortgage
- engage in abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender or age
- mischaracterize the credit history of consumer or loans available
- mischaracterize appraised value

# Mortgage Originator Liability

- Mortgage Originator is subject to civil liability provisions of TILA § 130
- Actual damages may not exceed 3 times the total amount of direct and indirect compensation or gain accruing to the mortgage originator
- Plus costs to the consumer of the action, including reasonable attorney's fees

# Subtitle B

## Minimum Standards for Mortgages

- Who – Creditors
- What –
  - Ability to Repay
  - Prohibition on Prepayment Penalties
  - No Mandatory Arbitration
  - Limitations on Negative Amortization
  - New Disclosures

# Subtitle C

## High-Cost Mortgages

Amends TIL §103(aa) - “High-Cost Mortgage”

APR Test:

- 1<sup>st</sup> mortgage – APR >6.5% of the average prime offer rate or
  - » >8.5% if dwelling is personal property and loan amount is <\$50,000
- Junior mortgage – APR >8.5% APOR

Points and Fees Test:

- loan amount =  $\geq$  \$20,000: 5% of total transaction
- loan amount = <\$20,000: lesser of 8% of total transactions or \$1,000

Prepayment Penalties:

- if the credit document permits ppp more than 36 mo after closing or the ppp exceed more that 2% of the amount prepaid

**\*Applies to purchase money and non-purchase money\***

# Subtitle E Mortgage Servicing

## TILA Amendments

Who: Creditor

What: Escrow Accounts on 1<sup>st</sup> Lien Mtg

Before consummation – escrow must be established:

- taxes
- hazard insurance
- flood insurance
- mortgage insurance
- ground rents,
- any other required periodic payments or premiums

# Subtitle E

## Mortgage Servicing

### Limitations on Escrows

Escrow may not be required as a condition of credit, except when:

- required by state or federal law
- loan is guaranteed or insured by state or federal lending or insuring agency
- required by regulation

Creditor is exempt from mandatory escrow if it retains its mortgage loan portfolio.

# Subtitle E

## Mortgage Servicing

### Escrow Disclosures

#### 1. Establishment of Escrow

- At least 3 business days before consummation
- Contents of the disclosure set forth in new section 129D of TILA

#### 2. Waiver of Escrow

- if the escrow is not established or consumer chooses to waive escrow, creditor must provide a “timely” disclosure informing the consumer of his/her responsibilities and implications.
- Contents of the disclosure set forth in new section 129D of TILA

# Subtitle E

## Mortgage Servicing

### Amendments to RESPA

### Servicer Prohibitions

- No force-placed insurance unless there is a reasonable basis to believe borrower has failed maintain insurance
- No fees for responding to “valid qualified written requests” (to be defined by BCFP)
- Must timely respond to borrower’s request to correct errors
- Must respond within 10 business days borrower’s request for contact information regarding assignee
- Must comply with any other obligation found by the BCFP to appropriate.

# Subtitle E

## Mortgage Servicing

### Amendments to TILA

### Servicer Requirements

- Prompt crediting of payments
  - must be credited as of the date of receipt
    - except when delay in crediting does not result in charge or in the reporting of negative information to a consumer reporting agency
    - *Exception to exception* – if the servicer specifies method of payment but accepts a payment that does not conform, the servicer shall credit payment as of 5 days of receipt

# Subtitle F Appraisal Activities Amends TILA

Creditor may not extend credit for a higher-risk mortgage without a written appraisal prepared in accordance with new requirements set forth in TILA §129H

# Subtitle G

## Mortgage Resolution and Modification

- Mandates HUD to develop a program to ensure protection of tenants
- No assistance to criminals
- Servicer must provide NPV data to borrowers whose modification request is denied
- NPV calculator to be available in internet
- Secretary of Treasury to make HAMP data collected from mortgage servicers public

# Effective Date of Title XIV

Effective Date of Act: 1 day after enactment

Designated Transfer Date:

Designated date may not be sooner than 180 days, nor later than 12 months after date of enactment (12 months may be extended to 18 months).

Secretary to *publish* the designated date within 60 days after date of enactment.

So, DTD could be as early as 180 days after enactment or as late as 18 months after enactment.

Effective Date of Title XIV:

1. The date on which final regulations take effect; or
2. If no, final regulations, then 18 months after DTD.

Final Regulations:

Final regulations must be issued within 18 months of the DTD.

Regulations must take effect within 12 months after final issuance.