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**Dodd-Frank Wall Street Reform and  
Consumer Protection Act**

**Title XIV: Mortgage Reform and Anti-  
Predatory Lending Act**

**NEW ENGLAND CONSUMER  
ADVISORY GROUP  
FEDERAL RESERVE BANK OF BOSTON**

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**Richard P. Hackett, Esq.**

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## Overview:

- Crowning achievements of the Center for Responsible Lending
- Sources:
  - House Bill separately pending – H.R. 1728
  - Some ideas already in FRB proposals
  - Appraisal concerns
  - Ideas from several state laws
- Added to Dodd-Frank at Conference in exchange for deletion of CFPB substantive powers to regulate sales conduct and impose fiduciary duties

## § 1400 – Effective Dates

- Effective dates set by rules adopted by FRB or CFPB (after designated transfer date)
- Rules required within 18 months after designated transfer date, with effective date not more than 12 months thereafter
- If no rules within 18 months of designated transfer date, statute becomes effective without rule
- FRB published rules under § 129E (appraisal independence) on 10/28/2010, interim final effective 12/27/2011, mandatory compliance 4/1/2011
- FRB plans to adopt 129B rules before designated transfer date (75 Fed. Reg. 58509)

# Overview: New and Significantly Revised TILA Provisions

- § 128 – New look to residential mortgage disclosures \*
- § 129 – High Cost Mortgages – expanded coverage and additional limitations \*
- § 129A – Notice of Change for Hybrid ARMs
- § 129B – Mortgage Originator Compensation and Conduct (Residential Mortgage Loan) \*
- § 129C – Ability to Pay Requirements (Residential Mortgage Loan) \*
  - Prepayment Penalties
  - Credit Insurance
  - Arbitration
  - Negative Amortization Disclosures (includes HELOCs)
  - Anti-deficiency Disclosures
- § 129D – Mortgage Servicing (escrows) (principal dwelling loans) \*
- § 129E – Appraisal Independence (principal dwelling loans) \*
- § 129F – Prompt Crediting of Payments (principal dwelling loans)
- § 129G – Payoff Quotes (“home loans”)
- § 129H – Appraisal Requirements Generally (Residential Mortgage Loans) \*

\* = covered in this presentation

## *Subtitle A – Residential Mortgage Loan Origination Status*

§ 1401 – Amends § 103 of TILA to add

- “Mortgage Originator,” a broader term than SAFE Act, to include taking applications, assisting in obtaining or applying for loan, offering or negotiating terms, but excludes purely clerical workers and real estate brokers; excludes servicers who negotiate loan modifications. Includes advising on loan terms, preparing loan packages, or collecting information on behalf of a consumer. The term is broad enough to pick up many types of bank employees.
- “Residential Mortgage Loan” – all consumer mortgage loans secured by a dwelling except open end and timeshares are covered (not limited to “principal dwelling”). Excludes HELOCs and timeshares.

§ 1402 – Enacts New § 129B of TILA – Applies to Residential Mortgage Loans

- Mortgage Originator (“MO”) has a duty of care to be qualified under SAFE and licensed (if required) under SAFE
- Depository Institution must police employees for SAFE Act compliance

§ 1403 – Steering Incentives and Rules – Residential Mortgage Loans

- (1) No compensation may be paid or received that varies based on terms of loan (except amount of principal): (targets YSP)
- (2) Only the consumer may pay the MO unless
  - The consumer pays nothing to the MO; and
  - The consumer pays no upfront fees or points except bona fide charges to a third party not affiliated with the MO or creditor

Compare:

- FRB MLO Rules adopted 9/24/2010, 75 Fed. Reg. 58509. Effective 4/1/2011.
  - ❑ Based on UDAP authority in HOEPA
  - ❑ MLO definition = “arranges, negotiates or obtains” a mortgage loan from creditor. 226.36(a)(i) [different from SAFE + Title XIV]
  - ❑ Same YSP prohibition
  - ❑ Similar ban on “split compensation,” but lacks Title XIV rule banning points paid by consumer when MLO paid away/from consumer



(3) FRB or CFPB to adopt regulations

- (i) to prohibit MO steering to
  - loans without reasonable consumer ability to pay
  - predatory loans (equity stripping, excessive fees)
  - away from a “qualified mortgage” (see below) to a nonqualified mortgage
  
- (ii) to prohibit practices that promote disparate treatment based on race, ethnicity, gender or age.
  
- (iii) to prohibit MOs from
  - mischaracterizing consumer credit history or available loans (steering to unnecessary subprime)
  - suborning mischaracterization of property value
  - discouraging a consumer from seeking more affordable loans elsewhere if consumer can’t be qualified by this MO

#### (4) Rules of Construction

No provision shall be construed as:

- permitting YSP or other compensation that varies with loan terms
- restricting lender profit on sale of a loan
- restricting consumer's choice to pay and finance discount or other fees and fees payable to MO, subject to the "no split MO compensation" rule above
- prohibiting MOs from receiving incentive payments from employer based on number of loans closed

Compare:

### New FRB 226.36(e)

- MLO may not steer consumer to a transaction that provides greater compensation to MLO than other possible transactions, unless “in the consumer’s interest”
- Safe Harbor = offer consumer a menu of options for each type (fixed/variable) of loan requested by consumer:
  - lowest interest rate
  - lowest rate without “gotchas” (negative ARM, balloons, demand feature, shared equity)
  - lowest dollar points and fees

## § 1404

- Section 130 civil liability under TILA applies to MOs who are not creditors, capped at 3x compensation to MO, plus attorneys' fees

## § 1405

- FRB/CFPB may adopt rules to “prohibit or condition terms, acts, or practices relating to residential mortgage loans that the Board finds to be abusive, unfair, deceptive, predatory, necessary or proper to assure that responsible, affordable mortgage credit remains available to consumers” consistent with 129B and 129C

# *Subtitle B: Minimum Standards of Mortgage Lending – Residential Mortgage Loans*

## § 1411 – Ability to Pay

Adopts § 129C of TILA

- FRB/CFPB to adopt rules requiring creditor to make reasonable and good faith determination that borrower has ability to pay PITI, based on verified and documented information.
  - must underwrite ability to pay multiple loans if know (or reason to know) of other liens
  - use DTI based on all debt service and current income and reasonably assured future income, employment status, credit history, other assets. Must use fully amortizing payment.
  - need W-2s or similar. Need IRS or other third party verification.
  - limited exemptions for certain government guaranteed refinance loans
  - use fully amortizing payment for DTI, even if option ARM or interest-only loan (no more “exploding” underwriting)
  - detailed rules for payment computation
  - use fully-indexed rate for discounted ARMs
  - special factor weightings for refinancing hybrid ARMs (to encourage refi approvals)
  - exclusion for reverse mortgages and bridge loans

## § 1412 – Presumption (Safe Harbor) Ability to Pay

[Note: Heading reads “Rebuttable Presumption.” Text does not discuss rebuttal.]

Safe harbor for ability to pay determination. A creditor “may presume” ability to pay if a “**qualified mortgage**,” defined as:

- no negative amortization
- no deferred principal payment
- no balloon payment
- verified income and assets
- if fixed rate, then fully amortizing underwriting with PITI at that rate
- if variable rate, then underwritten at **maximum rate allowed** under loan documents five years out, with fully amortizing PITI [Note practical effect is to exclude most ARMs from safe harbor except for highly compensated borrowers]
- meets any DTI ratios set by Board/Bureau
- maximum 3% points and fees (with limited additional allowance for up to 2 “bona fide discount points”)
- maximum term 30 years

[Can you say: “plain vanilla loan”?]

*(Safe Harbor – cont'd)*

- Board/Bureau may define “qualified” balloon mortgage, but limited to creditors in rural or underserved areas; for portfolio only.
- Board/Bureau has broad authority to add or delete criteria for “qualified mortgage”
- HUD, VA, Department of Agriculture, Rural Housing Service may define their own “qualified loans”

## § 1413 – Foreclosure Defense

§ 130 of TILA amended to make violation of 129B(c)(1) and (2) (MO compensation rules) or 129C(a) (ability to pay rules) a foreclosure defense valid against any holder of loan

\$ Amount of defense is a permitted set off of amounts creditor would have been liable for in a timely direct action by consumer

Secondary market effect

- buy only “qualified loans” (which happen to be exempt from 5% risk retention)
- from solvent originators



## § 1414 – Additional Standards and Requirements for Residential Mortgage Loans

### § 129C(c)

- No prepayment penalties permitted unless meets definition of “qualified mortgage loan” and loan is fixed rate less than prime offer rate + 1.5% (2.5% for jumbos)
- Lawful prepayment penalties must step down 1-year (3%), 2 years (2%), 3 years (1%), more than 3 = zero
- Creditor must offer a no-penalty loan side-by-side

### § 129C(d)

- No financing of single-premium credit insurance (MOB allowed)

### § 129C(e)

- No pre-dispute arbitration clauses (also applies to HELOCs)

## § 129C(f)

- New special disclosures for negative amortization loans. Includes HELOCs. Counseling required for first-time borrowers.

## § 129C(g)

- Protection of anti-deficiency rights. Lender required to give disclosure of state anti-deficiency rights at consummation and before any refi or other change that would affect those rights

## § 129C(h)

- Lenders must disclose policy regarding acceptance and crediting of partial payments

## § 1416 – Amendments to TILA Penalties and Statute of Limitations

- Non-mortgage penalty increased to \$2,000
- class action cap to \$1MM
- statute of limitations for predatory lending (129, 129B, 129C) extended to 3 years

## § 1417 – Fraud

- Borrower convicted of fraud in loan cannot exercise TILA rights with respect to that loan.

## Disclosure Improvements

### § 1418 – § 128A Added to TILA

- New special advance notice of change for “hybrid ARMs” – 6 months in advance of initial change. “Hybrid” defined as initial fixed rate followed by variable rate. [NB: This may describe any ARM that has a promotional rate]

### § 1419 – Amends § 128 of TILA

- Addition to 226.18 “fed box” disclosure:
  - for ARMs
    - PITI payment
    - PITI payment at fully indexed rate
  - for all loans
    - Settlement charges, broken out by financed and in cash
    - Other charges
    - “Wholesale rate of funds” (?)
    - Mortgage Originator fees – broken out by source of payment
    - Total finance charge as a percentage of loan amount

## § 1420 – New Section 128(f) of TILA

- billing statements required for mortgage loans, except for fixed rate coupon books. Data in either must include:
  - current principal, current rate, next reset date, prepayment fees, late fees, phone and email for servicer, HUD counselor information

## § 1421 – GAO Report

- GAO studies and reports to Congress in 1 year re effects of Title XIV changes and other issues on credit availability and effect of securitization risk retention requirements

## *Subtitle C: – High Cost Mortgages* *(Principal Dwelling)*

### § 1431 – Definition Changes in § 103(aa) of TILA

#### Rate Trigger

Average Prime Offer + 6.5% (8.5% for junior liens and loans under \$52K)  
(Previously T+8% or T+10%)

#### Fees Trigger

5% for loans over \$20K, 8% or \$1,000 for loans under \$20K  
(Previously 8% / \$400)

#### Prepayment Penalty Trigger

If prepayment penalty lasts more than 36 months or exceeds 2% of principal. But see below, prepayment penalties illegal for high cost loans. Compare “qualified” mortgage loan permits 3% fee.

Note: “High Cost” no longer excludes HELOCs OR PURCHASE TRANSACTIONS

Note: Unclear re effective dates where new rules not required.

APR Triggers clarified:

Fixed Rate = Fixed Rate

“Clean” variable (“rate varies solely in accordance with an index” + margin) = use fully indexed rate [Query: does this exclude discounted initial rates?]

Any other variable = Use maximum possible Rate

Limits Board/CFPB ability to adjust triggers (Fed currently has broad authority to adjust)

Points + Fees – changed to look like Maine and MA (CRL) definition (adds YSP, table funding premium, prepayment penalties that are charged or chargeable)

- excludes 2 points of “bona fide discount points” for loans below average prime offer + 1%
- excludes 1 point of “bona fide discount point” for loans below average prime offer + 2%

Provides rules for computing points and fees for HELOCs.

## §§ 1432-1433 – Substantive High Cost Mortgage Changes

- Prepayment penalties banned completely
- Balloons banned completely
- Creditor may not recommend default
- Late fees limited to 4% -- 15 days and no pyramiding
- Limits acceleration to payment default, due-on-sale, other material default
- No financing of points or fees or any prepayment penalty payable to same creditor or an affiliate
- Loan modification, extension, amendment fees prohibited
- Free payoff balances up to 4x per year, within 5 business days (courier fees allowed)
- Pre-loan counseling rules expanded
- Error correction procedure added



## *Subtitle D – Office of Housing Counseling*

(another day)

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expect reach depth results

## *Subtitle E – Mortgage Servicing (Principal Dwelling)*

### § 1461 – Adds § 129D of TILA

- Generally requires escrows for loans secured by principal dwelling except HELOCs and reverse mortgages
- Requires mortgage escrows for 1<sup>st</sup> lien, closed-end if conforming at prime offer + 1.5% or jumbo at prime offer + 2.5% (Fed proposes adjustment to 226.35 for jumbos on 9/24/10)
- Exclusion allowed by regulation for small, rural lenders
- Minimum 5 year duration of escrows (Reg Z currently one year)
- Funds held at insured depository and subject to RESPA and state interest rules (will affect federal preemption)
- New (additional to RESPA) pre-closing escrow disclosures required 3 days before closing

### § 1462 – Disclosure required for waiver or consumer closing of escrows

## § 1463 – RESPA Amendments

Servicers – Amends RESPA § 6 (effective date unclear; Compare § 4 with § 1400(c)(2))

- Servicer needs “reasonable basis” to force place insurance
- cannot charge fees for error resolution
- must timely respond to payoff disputes, payment allocation issues
- 10 days to provide loan owner information, including contact information for owner
- “reasonable basis” to force place insurance requires
  - written notice and disclosure to borrower
  - second notice 30 days later
  - 15 days more silence from borrower
  - no evidence of insurance received
- force placed must be terminated within 15 days of receipt of evidence of insurance and “unearned” premium refunded. Unearned = any period of coverage overlap between force placed and borrower-obtained coverage!
- force placed charges must be bona fide and reasonable
- § 6 penalties increased to parallel TILA (\$2,000 individual and \$1MM class)
- § 6 response times reduced
  - 20 days to 5 days to acknowledge
  - 60 days to 30 days to resolve
- 20 days to refund escrows at payoff

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expect reach depth results

§ 1464 – New Section 129F of TILA

- Prompt crediting of payments by servicers – principal dwelling

New § 129G of TILA

- 7 business days to provide payoff quote (“home loan”)

Amendment to § 128(b) of TILA

- TILA closed-end payment disclosures (Section 128(b)) to include escrows (principal dwelling)

## *Subtitle F – Appraisal Activities*

### § 1471 – New § 129H of TILA (Appraisals)

For non-qualified residential mortgage loans (see above for “qualified”) where rate is prime offer + 1.5% for conforming or + 2.5% for jumbos, or + 3.5% for junior liens (“higher risk loans”):

- Licensed appraiser must conduct, based on physical visit
- Conforming to new set of regulations issued by federal banking regulators
- Second appraisal (at no charge) required to “flip” property within 180 days
- Appraiser must be state licensed or certified and follow FIRREA Uniform Standards

§ 1472 – New § 129E of TILA (Appraiser Independence) (Principal dwelling)

Lender must not violate “appraisal independence”

- coercion or influence on appraiser
- “suborning mischaracterization of value”
- encouraging targeted value
- withholding payment when report done

Exceptions:

- provide additional information
- ask for detail or substantiation
- correct errors
- appraiser and appraisal management company may not have direct or indirect interest in property or transaction
- mandatory reporting of appraiser misconduct to state regulator

*(Appraisal Independence – cont'd)*

- lender may not close if knows of violation of independence or conflict rules without completing backup diligence
- Bureau and banking regulators issue joint rules on appraisal independence
- FRB to issue interim final rules within 90 days of enactment that supersede the FHFA/Cuomo Home Valuation Code of Conduct; FRB Interim Final rules issued 10/28/10, effective 12/27/2011, compliance mandatory 4/1/2011
- appraisal fees to fee appraiser must be “customary and reasonable” – based on market area
- civil penalties of \$10K/\$20K per violation in agency action
- FRB stays in rulemaking for appraiser independence as a bank regulator, not supplanted by CFPB

## § 1473 – FIRREA Amendments

### — FFIEC Appraisal Subcommittee

- CFPB will have input
- Congress will receive annual report on Subcommittee progress
- Subcommittee meetings open to public
- APA Rulemaking power given to Subcommittee

### — Appraisal Management Companies (SAFE Act for Appraisal Mgmt)

- FFIEC appraisal subcommittee to monitor state regulation/licensing of appraisers and management companies
- FFIEC subcommittee to create national registry for management companies



## Adds Section 1124 of FIRREA

- New minimum requirements for management companies to be established by Rules from federal bank regulators and CFPB rules – setting requirements for state licensing
- sets certain federal disqualifiers for state licensing systems
- state registration required 36 months after rules effective
- “Appraisal Management Company” covered by new rules if oversees 15 appraisers in one state or 25 nationally
- Registry fees modified for appraisers and management companies

— FFIEC Appraisal Subcommittee Monitors State Appraiser Regulator

- policies, practices, staffing must meet federal standards
- handles complaints
- metes out discipline to appraisers and management companies
- “maintains effective regulatory program”
- reports to national registry
- FFIEC Subcommittee can blackball a state and all its licensees = appraisal not valid for a federally related transaction
- Reciprocity between federally qualified state licensing systems required; state loses federal recognition if fails to grant reciprocity
- FFIEC monitors state programs for appraiser independence
- FFIEC may create national appraisal complaint hotline if no one else does in 6 months

## New § 1125 of FIRREA

- Federal banking regulators and Bureau to adopt rules re automated valuation models

## New § 1126 of FIRREA

- Reliance on real estate broker price opinions prohibited for primary residence financing

## § 1474 – ECOA Amendment

- Revise ECOA § 701(e) to provide Applicant/Borrower free copy of all appraisals and “valuation materials” at least 3 days before closing

## § 1475 – RESPA Amendment

- GFE to disclose separately management company fee and appraiser compensation

§ 1476 – GAO to Study

- Appraisal methods
- Valuation models
- Distribution channels
- HVCC
- FFIEC Subcommittee effectiveness

## *Subtitle G – Mortgage Resolution and Modification*

(another day)

# Questions?

Richard P. Hackett  
Pierce Atwood, LLP  
One Monument Square  
Portland, ME 04101

Tel: (207) 791-1280  
Fax: (207) 791-1350  
rhackett@pierceatwood.com  
www.pierceatwood.com

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