

TITLE VII – WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009 (FORMERLY H.R. 1728)

Title I: Residential Mortgage Loan Origination Standards.

Section 102	Amends the Truth in Lending Act (TILA) to prescribe fiduciary standards for originators of residential mortgages, including complete and timely written disclosure of: (1) the comparative costs and benefits of each residential mortgage loan product presented by the originator; (2) the nature of the originator's relationship to the consumer, including the cost of services provided by the originator; and (3) any relevant conflicts of interest between originator and consumer.
Section 103	Prohibits steering incentives in connection with mortgage loan origination. Directs the federal banking agencies to prescribe prohibitions against specified mortgage origination practices, including steering any consumer to a residential mortgage loan that: (1) the consumer lacks a reasonable ability to repay; (2) does not provide a consumer refinancing a residential mortgage loan with a net tangible benefit; or (3) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms).
Section 104	Sets the maximum liability of a mortgage originator to a consumer for violation of the residential mortgage loan origination requirements of this title, in addition to court costs and attorney fees, at the greater of: (1) actual damages; or (2) three times the total amount of direct and indirect compensation or gain accruing to the originator in connection with the residential mortgage loan involved.
Section 106	Instructs the Secretary of Housing and Urban Development (HUD) and the Board of Governors of the Federal Reserve (Board) to issue jointly for public comment proposed regulations and model disclosure forms that provide borrowers with compatible disclosures at the time of mortgage application and at the time of closing.
Section 107	Requires the Secretary to study and report to Congress on recommended regulatory requirements that would provide: (1) widespread use of shared appreciation mortgages to strengthen local housing markets; (2) new opportunities for affordable homeownership; and (3) homeowners at risk of foreclosure with the ability to refinance or modify their mortgages.

Title II: Minimum Standards for Mortgages

Section 201	Amends TILA to prescribe minimum standards for residential mortgage loans, including a requirement that a residential mortgage loan creditor: (1) make a reasonable and good faith determination based upon verified and documented information that the consumer has a reasonable ability to repay the loan and its applicable taxes, insurance, and assessments; and (2) use a fully amortizing repayment schedule for purposes of determining a consumer's ability to repay a variable rate loan that defers repayment of principal or interest.
Section 202	Prohibits a creditor from extending credit in connection with any residential mortgage loan that involves a refinancing of a prior existing residential mortgage loan unless the creditor reasonably and in good faith determines, at the time the loan is consummated and on the basis of information known by or obtained in good faith by the creditor, that the refinanced loan will provide a net tangible benefit to the consumer.
Section 203	Authorizes any creditor with respect to any qualified residential mortgage loan, meeting specified requirements, and any assignee or securitizer of such loan, to presume that the loan has met the minimum standards of this title.

Section 204	Permits civil actions for rescission of a residential mortgage loan if a creditor has committed specified abuses.
	Limits the liability of good faith assignees or securitizers of a residential mortgage loan to loan rescission and to certain obligor costs. Allows such an assignee or securitizer to avoid liability if it provides a satisfactory cure for a violation within 90 days after notice of the violation from the consumer. Shields assignees and securitizers from class action suits.
Section 205	Permits a consumer who has the right to mortgage loan rescission to assert such right as a defense to foreclosure.
Section 206	Prohibits specified practices, including: (1) certain prepayment penalties; (2) single premium credit insurance; (3) mandatory arbitration or other nonjudicial procedure (except for reverse mortgages); (4) mortgage loan terms that waive a statutory cause of action by the consumer; and (5) mortgages with negative amortization (except, again, for reverse mortgages), unless certain disclosures are made and a first-time borrower receives homeownership counseling.
	Requires a creditor or mortgage originator, before loan consummation or loan refinancing, to disclose the protection provided by a state anti-deficiency law and its significance for the consumer upon the loss of that protection. (A state anti-deficiency law shields a consumer mortgagor from liability for any deficiency between a foreclosure sale price and the outstanding balance of the mortgage.)
Section 210	Doubles civil money penalties on creditors for certain violations.
Section 211	Exempts a creditor, assignee, or securitizer from liability and rescission in the case of borrower fraud or deception.
Section 212	Requires a six-month notice including specified elements before a hybrid adjustable rate mortgage is reset.
Section 213	Directs federal banking agencies to prescribe jointly regulations requiring creditors that make a non-qualified residential mortgage loan retain an economic interest in a material portion of the credit risk if the creditor transfers, sells, or conveys such loan to a third party. Authorizes the agencies jointly to apply risk retention requirements to securitizers of non-qualified residential mortgages in addition to, or in substitution for, the requirements governing creditors that make such mortgages if the agencies jointly determine that applying retention requirements would: (1) help ensure high quality underwriting standards; and (2) facilitate appropriate creditor risk management practices, or otherwise serve the public interest.
Section 214	Prescribes creditor disclosures for: (1) variable rate residential mortgage loans for which an escrow or impound account will be established to pay taxes, insurance and assessments; and (2) periodic statements for residential mortgage loans.
Section 216	Directs the HUD Secretary to establish a grants program to enable low- and moderate-income homeowners and tenants to obtain legal assistance associated with foreclosure.
Section 218	Directs the Comptroller General to study and report to Congress on the effects that enactment of this Act will have upon the availability and affordability of credit for consumers, small businesses, homebuyers, and mortgage lending, including the effect upon: (1) the mortgage market for mortgages that are not within the safe harbor provided in this Act; (2) the ability of prospective homebuyers to obtain financing; and (3) the refinance ability of homeowners facing resets or adjustments.
Section 219	Authorizes state attorneys general to enforce the tenant protections set forth in this Act.
Section 220	Prescribes tenant protection measures in the case of foreclosure on any dwelling or residential real property (including Section 8 tenancies).

Title III: High-cost Mortgages

Section 301	(Sec. 301) Prescribes standards for points and fees related to: (1) high-cost mortgages; (2) open-end consumer credit plans; and (3) bona fide discount points and prepayment penalties.
Section 302	Repeals the allowance of prepayment penalties for certain mortgages.
	Prohibits a high-cost mortgage from containing a scheduled payment that is more than twice as large (balloon payment) as the average of earlier scheduled payments.
Section 303	Prescribes additional requirements for certain mortgages.
	Prohibits a creditor from: (1) recommending default on an existing debt prior to and in connection with the closing of a high-cost mortgage that refinances such debt; (2) imposing late payment fees in connection with a high-cost mortgage except in compliance with specified requirements; (3) accelerating debt on a high-cost mortgage (except in certain circumstances); or (4) financing, in connection with any high-cost mortgage, either a prepayment fee or penalty payable by the consumer if the creditor is the noteholder of the note being refinanced.
	Prohibits the creditor of a high-cost mortgage from implementing certain evasions, structured transactions, and reciprocal arrangements.
	Prohibits a creditor from charging a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage, unless the modification, renewal, extension, or amendment results in a lower annual percentage rate on the mortgage for the consumer, and then only if the amount of the fee is comparable to fees imposed for similar consumer credit transactions secured by a consumer's principal dwelling.
	Prohibits the charging of any fee, except a processing fee, for payoff statements.
	Requires a creditor, as a prerequisite to extending consumer credit under a high-cost mortgage, to receive certification from a HUD-approved counselor that the consumer has received counseling on the advisability of the mortgage.
	Prohibits any creditor from knowingly or intentionally engaging in the unfair act or practice of flipping in connection with a high-cost mortgage. Defines flipping as the making of a loan or extension of credit in the form a high-cost mortgage to a consumer which refinances an existing mortgage when the new loan or extension of credit does not have reasonable, net tangible benefit to the consumer considering all of the circumstances.
	Prescribes a procedure by which a high cost loan creditor or assignee that, acting in good faith, commits an unintentional violation of these prohibitions and other requirements may make timely corrections and avoid liability for the violation.

Title IV: Office of Housing Counseling

Section 402	Amends the Department of Housing and Urban Development Act to establish within HUD the Office of Housing Counseling, whose Director shall have primary responsibility within HUD for all activities and matters relating to both homeownership and rental housing counseling.
--------------------	---

Section 403	Amends the Housing and Urban Development Act of 1968 to require the Secretary to: (1) prescribe counseling procedures for homeownership and rental counseling; and (2) provide for certification of computer software programs for consumers to evaluate different residential mortgage loan proposals.
	Requires the Director to: (1) develop and conduct national public service multimedia campaigns to promote housing counseling; and (2) used specified funds to conduct foreclosure rescue education programs. Authorizes appropriations for FY2009-FY2011.
Section 404	Requires the Secretary to provide financial assistance (grants) to HUD-approved housing counseling agencies and state housing finance agencies that offer homeownership and rental counseling.
	Authorizes appropriations for FY2009-FY2012 for: (1) the Office of Housing Counseling; (2) certain responsibilities of the Director; and (3) assistance to entities providing homeownership and rental counseling.
Section 405	Requires an organization that receives federal assistance for counseling activities to be HUD-certified.
Section 406	Requires an organization that receives federal assistance for counseling activities to be HUD-certified.
Section 409	Directs the Secretary to develop a funds-tracking system, including accountability and transparency criteria, to ensure that grant recipients use all amounts of financial assistance in accordance with specified requirements.
Section 410	Amends the Real Estate Settlement Procedures Act of 1974 (RESPA) to direct the Secretary to: (1) prepare, at least once every five years, a booklet to help federally related mortgage loan applicants of different ethnic and cultural backgrounds to understand the nature and costs of real estate settlement services; and (2) distribute to all lenders that make federally related mortgage loans both the booklets and lists of HUD-certified homeownership counselors.
Section 411	Requires the Secretary to inform potential homebuyers of the availability and importance of obtaining an independent home inspection.
Section 412	Allocates specified funds to the Neighborhood Reinvestment Corporation for activities to make borrowers who are delinquent on certain loans aware of the dangers of fraudulent activities associated with foreclosure.
Title V: Mortgage Servicing	
Section 501	Amends TILA to require a creditor in a non-credit card consumer credit transaction secured by a first lien on the principal dwelling (other than a reverse mortgage) to establish an escrow or impound account for mandatory periodic payments or premiums (including taxes, insurance, and ground rents).
	Prohibits making an escrow or impound account a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the consumer's principal dwelling unless specified circumstances exist.
	Requires such escrow or impound account to remain in existence for at least five years until sufficient equity exists in the property securing the transaction so that private mortgage insurance is no longer required, or unless the underlying mortgage is terminated.
	States that: (1) escrow accounts need not be established for loans secured by shares in a cooperative; and (2) insurance premiums need not be included in escrow accounts for loans secured by condominium units if the condominium association has an obligation to unit owners to maintain a master insurance policy.

	Requires: (1) escrow accounts to be established in a federally insured depository institution; and (2) each creditor to pay interest on the amount held in such accounts as required by state or federal law.
	Requires specified disclosures to the consumer about a mandatory escrow or impound account before consummation of the credit transaction giving rise to such account.
Section 502	Requires creditors to provide specified disclosures to consumers who waive escrow services.
Section 503	Amends RESPA to prohibit the servicer of a federally related mortgage from engaging in certain practices, including obtaining force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract requirements. (Force-placed hazard insurance is coverage obtained by the servicer when the borrower has failed to comply with hazard insurance requirements under the terms of the mortgage).
	Prescribes notice and borrower non-response requirements for permitting loan servicers to obtain force-placed insurance.
	Doubles the penalties for loan servicer noncompliance with RESPA disclosure requirements.
	Reduces from 20 to five days the time limit within which loan servicers are required to respond to borrower inquiries.
	Requires any remaining escrow balance that is within the control of the loan servicer at the time the loan is paid off to be: (1) promptly returned to the borrower within 20 business days; or (2) credited to a similar account for a new mortgage loan to the borrower with the same lender.
Section 504	Amends TILA to prohibit a loan servicer, except in a specified circumstance, from failing to credit a payment to the consumer's account as of the date of receipt.
	Requires a creditor or servicer of a home loan to send an accurate payoff balance no later than seven business days after receipt of a written request for it.
	Requires repayment disclosures regarding a first mortgage- or lien-secured consumer credit transaction to take into account the amount of monthly escrow payments, including: (1) the taxable assessed value of the real property securing the transaction after consummation of the transaction; (2) the value of any improvements on the property or to be constructed on it; and (3) the replacement costs of the property for hazard insurance in the initial year after the transaction.

Title VI: Appraisal Activities	
Section 601	<p>Amends TILA to set forth property appraisal requirements for a creditor who extends subprime mortgage credit to a consumer, including: (1) a written appraisal performed by a qualified appraiser who conducts a physical property visit of the interior of the mortgaged property; (2) a free copy of such appraisal to the applicant before the transaction closing date; and (3) a statement by the creditor at the time of the initial mortgage application that the appraisal is for its sole use, and that the applicant, at its own expense, may choose to have a separate appraisal.</p> <p>Requires a creditor to obtain a second appraisal from a different qualified appraiser if the purpose of a subprime mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price lower than the current sale price of the property.</p>
Section 602	<p>Declares unfair and deceptive certain practices relating to consumer credit transaction secured by the consumer's principal dwelling.</p> <p>Includes among unfair and deceptive practices any appraisal of a property offered as security in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person conducting or involved in the appraisal.</p> <p>Includes, in addition, among such practices: (1) mischaracterizing, or suborning mischaracterization of the appraised value of the property securing the extension of the credit; (2) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the transaction; and (3) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered.</p> <p>Prohibits any certified or licensed appraiser or appraisal management company from having an interest, financial or otherwise, in the property or transaction involving the appraisal.</p> <p>Requires designated federal agencies to prescribe implementing regulations jointly. Subjects unfair and deceptive practices to civil penalties.</p>
Section 603	<p>Amends the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) to provide the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) with a consumer protection mandate.</p> <p>Directs the Subcommittee to monitor the efforts of, and requirements established by, states and federal financial institutions regulatory agencies to protect consumers from improper appraisal practices and from predations of unlicensed appraisers in consumer credit transactions secured by a consumer's principal dwelling.</p> <p>Requires the Subcommittee to detail in its annual report to Congress: (1) the results of all audits of state appraiser regulatory agencies; and (2) an accounting of disapproved actions and warnings taken in the previous year, including the conditions causing the disapproval and the actions taken to achieve compliance.</p> <p>Requires meetings of the Subcommittee to be open to the public.</p> <p>Requires: (1) all property appraisals performed within a state to be prepared by appraisers licensed or certified within the state where the property is located; and (2) all appraisal reviews to be performed by an appraiser licensed or certified by a state appraisal board.</p>

	Requires the Subcommittee to monitor state requirements for the registration and supervision of an appraisal management company.
	Directs the Subcommittee to maintain a national registry of appraisal management companies that either are: (1) registered with and subject to supervision of a state appraiser certifying and licensing agency; or (2) operating subsidiaries of a federally regulated financial institution.
	Requires the Appraiser Qualifications Board of the Appraisal Foundation to establish minimum qualifications a state must apply in the registration of appraisal management companies, including specified requirements.
	Requires the appropriate federal financial institution regulatory agency to develop regulations affecting the operations of any appraisal management company that is a subsidiary owned and controlled by a federally regulated financial institution.
	Sets forth: (1) registration limitations; (2) additional state agency reporting requirements; and (3) revised registry fees.
	Authorizes the Subcommittee to award grants to state appraiser certifying and licensing agencies in order to support their compliance with this Act.
	Authorizes the Subcommittee to: (1) remove a state licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis pending state agency action on licensing, certification, registration, and disciplinary proceedings; (2) impose sanctions against a state agency that fails to have an effective appraiser regulatory program; and (3) impose interim actions and suspensions against a state agency as an alternative to, or in advance of, de-recognition of a state agency.
	Requires a state appraiser certifying or licensing agency to issue a reciprocal certification or license for an individual with a valid certification or license from another state in compliance with this Act whose licensure standards meet or exceed those of the first state.
	Requires the Subcommittee to monitor each state appraiser certifying and licensing agency to determine whether: (1) its policies, practices, and procedures are consistent with the purposes of maintaining appraiser independence; and (2) such state maintains effective regulations, and policies regarding maintaining appraiser independence.
	Requires the Subcommittee, one year after enactment of this Act, to establish and operate an Appraisal Complaint National Hotline, including a toll-free telephone number and an email address, if none exists by that time.
	Directs the Subcommittee to promulgate regulations to implement quality control standards governing automated valuation models (computerized models used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling).
	Prohibits broker price opinions from being used as the primary basis to evaluate property for loan origination in connection with a residential mortgage loan secured by such property.
	Amends the Federal Financial Institutions Examination Council Act of 1978 to require that at all times at least one member of the Appraisal Subcommittee have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.
Section 604	Directs the Comptroller General to study and report to Congress on possible improvements in the appraisal process generally, and

	specifically on the consistency in and the effectiveness of, and possible improvements in, state compliance efforts and programs.
Section 605	Amends the Equal Credit Opportunity Act (ECOA) to revise requirements that creditors provide loan applicants a copy of the appraisal report used in connection with the applicant's application for a loan that is or would have been secured by a lien on residential real property. Repeals the condition that the loan applicant request the copy. Requires a creditor to furnish the applicant a copy of all written appraisals and valuations within three days after the closing of the loan.
Section 606	Amends RESPA to require the standard real estate settlement form to disclose, in the case of an appraisal coordinated by an appraisal management company, the fee paid directly by the company to the appraiser as well as the company's administration fee.
Title VII: Sense of Congress Regarding the Importance of Government Sponsored Enterprises Reform	
Section 701	Expresses the sense of Congress that efforts to enhance the terms of residential mortgage credit and practices by protection, limitation, and regulation would be incomplete without enactment of meaningful structural reforms of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).
Title VIII: Reports	
Section 801	Directs the Comptroller General to study and report to Congress on certain interagency efforts to crackdown on mortgage foreclosure rescue scams and loan modification fraud
Title IX: Multifamily Mortgage Resolution	
Section 901	Directs the Secretary of the Treasury, in order to ensure the protection of current and future tenants of at-risk multifamily properties, to develop a program to stabilize multifamily properties that are either delinquent, at risk of default or disinvestment, or in foreclosure.
Title X: Study of Effect of Drywall Presence on Foreclosures	
Section 1001	Directs HUD to study and report to Congress regarding the effect upon residential mortgage loan foreclosures of: (1) the presence of drywall imported from China between 2004 and the end of 2007; and (2) the availability of property insurance for residential structures in which such drywall is present.
Title XI: Guidelines for Purchase of Condominium and Cooperative Housing Mortgages	
Section 1101	Directs Fannie Mae and Freddie Mac to establish and revise, consistent with appropriate levels of credit risk, underwriting standards for the purchase of condominium and cooperative housing.

Questions?

Contact the authors:

Timothy R. McTaggart
202.220.1210
mctaggartt@pepperlaw.com

Travis P. Nelson
215.981.4187
202.220.1426
nelson@pepperlaw.com