Rules and Regulations of
Title XIV of the Dodd-Frank Act

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I. Introduction

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") was signed into law on July 21, 2010. The stated purpose of the sixteen titles set forth in the Dodd-Frank Act is "to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes." *Dodd-Frank Act, Pub L. No. 111-203, 124 Stat. 1376 (to be codified in scattered sections of the U.S. Code).* This paper seeks to generally address the following eight subtitles of Title XIV of the Dodd-Frank Act, the Mortgage Reform and Anti-Predatory Lending Act: (A) Subtitle A: Residential Mortgage Loan Origination Standards; (B) Subtitle B: Minimum Standards for Mortgages; (C) Subtitle C: High Cost Mortgages; (D) Subtitle D: Office of Housing Counseling; (E) Subtitle E: Mortgage Servicing; (F) Subtitle F: Appraisal Activities; (G) Subtitle G: Mortgage Resolution and Modification; and (H) Subtitle H: Miscellaneous Provisions.

Many of the rules and regulations promulgated to enact the measures set forth in Title XIV of the Dodd-Frank Act remain subject to public comment and under the review of the agencies tasked with their administration. This paper seeks to provide a general summary of provisions of the Mortgage Reform and Anti-Predatory Lending Act that will affect mortgage lending practitioners and to give such practitioners a basic knowledge of certain sections of such act that will affect their practice and their clients. Additionally, certain forms and charts are included in the Appendices of this paper to provide practitioners a quick resource as to the required language under the current rules as well as an easy reference as to the applicability of these rules with regards to various types of loans, creditors and consumers.

II. Subtitle A: Residential Mortgage Loan Origination Standards (*Dodd-Frank Act §§ 1401-06*)

Subtitle A sets forth a duty of care for all mortgage originators which requires such originators to be properly qualified, registered and licensed. *Dodd-Frank Act § 1402(a).*

A. Prohibition Against Compensation Based on a Term of a Transaction or Proxy for a Term of a Transaction.

The Dodd-Frank Act codifies the prohibition set forth in Regulation Z that a loan originator's compensation shall not be based on transaction terms or conditions of a mortgage loan. *12 C.F.R. § 1026.36 (2013) (Regulation Z).* A "term of transaction" is defined as "any right or obligation of the parties to a credit transaction." *Id.* An example given by the Bureau of Consumer Financial Protection (the "Bureau") is that, under this provision, a mortgage broker may not receive compensation based on the interest rate of a loan or due to the fact that a consumer purchases title insurance from an affiliate of the broker. *78 Fed. Reg. 11279 (February 15, 2013).* The prohibition of compensation based on the foregoing is due to the fact that the consumer in such example is obligated to pay interest on the loan and is required to obtain title insurance in connection with the loan. Generally, a mortgage broker is prohibited from being compensated based on those elements to which the consumer is obligated under the loan. *12 C.F.R. § 1026.36.* Additionally, a mortgage broker's compensation is prohibited from being based on a "proxy" for a term of a transaction. A "proxy" is defined as a factor within a loan that (1) consistently has a direct correlation with a transaction term over a significant number of transactions and (2) the loan originator has the ability, directly or indirectly, to add, modify or eliminate from the transaction. *Id.* Finally, the Dodd-Frank Act attempts to prevent incentives of mortgage loan originators and/or brokers to "up-charge" consumers on their loan by prohibiting a loan originator's compensation from being based on the profitability of a transaction or a pool of transactions; provided, however, the following are exceptions to this rule: "(i) contributions to or benefits under certain designated tax-advantage retirement plans, such as 401(k) plans and certain pension plans; (ii) bonuses and other types of non-deferred profits-based compensation if the individual loan originator originated ten (10) or fewer mortgage transactions during the preceding twelve (12) months; and (iii) bonuses and other types of non-deferred profits- based compensation that does not exceed ten percent (10%) of the individual loan originator's total compensation." *78 Fed. Reg. 11279 (amending 12 C.F.R. §1026.36).*

B. Prohibition Against Dual Compensation.

Section 1403 of the Dodd-Frank Act codifies the existing prohibition set forth in Regulation Z that forbids a loan originator who receives compensation from a consumer on a loan transaction from receiving compensation on the same transaction from an additional source. *Dodd-Frank Act § 1403.* The Bureau's final rule addressing this section of the Dodd-Frank Act provides an exception that allows for mortgage brokers to pay their employees or contractors commissions though such commissions cannot be based on the terms of the loans that they originate. *78 Fed. Reg. 11279.*

C. No Prohibition on Consumer Payment of Upfront Points and Fees.

Although the Dodd-Frank Act sets forth a prohibition against consumers paying upfront points and fees on a loan transaction in which the loan originator is compensated by a person other than the consumer, the Dodd-Frank Act also allows the Bureau to waive all or part of this prohibition if the Bureau determines such waiver is in the best interest of the public. *Dodd-Frank Act § 1403.* The final rule promulgated by the Bureau elects to waive this prohibition at this time. *78 Fed. Reg. 11279.* The Bureau retains the right to revoke or amend this waiver based on additional research and testing. *Id.*

D. Loan Originator Qualifications.

The Dodd-Frank Act requires that loan officers, mortgage brokers and creditors be "qualified" and registered or licensed to the extent required by federal and/or state law. *Dodd-Frank Act § 1402(a).* A creditor's loan originators shall be licensed or registered in accordance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act") and any other applicable law. *12 U.S.C. § 5110.* For those loan originating employees who are not covered by the SAFE Act, such employees shall "(1) meet character, fitness and criminal background standards similar to existing SAFE Act licensing standards and (2) provide training to such employees that is consistent and appropriate with their respective activities." *78 Fed. Reg. 11279.* The final rule promulgated by the Bureau provides special provisions with regards to credit checks and criminal background checks and sets forth certain criminal convictions that are disqualifying events for an employee. *Id.*

E. Loan Document Identification Requirements.

Section 1402 of the Dodd-Frank Act requires that mortgage brokers, creditors and individual loan originators primarily responsible for a loan provide their Nationwide Mortgage Licensing System and Registry unique identifiers, if any, on their loan documents along with their names. The Bureau has further defined this requirement and states in the applicable rule that such identifiers are only required on the note, security instrument and loan application and shall only be required to be set forth once on each such document. *78 Fed. Reg. 11279.*

F. Prohibition on Mandatory Arbitration Clauses.

The Dodd-Frank Act provides for a prohibition on binding arbitration for the consumer with regards to disputes concerning a residential mortgage loan or home equity line of credit. *Dodd-Frank Act § 1414.* Such section also prohibits the application or interpretation of a provision of a mortgage loan agreement from blocking a consumer from bringing a claim in court in connection with any alleged violation of Federal law. *Id.*

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