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Mortgage Origination and Servicing Issues Affecting Low- and Moderate-Income Homeowners

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Loan Origination and Servicing – A Regulatory Compliance Perspective

- The Dodd-Frank Act, signed into law in 2010, significantly changed the regulatory landscape for mortgage origination and servicing. This landscape continues to evolve six years later, and newly-adopted regulations such as TRID have created an entirely new lexicon and process for obtaining a obtaining a home mortgage.
- What's more, the broad supervision and enforcement power of the Consumer Financial Protection Bureau ("CFPB") has pushed both banks and non-banks in the mortgage industry to take a fresh look at their origination and servicing practices.
- We'll take a non-exhaustive look at some of the most important laws and regulations affecting mortgages.

TILA/RESPA Integrated Disclosure Rule ("TRID")

Key Provisions

- Purpose is to establish "a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) …[which will] facilitate compliance with the disclosure requirements of [TILA] and [RESPA] and … aid the borrower … in understanding the transaction by utilizing readily understandable language…."
- Applies to all "closed end consumer credit transactions secured by real property" (except reverse mortgages, HELOCs, loans secured by mobile homes or other dwellings not attached to real estate).
- For covered transactions, replaces GFE/HUD-1/1A with Loan Estimate and Closing Disclosure. RESPA disclosure requirements (GFE/HUD-1/1A) continue to apply to federally-related mortgage loans not covered by TRID.
- Loan Estimate required within 3 business days after receipt of application. Closing Disclosure required no later than 3 business days before "consummation" (as defined under state law).

Ability-to-Repay/Qualified Mortgage Rule

Key Provisions

- Ability-to-Repay – No loan unless unreasonable and good-faith determination of reasonable ability to repay.
- There is an Eight-Factor Test to determine repayment ability, including: current or reasonably expected income or assets, Employment status, Monthly payment on this loan, Monthly payment on "simultaneous loans," Monthly payment for "mortgage-related obligations," current debt obligations, monthly DTI ratio (or residual income), and credit history
- There is an elaborate definition for points and fees – this impacts the "Qualified Mortgage" Test
- The "Qualified Mortgage" is a safe harbor for "prime" mortgages; but there is a rebuttable presumption for "nonprime"
- The ATR/QM Rules places limits and prohibitions on prepayment penalties

SAFE Act
Key Provisions

- The SAFE Act was enacted to:
  - Improve the accountability and tracking of residential mortgage loan originators,
  - Provide protection to consumers,
  - Reduce fraud, and
  - Provide consumers with information about mortgage loan originators.
- Covered entities and their employees who meet the definition of a "mortgage loan originator" must be registered with and obtain a unique identifier from the Nationwide Mortgage Licensing System and Registry (Registry).
- A Mortgage Loan Originator ("MLO") is an employee who:
  - Takes a residential mortgage loan application; AND
  - Offers or negotiates terms of a residential mortgage loan for compensation or gain.
- The SAFE Act generally prohibits employees not registered in the Registry from pre-qualifying a potential client/prospect, evaluating the credit worthiness of the client/prospect or discussing particular mortgage terms and conditions with a client/prospect.

Equal Credit Opportunity Act ("ECOA") and Reg B

Purpose and Scope

- Purpose to ensure that financial institutions make credit available with <u>fairness</u>, <u>impartiality</u>, and <u>without discrimination</u> on a "prohibited basis"
- "Prohibited Bases" (a/k/a "Protected Classes") = Race, color, religion, national origin, sex, marital status, age, fact that applicant's income derives from public assistance, or fact that applicant exercised rights in good faith under federal consumer protection act
- Rules regarding taking of applications
  - Information that cannot be requested
  - Information that must be requested for government monitoring purposes
  - Self-testing
  - special purpose credit programs
- Rules concerning extending credit
- Adverse action notices/notices of incompleteness
- Appraisal reports/notices of availability

Home Mortgage Disclosure Act ("HMDA") and Reg C

Key Provisions

- Purpose to provide government officials and citizens with sufficient information to enable them to determine whether home mortgage lenders are providing adequate home financing to qualified applicants on reasonable terms and conditions.
- Originally aimed at discouraging "redlining." Not intended to encourage unsound lending or to allocate credit.
- Requires covered institutions to report data to the appropriate Federal agency about home purchase loans, home improvement loans, and refinancings that they originate or purchase, or for which they receive applications; and to disclose certain data to the public.
- Imposes detailed reporting requirements concerning who must report, what must be reported, when must reports be submitted and to whom. New Rule greatly expands these reporting requirements.

CFPB Mortgage Servicing Rules

Key Provisions

- Purpose is to provide better disclosure to consumers of their mortgage loan obligations and inform them of options available when having difficulty with their mortgage loan obligations.
- It implements new requirements with respect to TILA and Regulation Z in the following areas:
  - ARM subsequent rate change notice
  - Initial ARM interest rate adjustment disclosure
  - Crediting payments, pyramiding late fees, providing payoff quotes
  - Periodic billing statements (or coupons in certain instances)
- It implements new requirements with respect to RESPA and Regulation X, including the following:
  - Error Resolution
  - Requests for Information
  - Force-placed insurance restrictions
  - Early intervention protocol
  - Loss mitigation procedure

Telephone Consumer Protection Act
Key Provisions

- Enacted in 1991 to protect consumers from unwanted telephone calls and faxes
- Implemented and interpreted by the Federal Communications Commission (FCC)
- Generally prohibits the following:
  - Autodialed and prerecorded calls/text messages to cell phones
  - Unsolicited fax advertisements
  - Calls made to numbers on the "do not call" list
  - Requires two calls in a 12-month period
  - Autodialed and prerecorded calls to emergency lines, hospitals and nursing homes
  - Prerecorded messages to residential numbers
- Either calls or texts to a cell phone using "automatic telephone dialing system" are prohibited
- FCC has determined that an "automatic telephone dialing system" includes predictive dialers that use stored lists of numbers.

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- Len is the managing partner of Reed Smith’s Philadelphia office.
- Len founded and chairs the firm's Financial Services Regulatory Group (“FSRG”) and concentrates his practice in the representation of banks, mortgage bankers and finance companies in providing consumer credit compliance advice on federal, Pennsylvania and New Jersey laws and regulations.
- The FSRG addresses credit card, auto finance, deposit, residential mortgage and other retail finance products. Len is nationally known for expertise with federal Truth-in-Lending Act, Real Estate Settlement Procedures Act and similar laws, and works regularly with federal and state financial services regulators.
- Len and his colleagues also handle bank regulatory issues and exams, and defend class actions and individual claims filed against financial services providers. Len is also active with the firm's Financial Services Litigation defense group and has been elected to the American College of Consumer Financial Services Attorneys.