

## **TITLE XIV: Mortgage Reform and Anti-Predatory Lending Act**

Title XIV's short title is the "Mortgage Reform and Anti-Predatory Lending Act." **Sec. 1400(a) (p. 773).**

Subtitles A, B, C, and E, as well as Sections 1471, 1472, 1475, and 1476 are under the purview of the Bureau. **Sec. 1400(b) (p. 773).**

Regulations required under Title XIV must be in final form within 18 months of the transfer date and must take effect no later than 12 months after the date of their issuance. The title's sections take effect when the final regulations implementing the sections take effect. If regulations have not been issued within 18 months of the designated transfer date for a section, however, then the section will take effect on that date. **Sec. 1400(c) (pp. 773-774).**

### **A. Residential Mortgage Loan Origination Standards**

#### **1. Definition of Mortgage Originator**

A "mortgage originator" is defined as "any person who, for direct or indirect compensation or gain . . . (i) takes a residential 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." The definition also includes anyone who represents to the public that it can provide any of the aforementioned services. It specifically excludes persons who perform clerical tasks and employees of manufactured home retailers who do not advise consumers on loan terms, persons that only perform real estate brokerage activities, and mortgage servicers. **Sec. 1401 (p. 774).**

#### **2. Residential Mortgage Loan Origination**

Title XIV amends the TILA by adding a section regarding residential mortgage loan origination. The amendment is based on Congress's finding that regulation of residential mortgage credit and practices will enhance economic stabilization. The purpose of the section is to ensure that consumers are offered and receive mortgage loans that they can repay reasonably and that are understandable. **Sec. 1402 (p. 776).**

Mortgage originators must be qualified and, when required, be registered and licensed in accordance with applicable state and federal law. Mortgage originators must include on all loan documents any unique identifier provided by the Nationwide Mortgage Licensing System and Registry. Additionally, the Fed must prescribe regulations to require depository institutions to establish procedures to assure and monitor compliance of the institutions, their subsidiaries, and employees. **Sec. 1402 (p. 776).**

#### **3. Prohibition on Steering Incentives**

Mortgage originators are prohibited from receiving compensation that varies based on the terms of the loan, other than the principal amount, i.e., steering incentives. Only consumers may pay a mortgage originator any origination fee, unless the mortgage originator does not receive

any compensation from the consumer and the consumer does not make an upfront payment. **Sec. 1403 (pp. 776-777).**

The Fed must prescribe regulations to prohibit mortgage originators from steering consumers to residential mortgage loans that the consumer lacks a reasonable ability to repay or that have predatory characteristics. The Fed also must prohibit: mortgage originators from steering consumers away from qualified mortgages to unqualified mortgages; abusive or unfair lending practices that promote disparities among consumers of equal creditworthiness but of different race, gender, age, or ethnicity; and mortgage originators mischaracterizing consumers' credit histories and the appraised value of a property. **Sec. 1403 (pp. 777-778).**

#### **4. Liability**

The maximum liability of a mortgage originator for failing to comply with this section must not exceed the greater of actual damages or three times the total amount of direct or indirect compensation or gain accruing to the mortgage originator in connection with the mortgage involved in the violation, plus the cost to the consumer, including reasonable attorneys' fees. **Sec. 1404 (p. 778).**

#### **5. Regulations**

The Fed must, by regulations, prohibit residential mortgage terms, acts, or practices it finds to be abusive. The prohibitions apply to all residential mortgages, though the Fed may modify disclosure requirements for any class of residential mortgages if the Fed determines that the modification is in the interest of consumers and the public. **Sec. 1405 (pp. 778-779).**

#### **6. Study of Shared Appreciation Mortgages**

The HUD Secretary, in consultation with the Treasury Secretary and other relevant agencies, must conduct a study to determine prudent requirements to provide for the widespread use of shared appreciation mortgages. They must submit a report to Congress within six months of the date of enactment. **Sec. 1406 (p. 779).**

### **B. Minimum Standards for Mortgages**

#### **1. Ability to Repay**

Before making a residential mortgage loan, creditors must make a "reasonable and good faith determination based on verified and documented information" that the consumer has a reasonable ability to repay the loan, along with all applicable taxes, insurance, and assessments. If the creditor knows or has reason to know that a consumer has secured one or more residential loans with the same dwelling, the creditor must make a "reasonable and good faith determination" that the consumer has a reasonable ability to repay the combined payments on all of the loans.

To make these determinations, creditors must consider the consumer's credit history, current income, expected income, current obligations, debt-to-income ratio, employment status, and the consumer's financial resources other than the consumer's equity in the dwelling or real

property that secures the mortgage. Creditors must assess the consumer's ability to repay using a fully amortizing payment schedule. Creditors must verify the consumer's income by reviewing the consumer's IRS Form W-2, tax returns, payroll receipts, bank records, or other third-party documents.

To determine a consumer's ability to repay a variable rate loan, creditors must use a fully amortizing repayment schedule. For interest-only loans, creditors must use the payment amount required to amortize the loan by its final maturity. Creditors must also consider any balance increase that may accrue from negative amortization provisions.

In making its calculations under this section, a creditor must calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming: (i) the loan proceeds are fully disbursed on the date of the loan; (ii) the loan is to be repaid in substantially equal monthly payments for principal and interest over the entire term of the loan with no balloon payment; and (iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, i.e., the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of introductory interest rates.

If a creditor is considering refinancing an existing hybrid loan to a standard loan to be made by the same creditor, the mortgagor has not been delinquent on payments on the hybrid loan, and the monthly payment would decrease, the creditor may consider the mortgagor's good standing on the existing mortgage, whether the extension of new credit would likely prevent a default and offer favorable terms that would be available to new customers with high credit ratings.

This section must not apply to any reverse mortgage or temporary bridge loan with a term of 12 months or less.

If documented income, including a small business, is a source for repayment of a residential mortgage, a creditor may consider the irregularity of the income in the underwriting and scheduling of payments for the mortgage. **Sec. 1411 (pp. 779-782).**

## **2. Safe Harbor and Rebuttable Presumption**

A "qualified mortgage" is any residential mortgage that:

- i. The regular payments of which do not: (i) result in an increase of the principal balance; or (ii) allow the consumer to defer repayment of the principal;
- ii. Does not result in a balloon payment, i.e., a scheduled payment that is more than twice as large as the average of earlier scheduled payments;
- iii. Is qualified by income and financial resources that are verified and documented;

- iv. For a fixed rate loan, is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;
- v. For an adjustable rate loan, is based on the maximum rate permitted under the loan during the first 5 years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;
- vi. Complies with any guidelines or regulations established by the Fed;
- vii. Has total points and fees that do not exceed 3 percent of the total mortgage amount;
- viii. The term of which does not exceed 30 years; and
- ix. For a reverse mortgage, meets all the standards for a qualified mortgage, as set by the Fed. **Sec. 1412 (pp. 783-785).**

The Fed must prescribe regulations to fulfill this section. The Fed may prescribe regulations that revise the criteria of a qualified loan, upon finding that such regulations are necessary (i) to ensure that affordable mortgage credit remains available to consumers; (ii) to effectuate the purposes of this section; and (iii) to prevent the circumvention of or to facilitate compliance with this section. **Sec. 1412 (p. 785).**

In consultation with the Fed, the agencies listed must prescribe rules defining the types of loans they guarantee or administer, that are qualified mortgages. These rules may revise the criteria used to define a qualified mortgage upon finding that the rules are consistent with the purpose of the section and to prevent circumvention of or to facilitate compliance with this section. The agencies are: HUD, the Department of Veterans Affairs, the Department of Agriculture, and the Rural Housing Service. **Sec. 1412 (pp.785-786).**

### **3. Defense to Foreclosure**

When a creditor or other holder of a residential mortgage or anyone acting on their behalf initiates a foreclosure or any other action to collect the debt, a consumer may assert a violation of this section as a matter of defense without regard for the time limit established on a private action for damages. **Sec. 1413 (p. 786).**

The amount of recoupment or setoff must equal the amount to which the consumer would be entitled for damages for a valid claim brought in an original action against the creditor, plus the costs to the consumer of the action, including reasonable attorneys' fees. If the judgment is rendered after the expiration of the applicable time limit on a private action, the amount of recoupment or setoff must not exceed the amount to which the consumer would have been entitled up to the expiration of the applicable time limit. **Sec. 1413 (p. 786).**

#### 4. Additional Standards and Requirements

A residential mortgage that is not a “qualified mortgage” may not contain terms under which a consumer must pay a prepayment penalty. A qualified mortgage may not include a residential mortgage that has an adjustable rate or has an annual percentage rate that exceeds the average prime offer rate by specified percentage points according to the circumstances. **Sec. 1414(a) (pp. 786-787).**

A qualified mortgage may not require a consumer to pay a prepayment penalty that exceeds:

- i. 3% of the outstanding loan balance during the first year;
- ii. 2% of the outstanding loan balance during the second year; or
- iii. 1% of the outstanding loan balance after the third year.

After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage. **Sec. 1414(a) (pp. 787-788).**

Additionally, a creditor may not offer a consumer a residential mortgage that has a prepayment penalty without offering the consumer a residential mortgage that does not have a prepayment penalty as a term of the loan. **Sec. 1414(a) (pp. 787-788).**

No creditor may finance, in connection with any residential mortgage or extension of credit secured by the principal dwelling of the consumer, any life, disability, unemployment, property, accident, loss-of-income, or health insurance, or any payments for debt cancellation or suspension agreement or contract. **Sec. 1414(a) (p. 788).**

A residential mortgage may not include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction. This does not limit the right of the consumer and the creditor to agree to arbitration or any other nonjudicial procedure as the method for resolving the controversy at any time after a dispute arises. Also, no provision of any residential mortgage or any extension of credit secured by the consumer’s principal dwelling, and no other agreement between the creditor and the consumer relating to either, may be applied or interpreted as barring the consumer from bringing an action in an appropriate district court of the United States or any other court of competent jurisdiction, for damages or other relief in connection with violation of this title. **Sec. 1414(a) (p. 788).**

A creditor may not extend credit that is secured by a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time during the extension of the credit, result in negative amortization unless the creditor provides the borrower with a statement disclosing specified information to the borrower and, in the case of a first-time borrower, the borrower provides the creditor with sufficient documentation to demonstrate that the borrower received homeownership counseling. **Sec. 1414(a) (p. 789).**

If a residential mortgage is subject to protection under an anti-deficiency law — i.e., law

of any State which provides that, in the event of foreclosure, the consumer is not liable for any deficiency between the sale price obtained through foreclosure and the outstanding balance of the mortgage—the creditor or mortgage originator must provide written notice to the consumer describing the protection provided by the anti-deficiency law and the significance of its loss. The same is true for refinancing of any residential mortgage that is subject to protection under an anti-deficiency law. **Sec. 1414(c) (pp. 789-790).**

For a residential mortgage, a creditor must disclose prior to settlement: (i) its policy regarding the acceptance of partial payments; and (ii) if partial payments are accepted, how such payments will be applied to the mortgage and if such payments will be placed in escrow. **Sec. 1414(d) (p. 790).**

## **5. Amendments to Civil Liability Provisions**

Any action under this section with respect to any violation may be brought in any U.S. district court or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date the violation occurred. **Sec. 1416 (pp. 790-791).**

## **6. Lender Rights in the Context of Borrower Deception**

A creditor or assignee must not be liable to an obligor under this section, if the obligor or co-obligor have been convicted of obtaining the residential mortgage loan by actual fraud. **Sec. 1417 (p. 791).**

## **7. Six-Month Notice Required Before Reset of Hybrid Adjustable Rate Mortgages**

Six months before the date on which the interest rate in effect resets to a variable interest rate or, if the resetting occurs within the first 6 months after consummation, at consummation, the creditor must provide a written notice, separate and distinct from all correspondence to the consumer, indicating the index or formula used in resetting the interest rate, an explanation of how the new interest rate and payment would be determined, a good faith estimate of the new monthly payment after the date of the reset, a list of alternatives the consumer may pursue before the reset, and the name, address, telephone number and internet addresses of counseling agencies and of the state housing finance authority for the state in which the consumer resides. **Sec. 1418 (pp. 791-792).**

## **8. Required Disclosures**

Required disclosures for a variable rate residential mortgage, for which an escrow account is established for payment of taxes, insurance and assessments, are the amount of the initial monthly payment due for payment of principal and interest, the amount of the monthly payment deposited in the account for the payment of taxes, insurance and assessments, the amount of the fully indexed monthly payment due for the payment of the principal and interest, and the amount of the fully indexed monthly payment deposited in the account for the payment of taxes insurance and assessments. **Sec. 1419 (p. 792).**

Required disclosures for a residential mortgage are the aggregate amount of settlement

charges for all settlement services, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees in connection with the loan; the aggregate amount of fees paid to the mortgage originator, the amount of such fees paid directly by the consumer and any additional amount received by the originator for the creditor; and the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal, which is computed assuming the consumer makes equal monthly payments in full and on time and does not make any overpayments. **Sec. 1419 (pp. 792-793).**

## **9. Disclosures Required in Monthly Statements for Residential Mortgage Loans**

The creditor or servicer to any residential mortgage must transmit to the obligor for each billing cycle, a statement setting forth the following in a conspicuous and prominent manner: the amount of the principal; the current interest rate; the date on which the interest rate may next reset; the amount of any prepayment fee; a description of any late payment fees; the telephone number and email address from which the obligor may obtain information on the mortgage; the names, addresses, telephone numbers and Internet addresses of counseling agencies approved by HUD or a state housing finance authority; and such other information as the Fed may prescribe in regulations. The Fed must develop and prescribe a standard form for the disclosure required under this subsection. This is not applicable to any fixed rate mortgage where the creditor provides the obligor with a coupon book that provides substantially the same information. **Sec. 1420 (p. 793).**

## **10. Report by the GAO**

The Comptroller must conduct a study to determine the effects this Act will have on the availability of credit for consumers, small businesses, homebuyers, and mortgage lending. Within one year of enactment, the Comptroller General must submit a report to Congress containing the findings and conclusions of the Comptroller as well as an analysis of the effect on the capital reserves and funding of lenders of credit risk retention provisions for non-qualified mortgages.

### **C. High Cost Mortgages**

A “high cost mortgage” is defined as a consumer credit transaction secured by the consumer’s principal dwelling, other than a reverse mortgage transaction, if

- i. Secured by: (i) a first mortgage on the consumer’s primary dwelling and the annual percentage rate (the “APR”) at consummation exceeds the average prime offer rate by more than 6.5%; or (ii) a subordinate mortgage on the consumer’s principal dwelling and the APR at consummation exceeds the average prime offer rate by more than 8.5%;
- ii. The total fees payable, other than *bona fide* third-party charges not retained by the mortgage originator, exceed 5% of the total transaction amount for transactions more than \$20,000 or 8% for

transactions below \$20,000; or

- iii. The credit transaction documents permit the creditor to charge prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed more than 2% of the amount prepaid. **Sec. 1431 (pp. 794-795).**

No high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments, i.e., a balloon payment. **Sec. 1432 (p. 798).**

A creditor must not recommend default on an existing loan in connection with the closing of a high-cost mortgage that refinances all or any portion of such existing loan or debt. **Sec. 1433(a) (p. 798).**

Also, a creditor must not impose a late payment fee on a high-cost mortgage that is in excess of 4% of the payment past due, unless the loan documents specifically authorize the charge, or more than once with respect to a single late payment. A high-cost mortgage may not contain a provision permitting the creditor to accelerate the indebtedness, except when repayment of the loan is accelerated by a default or pursuant to a due-on-sale provision, or pursuant to a material violation of the mortgage agreement unrelated to payment. **Sec. 1433(a) (pp. 798-799).**

A creditor may not structure a loan transaction as an open-end credit plan or divide the transaction into separate parts so as to evade the provisions of this title. Nor may a creditor charge a consumer a fee to modify, renew or amend a high-cost mortgage. **Sec. 1433(b)-(c) (p. 799).**

A creditor may not charge a fee for informing any person of the outstanding balance due for payoff of a high-cost mortgage, except processing fees to cover transmission or service if the information is transmitted via fax or courier service. If the creditor has provided this information for free 4 times in a single calendar year, the creditor may charge a reasonable fee for providing the information during the remainder of the calendar year. **Sec. 1433(d) (pp. 799-800).**

A creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor approved by HUD that the consumer has received counseling on the advisability of the mortgage. The Fed may prescribe regulations, as it deems appropriate, to carry out these requirements. **Sec. 1433(e) (p. 800).**

A creditor of a high-cost mortgage who, when acting in good faith, fails to comply with any requirement under this section will not be deemed to be in violation of this section if the creditor establishes that either: (i) within 30 days of the loan closing and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution and proper adjustments are made; or (ii) within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or *bona fide* error and prior to the institution of any action, the consumer is notified of the compliance failure and appropriate restitution and necessary adjustments are made. **Sec. 1433(f) (pp. 800-801).**

## **D. Office of Housing Counseling**

### **1. Short Title**

This subtitle may be cited as the “Expand and Preserve Home Ownership Through Counseling Act.” **Sec. 1441 (p. 801).**

### **2. Establishment of Office of Housing Counseling**

The Office of Housing Counseling is established in HUD. The head of the Office of Housing Counseling must be the Director of Housing Counseling (the “DHC”) who must be appointed by and report to the HUD Secretary. The DHC has primary responsibility within HUD for all activities and matters related to homeownership counseling and rental housing counseling. The DHC establishes rules necessary for counseling procedures, contributing to the distribution of home buying information booklets, carrying out functions regarding abusive lending practices relating to residential mortgages, providing for operation of the advisory committee, collaborating with community-based organizations with expertise in the field of housing counseling and providing for the building capacity to provide housing counseling services in areas that lack sufficient services. **Sec. 1442 (pp. 801-802).**

The HUD Secretary will appoint an advisory committee to provide advice regarding the carrying out of the functions of the DHC. The advisory committee will not have more than 12 members and the membership must equally represent the mortgage and real estate industries. Each member is appointed for a term of 3 years and will serve without pay, but will receive travel expenses. **Sec. 1442 (pp. 802-803).**

The DHC must ensure that homeownership counseling addresses the entire process of homeownership, including the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of homeownership and the sale of a home. **Sec. 1442 (p. 803).**

### **3. Counseling Procedures**

The HUD Secretary must establish and monitor the administration of counseling procedures for homeownership counseling and rental housing counseling. The Secretary in consultation with the advisory committee must establish standards for materials and forms to be used by organizations providing homeownership counseling services. The Secretary must provide for the certification of computer software programs for consumers to use in evaluating different mortgage proposals. If the HUD Secretary determines that the available software is inadequate, the HUD Secretary must arrange for the development of new mortgage software systems that meet the HUD Secretary’s specifications. These certified computer software systems must be used to supplement, not replace, housing counseling. **Sec. 1443 (pp. 803-806).**

The DHC must develop and conduct national public service multimedia campaigns designed to make potentially vulnerable consumers aware that it is advisable to obtain homeownership counseling from an unbiased source before seeking a residential mortgage and that such homeownership counseling is available. Additionally, ten percent of funds allocated to conduct the multimedia campaign must be used by the DHC to conduct an education program in

areas that have a high density of foreclosure. **Sec. 1443 (pp. 806-807).**

#### **4. Grants for Housing Assistance**

The HUD Secretary must make financial assistance available to HUD-approved housing counseling agencies and State housing finance agencies. The HUD Secretary must establish standards and guidelines for eligibility of organizations to receive financial assistance. None of the amounts made available may be distributed to an organization that has been convicted for a violation under federal law relating to an election for federal office or an organization that employs someone convicted of such a violation. **Sec. 1444 (p. 808).**

#### **5. Requirements to Use HUD-Certified Counselors Under HUD Programs**

An organization may not receive assistance for counseling activities unless the organization has been certified by the HUD Secretary. Any homeownership counseling or rental housing counseling provided in connection with any program administered by HUD must be provided only by organizations certified by the Secretary as competent to provide such counseling. **Sec. 1445 (p. 809).**

#### **6. Study of Defaults and Foreclosures**

The HUD Secretary must conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as available. The study must examine the role of escrow accounts in helping borrowers avoid defaults and foreclosures and the role of computer registries of mortgages. Within 12 months of enactment, the Secretary must present a preliminary report to Congress. Within 24 months of enactment, a final report must be presented to Congress and it must include any recommended legislation related to the study and recommendations for a process to identify populations that need counseling the most. **Sec. 1446 (pp. 809-810).**

#### **7. Default and Foreclosure Database**

The HUD Secretary and the DHC, in consultation with the federal agencies responsible for regulation of banking and financial institutions involved in residential mortgages, must establish and maintain a database of information on foreclosures and defaults on mortgages for one- to four-unit residential properties and must make such information publicly available. In establishing and maintaining the database, the HUD Secretary and the DHC must be subject to the standards applicable to federal agencies for the protection of personally identifiable information and for data security and integrity. **Sec. 1447 (p. 810).**

#### **8. Accountability and Transparency for Grant Recipients**

The HUD Secretary must (i) develop and maintain a system to ensure that any organization that receives financial assistance uses all amounts in accordance with this section, any regulations issued under this section, and any conditions under which such amounts were provided; and (ii) require any organization, as a condition of receipt of any financial assistance, to agree to comply with such requirements as the HUD Secretary may establish. If any organization is determined to have used the assistance in a manner in material violation of this

section, regulations issued under this section, or conditions under which the assistance was provided, the HUD Secretary must require that within 12 months after the determination of misuse the organization must reimburse the HUD Secretary of the misused amounts and return any unused amounts; and such organization is ineligible to apply for or receive any further financial assistance. **Sec. 1449 (pp. 811-812).**

## **9. Updating and Simplification of Mortgage Information Booklet**

The Director of the Bureau of Consumer Financial Protection must prepare, at least once every 5 years, a booklet to help consumers applying for federally related mortgages understand the nature and costs of real estate settlement services. The Director of the Bureau must prepare the booklet in various languages and cultural styles, as the Director of the Bureau deems appropriate. The Director of the Bureau must distribute such booklets to all lenders that make federally related mortgages. The Director of the Bureau must prescribe the form and detail of each booklet, which must also include in plain and understandable language:

- i. A description and explanation of the nature and purpose of the costs incident to a real estate settlement or a federally related mortgage loan;
- ii. An explanation and a sample of the uniform settlement statement required;
- iii. A list and explanation of lending practices, including those prohibited by TILA, and of other unfair practices and unreasonable charges to be avoided;
- iv. A list and explanation of questions a consumer should ask regarding the mortgage;
- v. An explanation of the rights of recession;
- vi. A brief explanation of a variable rate mortgage;
- vii. A brief explanation of the nature of a home equity line of credit;
- viii. Information about homeownership counseling services, a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling and their contact information is available;
- ix. An explanation of the nature and purpose of escrow accounts;
- x. An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement;
- xi. An explanation of a consumer's responsibilities and obligations in

- a mortgage transaction;
- xii. An explanation of the nature and purpose of real estate appraisals; and
  - xiii. Notice that HUD has made publicly available a brochure regarding loan fraud and information for obtaining the brochure. **Sec. 1450 (pp. 812-814).**

#### **10. Home Inspection Counseling**

The HUD Secretary must take such actions as necessary to inform potential homebuyers of the availability and importance of obtaining an independent home inspection. The Secretary must make the materials specified available for electronic access and inform potential homebuyers of such availability through home purchase counseling public service announcements and toll-free telephone hotlines. The HUD Secretary must give special emphasis to reaching first-time and low-income homebuyers with these materials and efforts. **Sec. 1451 (p. 814).**

#### **11. Warnings to Homeowners of Foreclosure Rescue Scams**

Ten percent of any amounts made available to HUD during any fiscal year must be used only for assistance to the Neighborhood Reinvestment Corporation for activities to provide notice to borrowers under such loans who are delinquent with respect to payments due under such loans that makes borrowers aware of the dangers of fraudulent activities associated with foreclosure. **Sec. 1452 (p. 815).**

### **E. Mortgage Servicing**

#### **1. Escrow and Impound Accounts Relating to Certain Consumer Credit Transactions**

A creditor, before consummating a credit transaction secured by a first lien on the principal dwelling of the consumer, must establish an escrow account for the payment of taxes, insurance premiums, and any other required periodic payments. **Sec. 1461 (p. 816).**

An escrow account may not be required as a condition of a property contract or loan secured by a first deed of trust or mortgage on the consumer's principal dwelling unless: (i) the escrow account is required by federal or state law; (ii) a loan is made or guaranteed by a state or federal governmental lending agency; (iii) the transaction is secured by a first lien on the consumer's principal dwelling that has an original principal obligation that either does not exceed the maximum limitation on the original obligation in effect for a residence of applicable size as of the date the interest rate is set and the APR exceeds the average prime offer rate by 1.5% or more; or exceeds the maximum limitation on the original principal obligation in effect for a residence of applicable size as of the date the interest rate is set and the APR exceeds the average prime offer rate by 2.5% or more; or (iv) so required pursuant to regulation. **Sec. 1461 (p. 816).**

An escrow account will remain in existence for a minimum period of 5 years, unless and until the borrower has sufficient equity in the dwelling as to no longer be required to maintain private mortgage insurance, the borrower is delinquent, the borrower has not complied with the legal obligation, or the underlying mortgage is terminated. The escrow account must be administered by a federally insured depository institution or credit union. **Sec. 1461 (p. 817).**

For an escrow account, a creditor must disclose in writing 3 business days before the consummation of the credit transaction that an escrow account will be established, the amount required at closing to initially fund the escrow account, the amount of the estimated taxes, insurance premiums and other required periodic payments in the initial year, the estimated monthly amount payable to be escrowed, that if the consumer terminates the account, the consumer will be responsible for payment of all taxes, insurance premiums and other required periodic payments, unless a new escrow account is established, and such other information as the Fed determines is necessary. **Sec. 1461 (p. 818).**

The Fed may prescribe rules that revise the criteria regarding the requirements of escrow accounts if the Fed determines that such rules are in the interest of consumers and in the public interest. **Sec. 1461 (p. 819).**

## **2. Disclosure Notice Required for Consumers Who Waive Escrow Services**

If an escrow account for the payment of all taxes, insurance premiums and other required periodic payments is not established or a consumer chooses and provides written notice to the creditor of the choice at any time after the account is established, to close the account, the creditor must provide timely and clearly written disclosure that advises the consumer of the responsibilities of the consumer and the implication in the absence of the account. **Sec. 1462 (p. 819).**

The disclosure provided to the consumer must include: (i) information concerning all applicable fees associated with the non-establishment of the account at the time of the transaction or subsequently; (ii) a clear and prominent statement that the consumer is responsible for paying the non-escrowed items and that the costs can be substantial; (iii) a clear explanation of the consequence of failure to pay non-escrowed items; and (iv) such other information as the Fed determines necessary. **Sec. 1462 (p. 819-820).**

## **3. Real Estate Settlement Procedures Act of 1974 Amendments**

A servicer must not: obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to maintain property insurance; charge fees for responding to valid qualified written requests; fail to take timely action to respond to a borrower's requests to correct errors relating to the allocation of payments, final balances for paying off the mortgage, avoiding foreclosure or other standard servicer duties; fail to respond in 10 business days to a borrower request for the identity, address, and other relevant contact information of the owner of the loan; or fail to comply with any other obligation established by the Bureau through regulations. **Sec. 1463 (p. 820).**

A servicer does not have a reasonable basis for obtaining force-placed insurance and may not charge a borrower for force-placed insurance unless:

- The servicer has sent a written notice including: a reminder of the borrower's obligation to maintain hazard insurance, a statement that the servicer does not have any evidence of insurance coverage, a clear and conspicuous statement of the ways the borrower may demonstrate existing insurance coverage, and a statement that the servicer may obtain such insurance at the borrower's expense if the borrower does not demonstrate existing coverage in a timely manner;
- The servicer has sent a second written notice with the information described above, at least 30 days after the mailing of the first notice;
- The servicer has not received from the borrower any demonstration of hazard insurance coverage within 15 days of the second notice. **Sec. 1463 (pp. 820-821).**

#### **4. TILA Amendments**

With regard to a credit transaction secured by a consumer's principal dwelling, a creditor must not fail to credit a payment to the consumer's loan account as of the date of receipt, unless the delay does not result in any charge to the consumer or reporting of negative information to a consumer reporting agency. A creditor must send an accurate payoff balance within a reasonable time, but in no case more than 7 business days, after receipt of a written request for such a balance. **Sec. 1464 (p. 822).**

#### **5. Escrows Included in Repayment Analysis**

With regard to any consumer credit transaction secured by a first mortgage on the principal dwelling of the consumer, for which an escrow account has been or will be established for the payments of all taxes, insurance premiums and other required periodic payments, the information with regard to number, amount, and due dates or period of payments scheduled to repay the total of payments must take into account the amount of any monthly payment to such account for each such repayment. The amount taken into account for the payment of all taxes, insurance premiums and other required periodic payments are required to reflect the taxable assessed value of the property securing the transaction after consummation. **Sec. 1465 (pp. 822-823).**

### **F. Appraisal Activities**

#### **1. Property Appraisal Requirements**

A creditor may not extend a higher-risk mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged. An appraisal of the property that secures a higher-risk mortgage must be performed by a certified appraiser who conducts a physical property visit of the interior of the mortgaged property. If the purpose of the higher-risk mortgage is to finance the purchase of the mortgaged property from a person within 180 days of the purchase of such property at a price that is lower than the current sale price, the creditor must obtain a second appraisal from a different certified or licensed appraiser. The second appraisal must include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the previous sale and the current sale. The Fed, the

Comptroller, the FDIC, the NCUAB, and the Bureau must jointly prescribe regulations to implement this section. **Sec. 1471 (pp. 823-824).**

A creditor must provide one copy of each appraisal conducted in connection with this section to the applicant without charge, at least 3 days before the transaction closing date. At the time of the initial mortgage application, the applicant is required to be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant. A creditor who willfully failed to obtain an appraisal as required by this section is liable to the applicant for \$2,000. **Sec. 1471 (p. 824).**

## **2. Appraisal Independence Requirements**

Dodd-Frank makes it unlawful, in extending credit secured by the principal dwelling of the consumer, to engage in any act or practice that violates appraisal independence. No certified appraiser conducting an appraisal in connection with an extension of credit secured by the principal dwelling of a consumer may have any interest in the property or transaction involving the appraisal. **Sec. 1472 (pp. 825-826).**

Any mortgage lender, broker, banker or other person involved in a real estate transaction involving an appraisal who has a reasonable basis to believe an appraiser is failing to comply with the *Uniform Standards of Professional Appraisal Practice* must refer the matter to the applicable State appraiser certifying and licensing agency. A creditor who knows, at or before consummation, of a violation of the appraisal independence standards must not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling. The Fed must prescribe interim regulations no later than 90 days after the enactment of this section defining with specificity acts that violate appraisal independence. On the date the interim final regulations are issued, the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008 has no force or effect. **Sec. 1472 (pp. 826-827).**

## **3. Amendments Related to Appraisal Subcommittee of the Federal Financial Institutions Examinations Council, Appraiser Independence Monitoring, Approved Appraiser Education, Appraisal Management Companies, Appraiser Complaint Hotline, Automated Valuation Models and Broker Price Opinions**

### **a. Appraisal Management Company Minimum Requirements**

The Fed, the Comptroller of the Currency, the FDIC, the NCUAB, the Federal Housing Finance Agency, and the Bureau must jointly establish minimum requirements to be applied by a state in the registration of appraisal management companies, which must include a requirement that such companies: (i) register and be subject to supervision by a state appraiser certifying and licensing agency in each State in which the company operates; (ii) verify that only licensed and certified appraisers are used for federally related transactions; (iii) require that appraisals comply with the Uniform Standards of Professional Appraisal Practice; and (iv) require that appraisals

are conducted independently. **Sec. 1473(f) (pp. 829-830).**

An appraisal management company will not be allowed to be registered by a State or included in the national registry if such company is owned by any person who has had an appraiser license refused, surrendered or revoked in any State. Also, each person that owns more than 10% of an appraisal management company must be of good moral character, as determined by the state appraiser certifying and licensing agency, and must submit to a background investigation. **Sec. 1473(f) (p. 830).**

No appraisal management company may perform services related to a federally related transaction 36 months after the regulations required under this subsection are prescribed in final form, unless such company is registered with such State or subject to oversight by a federal financial institutions regulatory agency. **Sec. 1473(f) (p. 831).**

#### **b. The Appraisal Subcommittee**

The Appraisal Subcommittee monitors each state appraiser certifying and licensing agency for the purposes of determining whether such agency has policies and procedures that are consistent with this title, processes complaints and completes investigations in a reasonable time period, appropriately disciplines sanctioned appraisers, maintains an effective regulatory program, and reports complaints and disciplinary actions on a timely basis to the national registries on appraisers. **Sec. 1473(k) (p. 834).**

The Appraisal Subcommittee has the authority to remove a state licensed appraiser from a national registry on an interim basis not to exceed 90 days, pending state agency action. The Appraisal Subcommittee and all agencies and federally recognized entities will not be permitted to recognize appraiser certifications from States whose appraisal policies and procedures are inconsistent with this title. The Appraisal Subcommittee has the authority to impose sanctions against a state agency that fails to have an effective appraiser regulatory program. The Appraisal Subcommittee has the authority to impose interim actions and suspensions against a State agency as an alternative to or in advance of the de-recognition of a state agency. **Sec. 1473(k) (p. 834).**

The Appraisal Subcommittee monitors each state appraiser certifying and licensing agency for purposes of determining whether such agency's policies and procedures are consistent with the purposes of maintaining appraiser independence. **Sec. 1473(n) (p. 835).**

#### **c. Automated Valuation Models**

Automated valuation models must adhere to quality control standards designed to ensure a high level of confidence in the estimates produced, protect against manipulation of data, seek to avoid conflicts of interest, require random sample testing and reviews, and account for any other factors that the agencies deem appropriate. **Sec. 1473(q) (p. 836).**

#### **d. Broker Price Opinions**

With regard to the purchase of a consumer's principal dwelling, broker price opinions—i.e., an estimate prepared by a real estate broker that details the probable selling price of a particular piece of property—may not be used as the primary basis to determine the value of a

piece of property for the purpose of a loan origination of a residential mortgage secured by such property. **Sec. 1473(r) (pp. 836-837).**

**e. Equal Credit Opportunity Act Amendment**

A creditor must furnish to an applicant a copy of all appraisals developed in connection with the application for a loan secured by a first lien on a dwelling no later than 3 days prior to the closing of the loan. The applicant may waive the 3 day requirement except where otherwise required by law. The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal except where otherwise required by law. Notwithstanding the foregoing, the creditor must provide a copy of each written appraisal at no additional cost to the applicant. **Sec. 1474 (pp. 837-838).**

**f. GAO Study**

The GAO is required to conduct a study on the effectiveness and impact of appraisal methods, appraisal valuation models, appraisal distribution channels, the Home Valuation Code of Conduct and the Appraisal Subcommittee's functions. Within 12 months of the enactment of this Act, the GAO must submit a study to the Senate Banking Committee and the House Financial Services Committee. Within 90 days of the enactment of the Act, the GAO must provide a status report on the study and any preliminary findings to the aforementioned Committees. **Sec. 1476 (pp. 838-839).**

No later than 18 months after the enactment of this Act, the GAO must submit a study to the Senate Banking Committee and the House Financial Services Committee, which will be required to include an examination of the Appraisal Committee's ability to monitor and enforce state and federal certification requirements, whether existing federal financial institutions regulatory agency exemptions on appraisals need to be revised, whether new means of data collection would benefit the Appraisal Subcommittee's ability to perform its function and recommendations from this examination for administrative and legislative action at the federal and state levels. **Sec. 1476 (pp. 839-840).**

**G. Mortgage Resolution and Modification**

**1. Multifamily Mortgage Resolution Program**

The HUD Secretary must develop a program to ensure the protection of current and future tenants and at-risk multifamily properties based on criteria that may include: creating sustainable financing of such properties; maintaining the level of federal, state and city subsidies in effect as of the date of the enactment of this Act; providing funds for rehabilitation; and facilitating the transfer of such properties to responsible new owners and ensuring affordability of such properties. **Sec. 1481(a) (p. 840).**

No person will be eligible to begin receiving assistance from the Making Home Affordable program or any other mortgage assistance program authorized by the Emergency Economic Stabilization Act of 2008, if such person in connection with a mortgage or real estate transaction has been convicted within the last ten years of felony larceny, theft, fraud, forgery, money laundering or tax evasion. **Sec. 1481(d) (pp. 840-841).**

The HUD Secretary must establish procedures to ensure compliance with this subsection. The HUD Secretary must report to the Senate Banking Committee and House Financial Services Committee regarding the implementation of this provision. The report must also describe steps taken to implement this subsection. **Sec. 1481(d) (p. 841).**

## **2. Making Home Affordable Modification Program Guidelines**

The Secretary is required to revise the guidelines for the Making Home Affordable Modification Program to require each mortgage servicer participating in the program to provide each borrower under a mortgage whose request for modification is denied with all borrower-related and mortgage-related input data used in any net present value (“NPV”) analyses performed in connection with the mortgage. **Sec. 1482(a) (p. 841).**

With regard to the Making Home Affordable Modification Program, the Secretary must establish and maintain a website that provides a calculator for NPV analyses for a mortgage, that mortgagors can use to enter information regarding their own mortgage and that provides a determination regarding whether such mortgage would be accepted or rejected for modification under the Program. **Sec. 1482(a) (p. 841).**

## **3. Public Availability of Information**

The Secretary must revise the guidelines for the Making Home Affordable Modification Program to provide that the data being collected from each mortgage servicer participating in the Program is made publicly available. Within 14 days of each monthly deadline for submission of data by mortgage servicers participating in the Program, reports must be made publicly available that include the number of requests for mortgage modification received, processed, accepted and denied. Within 60 days after each monthly deadline for submission of data, the Secretary must make data tables available to the public. **Sec. 1483 (p. 842).**

## **H. Miscellaneous Provisions**

### **1. Sense of Congress Regarding the Importance of Government-Sponsored Enterprises Reform to Enhance the Protection, Limitation and Regulation of the Terms of Residential Mortgage Credit**

The Dodd-Frank Act states that Congress finds the following:

- i. Fannie Mae and Freddie Mac were chartered by Congress to ensure a reliable and affordable supply of mortgage funding;
- ii. In 1996, HUD required that 42% of Fannie Mae’s and Freddie Mac’s mortgage financing should go to borrowers with income levels below the median for a given area;
- iii. In 2004, the goal was revised, increasing them to 56% of their overall mortgage purchases by 2008;
- iv. To help fulfill those mandated affordable housing goals, in 1995

HUD authorized Fannie Mae and Freddie Mac to purchase subprime securities that included loans made to low-income borrowers;

- v. In 2004 alone, Fannie Mae and Freddie Mac purchased \$175 billion in subprime mortgage securities and from 2005 through 2007 Fannie Mae and Freddie Mac purchased approximately \$1 trillion in subprime loans;
- vi. On September 7, 2008, the FHFA placed Fannie Mae and Freddie Mac into conservatorship with the Treasury Department agreeing to purchase at least \$200 billion of preferred stock from each enterprise in exchange for warrants for the purchase of 79.9% of each enterprise's common stock;
- vii. The conservatorship of Fannie Mae and Freddie Mac has potentially exposed taxpayers to upwards of \$5.3 trillion worth of risk; and
- viii. The hybrid public-private status of Fannie Mae and Freddie Mac is untenable and must be resolved to assure that consumers are offered and receive residential mortgages on terms that reasonably reflect their ability to repay the loans.

The Act also states that in the sense of Congress that efforts to enhance by the protection, limitation and regulation of the terms of residential mortgage credit and the practices related to such credit would be incomplete without meaningful structural reforms of Fannie Mae and Freddie Mac. **Sec. 1491 (pp. 843-844).**

## **2. GAO Study Report**

The Comptroller General must conduct a study of the current inter-agency efforts of the Secretary, the HUD Secretary, the Attorney General, and the FTC to crack down on mortgage foreclosure rescue scams and loan modification fraud. **Sec. 1492(a) (p. 844).**

The Comptroller General must submit a report to the Congress on the study conducted containing such recommendations for legislative and administrative actions as the Comptroller deems appropriate. The report is required to include: (i) an evaluation of the effectiveness of the inter-agency task force current efforts to combat mortgage foreclosure rescue scams and loan modification fraud scams; (ii) specific recommendations on agency or legislative action that are essential to properly protect homeowners from mortgage foreclosure rescue scams and loan modification fraud scams; and (iii) the adequacy of financial resources that the federal government is allocating to crack down on loan modification and foreclosure rescue scams and the education of homeowners about fraudulent scams relating to loan modification and foreclosure rescues. **Sec. 1492 (p. 844).**

### **3. Study of Effect of Drywall Presence on Foreclosures**

The HUD Secretary in consultation with the Secretary must conduct a study of the effect on residential mortgage loan foreclosures of the presence of drywall imported from China in residential structures and the availability of property insurance for residential structures in which such drywall is present. This report must be presented to Congress no later than 120 days after the enactment of this Act. **Sec. 1494 (p. 845).**

### **4. Emergency Mortgage Relief**

As of October 1, 2010, \$1 billion is made available to the HUD Secretary to provide assistance through the Emergency Homeowners' Relief Fund, which is established for emergency mortgage assistance. **Sec. 1496 (p. 845).**

The HUD Secretary must establish underwriting guidelines to allocate amounts available for loans under this section and for emergency relief payments based on the likelihood that a mortgagor will be able to resume mortgage payments. **Sec. 1496 (p. 846).**

### **5. Additional Assistance for Neighborhood Stabilization Program**

As of October 1, 2010, \$1 billion is available to the HUD Secretary to be used for assistance to States and local government units for the redevelopment of abandoned and foreclosed homes. None of the amounts made available may be distributed to any organization that has been convicted for a violation under federal law relating to election for a federal office or any organization that employs someone who has been convicted of the same. **Sec. 1497 (pp. 847-848).**

### **6. Legal Assistance for Foreclosure-Related Issues**

The HUD Secretary must establish a program for making grants for providing a full range of foreclosure legal assistance to low- and moderate-income homeowners and tenants related to home ownership preservation, home foreclosure prevention, and tenancy associated with home foreclosure. **Sec. 1498(a) (p. 849).**

Any state or local legal organization that receives financial assistance pursuant to this section may use such amounts only to assist homeowners of owner-occupied homes with mortgages in default, in danger of default, or subject to or at risk of foreclosure; and tenants at risk of or subject to eviction as a result of foreclosure of the property in which such tenant resides. Any state or local legal organization that receives financial assistance must begin using any financial assistance received within 90 days after receipt of the assistance. This subsection takes effect on the date of enactment of this Act. None of the amounts made available may be distributed to any organization that has been convicted for a violation under federal law relating to election for a federal office or any organization that employs someone who has been convicted of the same. **Sec. 1498 (d)-(e) (pp. 849-850).**