On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter the Dodd-Frank Act) was signed into law. As part of the sweeping changes in this financial reform bill, Congress amended TILA in title XIV of the Act to include a variety of substantive provisions relating to mortgage lending and servicing, and to provide for additional damages recoveries for certain of these violations. These changes are discussed in greater detail at Chapter 9, infra.

The Dodd-Frank Act bans yield spread premiums (YSPs) and other mortgage originator compensation that is based on the terms of a consumer’s loan, except for the amount borrowed. It thus codifies and expands upon regulations finalized by the Federal Reserve Board, which themselves became effective for applications on or after April 1, 2011.

The Act also directs the new Consumer Financial Protection Bureau (CFPB) to write additional rules restricting loan steering, applicable to both loan brokers and the lender’s in-house loan officers. This provision has no rule writing deadline and has not been implemented. Moreover, for most closed-end mortgage loans, the Act requires the creditor to make a reasonable determination that the homeowner can afford the loan and to document that analysis. The statute provides a rebuttable presumption of affordability if the loan meets the CFPB’s definition of a “qualified mortgage.” Although the statute provides no basis for such an approach, the CFPB’s regulations implemented a split regime for the qualified mortgage presumption of affordability, providing a rebuttable presumption for higher-priced mortgage loans and a safe harbor for prime loans meeting the standard.

The Act bans forced arbitration and the financing of credit insurance in mortgages and prohibits prepayment penalties for certain loans. It expands the range of loans subject to HOEPA, in part by adding a separate trigger based on prepayment penalties, and adds several new substantive provisions. It also amends TILA to impose new restrictions on appraisals and makes several servicer-related additions. These changes are all discussed in Chapter 9, infra.

The new mortgage origination violations trigger TILA private remedies against the creditor of actual and statutory damages and attorney fees, in both individual and class actions. Violations of the new ability to repay and mortgage originator compensation provisions by the creditor also bring with them enhanced damages of the sum of all finance charges and fees paid by the consumer. The statute of limitations for all violations of HOEPA and for the new steering and ability-to-repay rules is extended to three years, and an action in recoupment with a cap on damages is available to homeowners in foreclosure for violation of the compensation or ability-to-repay rules. However, if a mortgage originator violates the compensation provisions found in section 1639b(c), statutory damages are limited to the greater of actual damages or three times the originator’s compensation. Statutory damages of $2,000 are available if a creditor fails to obtain an appraisal that meets the Act’s new requirements.

The Act also extends enforcement power to state attorneys general for a variety of new prohibitions. The Dodd-Frank Act eliminates TILA liability where an obligor or co-obligor has been convicted of obtaining the mortgage by actual fraud. It also adds a correction-of-error defense for creditors or assignees who, in good faith, fail to comply with HOEPA requirements.

For purposes of the new TILA mortgage originator compensation and steering requirements, the Dodd-Frank Act also expands the definition of “creditor” to include mortgage originators, so that there is no question that TILA’s private remedies apply to such originators. (Without such an amendment, a mortgage originator might not meet the definition of either creditor or assignee, and thus not be subject to TILA remedies.) The Dodd-Frank Act, though, offers no new clarification as to whether servicers are creditors for purposes of TILA’s remedy provisions, or whether servicers are liable for their TILA violations even if they are not creditors.

A variety of other TILA changes were made by the Dodd-Frank Act. The Act raises from $25,000 to $50,000 the amount over which leases and non-mortgage, non-student loan credit are exempt from TILA and the Consumer Leasing Act. This change was effective on the transfer date, July 21, 2011. The Consumer Financial Protection Bureau also must adjust the limit in the future for inflation. The range of TILA statutory damages for closed-end, non-mortgage transactions, currently $100 to $1,000, is raised to $200 to $2,000. TILA’s class action cap is raised from $500,000 to $1 million.

The Dodd-Frank Act creates the Consumer Financial Protection Bureau (CFPB), charged with protecting consumers across the board in the financial arena. It took over rule writing authority previously held, largely, by the Federal Reserve Board (FRB) as well as enforcement and supervisory authority currently held by several federal agencies. The CFPB takes over rule writing authority for all the major consumer financial protection statutes—called the “enumerated statutes”—including TILA. The CFPB has full enforcement authority under the enumerated statutes.
Beyond the Truth in Lending Act, the Dodd-Frank Act made a host of other changes affecting preemption, credit reporting, remittances, the authority to adopt and enforce rules prohibiting unfair, deceptive, or abusive acts and practices, and Fair Debt Collection Practices Act rule writing. These changes are discussed in other treatises in this series. The CFPB’s authority to identify and ban unfair, deceptive, or abusive acts and practices has survived constitutional arguments that this provision is void for vagueness.

Footnotes


116 {116} 75 Fed. Reg. 58,509 (Sept. 24, 2010), 12 C.F.R. § 226.36(d), (e) [§ 1026.36(d), (e)].


These regulations are discussed at §§ 1.5.3.4.4 [2], 9.3.2 [3], infra.

117 {117} 12 C.F.R. § 1026.43. See § 9.3.3.4 [4], infra.

118 {118} 12 C.F.R. § 1026.43(c). See § 9.3.3.4 [4], infra.


123 {123} 15 U.S.C. § 1641(a), (d).


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