

# Dodd-Frank Wall Street Reform and Consumer Protection Act (HR 4173)

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# Introduction

- Bill Status
  - Conference Committee complete
  - Passed House on June 30, 2010
  - Scheduled for Senate floor action week of July 12

# Major Provisions

- New Bureau of Consumer Financial Protection
- Eliminates the Office of Thrift Supervision
- Retains thrift charter and transfers it to the Office of the Comptroller of the Currency
- Credit Rating Agency Requirements
- Whistleblower incentives
- 5 percent “skin in the game” requirement, unless it meets standards that reduce riskiness
- Requires issuers to disclose information about underlying assets and analyze the quality of underlying assets
- \$1 billion in additional funding for the Neighborhood Stabilization Program
- Mortgage Reform

# Appraisal Provisions

- Truth in Lending Act
- Title XI of FIRREA
- Real Estate Settlement Procedures Act
- Equal Credit Opportunity Act
- GAO Studies

# TILA

- Full, interior inspection appraisal requirement for non-prime (“higher risk”) loans
- Two appraisals required if purchase made within 6 months (property flipping)
- Fed, OCC, FDIC, NCUA, Bureau (Agencies) to issue rules
- Exemption allowed if shown in the public interest and promotes safety and soundness

# TILA

- Appraisal Independence
  - Expands on preexisting appraisal independence requirements in TILA (Regulation Z)
  - Sec. 129 relates to “unfair” and “deceptive” practices
  - Retains many provisions from Sec. I of the HVCC
  - Mandatory reporting of USPAP, legal violations to state boards
  - No extension of credit if creditor knows of violation or has not acted with reasonable diligence

# TILA

- Appraisal Independence (cont.)
  - Rules and interpretive guidelines
  - Agencies (and FHFA) may jointly issue interpretive guidelines and statements of policy
  - May develop joint regulations that address appraisal portability
  - Customary and Reasonable Fees

# TILA

- Customary and Reasonable Fees
  - *“Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies”*

# TILA

- Customary and Reasonable Fees
  - Fee Appraiser defined as
    - Person who is not an employee of the mortgage originator or appraisal management company engaging the appraiser and is
      - A state certified/licensed appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with USPAP, or
      - A company not subject to requirements of section 1124 of FIRREA that utilizes the services of state licensed or certified appraisers and receives a fee for performing appraisals in accordance with USPAP (AMC)
    - Exception for complex assignments over and above customary and reasonable

# TILA

- Fed to develop interim final rule within 90 days of enactment
- Sunset of HVCC
- Penalties for independence violations
  - Up to \$10,000/day for first violation
  - Up to \$20,000/day for subsequent violations
- State Attorneys General may bring Sec. 129 action within 3 years of violation

# FIRREA

- Threshold levels would require concurrence with Bureau
- Appraisal Subcommittee
  - Sunlight on Annual Report
  - Open Meetings
  - Regulatory power in Temporary Practice, National Registry, Information Sharing, and Enforcement

# FIRREA

- Appraisal Review – Adds review to the interagency standards requirements
- Complex Appraisals (requiring use of certified appraisers) – defined within the bill

# FIRREA

- AMC Supervision
  - ASC to establish Registry for AMCs
  - Minimum requirements established by Agencies
  - States allowed to establish additional requirements
  - Exception for AMCs “owned and controlled” by federally regulated institutions (25 percent or more)
  - Good moral character requirements for AMCs
  - Requires state registration within 36 months of completion of regulations

# FIRREA

- AMC definition
  - Oversees a panel or network of 15 or more certified/licensed appraisers in a state or more than 25 nationally in a given year -
    - Recruit, select, and retain appraisers
    - Contract with appraisers
    - Manage the process of having appraisals performed or
    - Review and verify work of appraisers

# FIRREA

- Enforcement
  - Authorizes grants to state appraiser regulatory agencies in accordance with ASC policies
  - Up to 75 percent of incremental revenues are eligible for grant funding

# FIRREA

- Professional Designations –
  - Amends Title XI to clarify that designations can be considered by clients
  - New section would read:
    - *Criteria established by the Federal financial institutions regulatory agencies...in addition to State certification or licensing may include education achieved, experience, sample appraisal and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a criteria considered, though lack of membership therein shall not be the sole bar against consideration for an assignment under these criteria.*

# FIRREA

- Misc. provisions

- Reciprocity – States to enact reciprocal licensing policies for states in compliance with Title XI where requirements meet or exceed the requirements where the individual seeks licensure
- AQB minimum qualification authority over Trainee and Supervisory Appraisers
- ASC to monitor states on funding and staffing
- ASC authorized to remove appraiser from National Registry on an interim basis
- ASC authorized to take interim actions and suspensions of state boards, including sanctions for insufficient funding

# FIRREA

- Misc. (cont.)
  - ASC to monitor state appraisal independence requirements
  - ASC to encourage states to accept courses approved by CAP
  - ASC authorized to establish an independence hotline if non-exists within six months of enactment

# FIRREA

- AVM quality control standards
  - Intended to protect against manipulation and avoid conflicts of interest
  - Require random sample testing and reviews
  - Agencies, ASC, ASB to issue QC standards

# FIRREA

- Broker Price Opinions
  - Prohibited as primary basis for valuation in loan origination
  - Intended to codify FHA, Fannie, Freddie policies that do not accept BPOs in loan origination

# ECOA

- All appraisals and valuations to be provided to the consumer three days prior to closing
  - Expands from HVCC and current requirements to include AVMs, BPOs, etc.

# RESPA

- Authorizes that HUD-1 to include clear disclosure of AMC fee and fee paid directly to the appraiser
- Language was changed to “may” from “shall” during the Conference Committee

# GAO studies

- GAO to study
  - Appraisal methods
  - AVMs
  - Distribution channels
  - HVCC
  - ASC functions
- Additional study
  - ASC ability to monitor states
  - Title XI exemptions
  - Merits of a National Repository

# Summary

- Bill would establish a strong independence standard that includes customary and reasonable fees to appraisers
- Provides more resources for enforcement and plugs a regulatory gap
- Clarifies that professional designations can be considered when hiring an appraiser, in addition to education and experience levels
- Provides enhanced disclosures to consumers

# Questions

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