



Summary of H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act, As Passed by the House of Representatives

Status – The House of Representatives passed H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007, on November 15, 2007 by a vote of 291-127. The Senate will likely develop its own, substantially different, mortgage lending reform legislation, and we expect the vehicle for that to be a forthcoming bill by Banking Committee Chairman Chris Dodd (D-Conn.). Any differences between bills passed by the House and Senate would have to be worked out in a conference committee before being sent to the President for enactment.

Scope – H.R. 3915 would regulate the origination of mortgage loans based on the amount of their Annual Percentage Rates (APRs) and points and fees. It also would regulate all mortgage originators including lenders and loan officers as well as mortgage brokers. The bill does not establish a uniform national standard for mortgage lending because, with the exception of some preemption for securitization, it does not establish federal preemption of state and local laws and regulations.

The bill regulates (1) prime and Alt A mortgages (called “qualified mortgages” under the bill) least, (2) subprime mortgages (called “not qualified mortgages” under the bill) to a significantly greater extent than they are today, and (3) “high-cost” or Home Ownership and Equity Protection Act (HOEPA) mortgages the most. Some refer to these three categories as “green light,” “yellow light” and “red light” mortgages, respectively. Mortgages which are “not qualified mortgages” which meet specified underwriting requirements (see below) are called “qualified safe harbor mortgages.”

To define “qualified mortgages,” both first lien and “not first lien,” the bill uses both the trigger levels established under the Home Mortgage Disclosure Act (HMDA) and other metrics using the “conventional mortgage rate,” published regularly by the Federal Reserve as the H. 15 rate. A loan is regarded as a “qualified mortgage” if it meets either test.

Using these triggers, a first lien mortgage that, at the time of origination, either has an APR less than three percentage points over a U.S. Treasury obligation with a comparable maturity or has an APR that does not equal or exceed the most recent “conventional mortgage rate” by more than 175 basis points, is a “qualified mortgage.” A mortgage that is not a first lien mortgage that either has an APR less than five percentage points over a Treasury security of comparable maturity, or has an APR that does not equal or exceed the most recent conventional mortgage, is a “qualified mortgage.” All FHA and VA loans are considered “qualified mortgages” regardless of their APRs.

The federal banking regulators – the Federal Reserve, Comptroller of Currency, Office of Thrift Supervision, the Federal Deposit Insurance Corporation and the National Credit Union Administration – in consultation with the Federal Trade Commission are assigned regulatory responsibility for several portions of the bill. The HUD Secretary is assigned regulating

responsibility for the licensing and counseling provisions and the Federal Reserve for the revised HOEPA provisions.

Summary - H.R. 3915:

- Requires registration for all originators and minimum standards for state-licensed originators.
- Establishes new anti-steering provisions that limit yield spread premiums (YSPs) and equivalent compensation for mortgages that are “not qualified mortgages.”
- Requires that a lender determine in good faith that a consumer has the ability to repay his or her mortgage and that refinance loans provide a net tangible benefit. Note: “Qualified mortgages” and “qualified safe harbor mortgages” would be presumed to meet these requirements; the presumption is rebuttable against lenders for “qualified safe harbor mortgages.”
- Prohibits prepayment penalties for “not qualified mortgages.”
- Would expand the coverage of HOEPA and its restrictions governing high-cost mortgages.
- Includes numerous other provisions including facilitating and funding counseling programs and requiring counseling for some borrowers, establishing new escrow and appraisal requirements including requiring escrow accounts and appraisals for certain borrowers, and establishing new disclosure requirements for all loans.

SPECIFIC PROVISIONS

Licensing and Registration – H.R. 3915 requires all loan originators – defined as those individuals who take mortgage applications, assist consumers in obtaining mortgage loans or offer or negotiate terms of loans – to be registered with, and maintain a unique identifier through, a nationwide mortgage licensing system and registry. All licensing laws for state-licensed loan originators would be required to meet specified standards for registration and license issuance, as well as testing and continuing education requirements. If the Secretary of HUD determines that a state’s licensing law does not meet the licensing and registration standards in H.R. 3915 a year after the law’s enactment (or after two years for states with legislatures that do not meet annually), licensing regulations developed by the Secretary of HUD shall apply. H.R. 3915 also requires federal banking agencies to develop and maintain a system for registering employees of federally regulated depository institutions.

Duty of Care – The bill requires all loan originators to: (1) be licensed and registered as required; (2) diligently work to present the consumer with a range of loan products for which the consumer likely qualifies and which are “appropriate” to the consumer’s existing circumstances, based on information known to or obtained by the originator; (3) make full and timely disclosures to each consumer of (a) comparative costs and benefits of each loan product offered or discussed, (b) whether the originator is or is not acting as an agent for the consumer, and (c) any relevant conflicts of interest. Note: a product is presumed to be “appropriate” if the originator determines in good faith, at the time of origination, based on existing information and without full underwriting, the consumer has a reasonable ability to repay the loan and would receive a net tangible benefit.

Anti-Steering – All loan originators, for transactions involving not qualified mortgages, are prohibited from receiving any incentive compensation (including YSPs or equivalent compensation) that is based on or varies with the terms other than the amount of principal of the loan. This provision does not restrict a consumer’s ability to finance origination fees through their interest rate as long as the fees were fully disclosed to the consumer earlier in the

application process and do not vary based on the terms of the loan or the consumer's decision to finance such fees. The restriction also does not limit or affect the ability of a mortgage originator to sell residential mortgage loans to subsequent purchasers.

Ability to Repay for All Loans – Under regulations prescribed by the federal banking regulators, no creditor (lender) may make a residential mortgage loan unless the lender makes a good faith determination, based on verified and documented information, that at the time the loan was consummated the consumer had a reasonable ability to repay the loan.

Net Tangible Benefit for Refinance Loans – Also, under regulations prescribed by the federal banking agencies, no lender may make a residential mortgage loan unless the lender makes a reasonable and good faith determination based on information known to or obtained in good faith by the lender that the refinanced loan will provide a net tangible benefit to the consumer.

Safe Harbor for Ability to Repay and Net Tangible Benefit – Any lender and any assignee or securitizer of a residential mortgage loan may presume that the loan has met the ability to repay and net tangible benefit requirements if the loan is a qualified mortgage or a qualified safe harbor mortgage. The presumption is rebuttable against the creditor or lender of a qualified safe harbor mortgage.

Qualified Mortgage - means any residential mortgage loan that meets the tests set forth above in the section titled Scope.

Qualified Safe Harbor Mortgage means any “not qualified mortgage” where:

- 1) The income and financial resources of the consumer are verified and documented,
- 2) Underwriting is based on the fully-indexed rate and takes into account all applicable taxes, insurance and assessments,
- 3) Mortgage repayment schedule does not provide for negative amortization,
- 4) Meets other rule(s) set by federal regulators,

And one of the following applies:

- a) Fixed payment for at least five years,
- b) For ARMs, APR varies based on a margin that is less than three percent over a generally accepted interest-rate index, or
- c) Loan does not result in a debt-to-income (DTI) ratio that exceeds a percentage prescribed by regulation.

Prohibition on Prepayment Penalties – Prepayment penalties are prohibited for all loans that are not qualified mortgages.

Lender Liability - Rescission – H.R. 3915 would establish a remedy of rescission, costs and attorneys' fees against a lender for violation of the ability to repay and net tangible benefit requirements. A lender has a right to cure a loan that a borrower cannot repay or does not provide a net tangible benefit to avoid rescission, if, no later than 90 days after receipt of notification, the creditor provides a cure at no cost to the consumer.

Definition of Cure – Cure for a violation of the ability to repay or net tangible benefit requirements means modification or refinancing of the loan at no cost to the consumer to provide terms that would have satisfied the ability to repay and net tangible benefit requirements.

Assignee Liability – An action may be brought against an assignee or securitizer for rescission and costs for violation of the ability to repay or net tangible benefit requirements. Assignees and securitizers are protected from liability if no later than 90 days after notice from a consumer

the assignee or securitizer provides a cure OR the assignee or securitizer satisfies the following conditions:

- 1) Has a policy against buying loans other than qualified mortgages or qualified safe harbor mortgages;
- 2) Has a policy intended to verify assignor or seller compliance with representations and warranties that the seller is not selling any loan that is not a qualified mortgage or a safe harbor mortgage;
- 3) Exercises due diligence per regulations issued by the SEC and banking regulators including through adequate sampling procedures; and
- 4) Has a contract with the seller or assignor that represents and warrants that it is not selling loans which are not qualified or qualified safe harbor mortgages or is a beneficiary of a representation or warrant from a previous seller to that effect.

Preemption for Assignee Liability- H.R. 3915 says it contains the sole remedies against any assignee, securitizer or securitization vehicle and state laws that provide additional remedies against such entities are superseded. The bill also provides that it is not to be construed as limiting the application of any state law against a creditor.

Statute of Limitations – The liability of a creditor (lender) or assignee or securitizer for rescission extends for three years from when the loan is consummated for a fixed rate loan, and for an adjustable rate loan, the earlier of one year after reset or six years after the loan is consummated.

Defense to Foreclosure – The bill gives a consumer – who has the right to rescind – the ability to assert that right as a defense to foreclosure. If the foreclosure begins after the statute of limitations expires, the consumer may, where there is a valid basis for the claim, seek actual damages and reasonable attorneys' fees.

Effect of Foreclosure on Preexisting Lease – A successor to a foreclosed property shall take the property subject to the rights of a bona fide tenant (not the mortgagor) under a lease entered into before the notice of foreclosure, for the remaining term of the lease or six months after the date of the notice of foreclosure, whichever occurs first, as long as the tenant receives a notice 90 days before the effective date of the notice to vacate.

HOEPA High-Cost Mortgages – H.R. 3915 would amend HOEPA in several ways, including expanding its coverage to purchase loans. While the bill would maintain the APR trigger at eight percent above Treasury securities, it would lower the point and fee trigger from eight percent of the total loan amount to five percent. The definition of points and fees also would be expanded to include all compensation paid directly or indirectly to a mortgage broker, premiums for credit life insurance not paid on a monthly basis and all prepayment penalty fees. The bill would also create a third trigger to qualify a loan as a HOEPA loan – a prepayment penalty that applies for more than 36 months or the penalty exceeds more than two percent of the amount prepaid.

Counseling – The bill would establish an Office of Housing Counseling within HUD to provide research, public outreach, policy development and up to \$45 million in grants. The Office would assure that specified standards for housing counselors are met, certify software to help counseling efforts and issue booklets on the home buying and mortgage process. Note: Under the bill, first time borrowers seeking not qualified mortgages with a negative amortization feature must receive counseling prior closing and all borrowers must receive counseling prior to entering into HOEPA loans.

Consumer Disclosures – The bill would add several new disclosures for consumers including: 1) under variable loans, the maximum payment amount, 2) for loans with escrows, the amounts paid in the first year to cover taxes and insurance, and 3) the aggregate amount of settlement charges for all services provided in connection with the loan and the amount of charges that are included in the loan. Additionally, the bill would amend RESPA to provide a new disclosure to appear on the good faith estimate summarizing key loan terms including: the loan amount; whether the loan has a fixed or variable rate; estimated interest rate; estimated monthly payment and percentage of borrower's income; rate-lock period; whether the loan has a prepayment penalty; total estimated settlement costs; and cash needed to close. During loan repayment, for borrowers with hybrid ARMs, notice must be given six months prior to reset and must disclose the options available to avoid payment shock.

Loan Administration and Escrows – Creditors would be required to establish escrow or impound accounts for at least five years and until sufficient equity has been built up for all first liens on principal dwellings, other than open-end credit plans, where the loan has one of several characteristics including: a first lien loan three percentage points above a comparable Treasury; a DTI ratio in excess of 50 percent; an LTV above 90 percent; or the loan is made, guaranteed or insured by a government agency. Consumers who choose not to escrow must be informed of their responsibility to pay non-escrowed fees. In addition, a servicer may not obtain force-placed insurance unless the servicer has a reasonable basis to believe the borrower has failed to comply with a requirement to maintain property insurance. Prior to imposing any charge for force-placed insurance, the servicer must notify the borrower in accordance with the bill.

Appraisals – For HOEPA loans, physical appraisals would be required to be performed by an appraiser who is certified, licensed, and performs work in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). Additionally, creditors would be required to provide to the consumer one copy of each appraisal conducted for a HOEPA loan at least three days prior to closing, without charge.

“Pressure” on Appraisers – The bill would prohibit any person with an interest in the loan transaction to influence the judgment of the appraiser, through prohibiting coercion, extortion, collusion, inducement, bribery or intimidation. The bill provides civil penalties for first violations and additional costs for subsequent violations.

Mortgage Fraud – The bill would authorize \$31,250,000 from 2008 through 2012 for new employees at the Department of Justice dedicated to combating mortgage fraud, and \$750,000 for the same period for additional funding for a mortgage fraud interagency task force.

November 2007