

# Mortgage Reform Concepts

MBA LIRC - 2008

**Licensing:** Impose minimum licensing or registration requirements upon all residential mortgage loan originators. Prohibits any person from engaging in the business of a “mortgage originator” without being registered with their principal federal bank regulator or licensed by the state or states in which he/she will do business.

**Duty of Care.** Amend the Truth-in-Lending Act (“TILA”) to impose minimum loan origination standards upon mortgage loan originators. Create a duty of care, where originators will present consumers with a range of appropriate loan products for which they can qualify, and fully disclose to consumers the comparative costs and benefits of each such loan product, the cost of the Originator’s services, whether the Originator is or is not acting as the consumer’s agent, and any relevant conflicts of interest.

**Fiduciary Duty:** Some state bills create an agency or fiduciary relationship between Originators and their customers.

**Anti-Steering:** Concept of ensuring that consumers are not “steered” to loans that of a lesser rank or grade than that for which they qualify.

**Expand HOEPA:** Expand and toughen rules relating to loans covered by the Home Ownership and Equity Protection Act (“HOEPA”).

- Expand “Reach” of HOEPA: Expand definition of a HOEPA loan to include purchase money loans, open-end loans and loans with prepayment penalties; (2) lower HOEPA APR trigger (to points below current 8%); (3) reduce the HOEPA “points and fees” threshold (from 8% to 5% of the total loan amount); (4) expand definition of “points and fees” to include additional items (“indirect compensation” paid to a mortgage broker (YSPs), premiums for credit insurance or debt cancellation benefits, prepayment penalty payable on loan.
- Expand Prohibitions Under HOEPA: Prohibits in connection with HOEPA loans: (1) balloon payments (even after 5 years); (2) making HOEPA loan without proof that borrower will be able to repay or without requiring pre-loan credit counseling; (3) charging late fees in excess of 4% of the amount of the past due payment or less than 15 days after the payment due date; (4) including call provisions; (5) financing points and fees; (6) financing prepayment penalties paid in connection with a loan being refinanced by the same creditor or an affiliate; (7) structuring loan as open-end loan or dividing it into separate parts with the intent to evade HOEPA.

**Fair Lending Enhancements:** Originators are not permitted to engage in abusive or unfair practices that promote disparities based on race, ethnicity, gender or age.

**Ability to Repay:** Borrower must have the ability to repay the loan (and all taxes, assessments and insurance premiums).

- ARM loans that allow for non-amortizing payments, be based on a fully amortizing payment schedule using the fully-indexed rate and with no balloon payment.
- Ability to repay must be verified and documented by the creditor (Ex: Fed Proposal would require creditors to verify the income and assets they rely upon with third-party documents that provide reasonably reliable evidence such as W-2 forms, tax returns, payroll receipts, or financial records.)
  - Require establishment of escrow accounts for taxes and insurance for at least the first year of a first lien higher-priced mortgage.
  - Prohibition imposed on “pattern or practice” of making unaffordable loans (“Shift in focus”).
  - Impose “Rebuttable Presumption” that a mortgage was made without regard to the borrower’s ability to repay if DTI exceeds 45 percent of the gross monthly income of the borrower. (No presumption of ability to make the payments if DTI does not exceed 45 percent.)

**Tangible Net Benefit:** A transaction to refinance a loan must provide the borrower with a “tangible net benefit.” Definitions of TNB vary. (Ex: “tangible net benefit” will be deemed to exist if cost of the refinance loan exceeds the amount of any newly advanced principal without any corresponding changes in the terms of the loan; if the new loan is “less expensive” than old loan; if new loan “favorably” amends repayment terms.)

**Prohibit/Limit Specific Terms:**

- Prepayment Terms: Prohibit or severely limit the ability to charge prepayment penalties on loans.
- No financing of credit insurance premiums or debt cancellation coverage in residential mortgage loans or open end credit plans.
- No arbitration in residential mortgage loan or open end credit plan; no limitation on consumer’s right to bring action in federal court or other court having jurisdiction.
- Foreclosure on any dwelling (1-4 family residence) securing an extension of credit made after effect date of Act is subject to tenant’s right of possession, as specified (90 days notice to vacate; 6 months from commencement of foreclosure).
- No negative amortization for any open end or closed end credit secured by dwelling, unless mandatory disclosures and, in certain instances, counseling.

**Statutory Damages/Statute of Limitations:** Certain ideas would greatly expand liability and punitive provisions for violations. Examples: (1) double minimum and maximum penalties that attach to TILA violations generally, (2) extend time within which claims of such violations may be asserted (from 1 year to 3, 5, or 10 years).

**Disclosure:** Require additional items of information to be disclosed to consumers as part of the good faith estimates mandated by the Real Estate Settlement Procedures Act (“RESPA”).

**Advertising** – Prohibit additional deceptive advertising practices, including, for example, misleading use of the word “fixed” in describing payments for variable rate loans, and advertising loans as government loans such as FHA or VA loans when they are not.

**Appraisers** – Prohibit creditors and affiliates from coercing, influencing, or encouraging appraiser to misrepresent a dwelling’s value. Prohibit extending credit if creditor “knew or had reason to know” that a broker had coerced, influenced or encouraged an appraiser to misstate a dwelling’s value.

**Third Party Originators/Brokers:** Various proposals would seek to tighten up the rules applicable to third party originators.

- Impose strict liability on lenders for all actions of the mortgage broker;
- Cap compensation paid to brokers;
- Prohibit YSPs unless the broker enters into a written agreement with consumer before the consumer applies or pays any fee to the broker. Contract would clearly state (1) total dollar amount of compensation to broker; (2) consumer will pay the entire compensation the broker will receive; and (3) a creditor’s payment to a broker can influence the broker to offer loan terms or products that are not in the consumer’s interest.

**Yellow Light Loan Category:** Create new categories of loans, usually measured at HMDA triggers for APR reportable loans. New categories of loans would see enhancement of restrictions, disclosures, and/or assignee liability provisions.

**Assignee Liability:** Expand assignee liability so that more secondary market players assume legal risks for loan terms or originator conduct. Create category of “preferred loans” that shield investors from assignee liability.

**Servicing Rules:** Revise servicing rules to better protect and better inform borrowers. Examples: Creditors, assignees or servicers must send “reset” notices containing specified items of information to borrowers of “hybrid” ARM loans; reset notices must be sent between 6 and 7 months prior to the interest rate reset date; mandate the establishment of escrow accounts in connection with certain loans and require servicers to satisfy certain conditions before they can force-place insurance; Servicer required to give annual written notice to consumer (and notice whenever a change in ownership of residential mortgage loan), identifying name of creditor or assignee or securitizer who should be contacted by the consumer concerning the consumer’s rights with respect to the loan; impose a “reasonable skill” and a “good faith and fair dealing” standard and other requirements on servicers regarding their fees, monthly statements, crediting of payments and requiring loss mitigation.

**Suitability Concepts:** See presentation