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Memorandum

TO: MBA's Regulatory Compliance Conference
"Secondary Market Developments"
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FROM: Stephen F.J. Ornstein
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DATE: August 1, 2008

RE: The Housing and Economic Recovery Act of 2008

We have summarized below the most salient provisions from the landmark housing bill, H.R. 3221, that was signed into law by President George W. Bush on July 30, 2008. The bill, entitled the "Housing and Economic Recovery Act of 2008" (hereinafter the "Act"), is the most comprehensive legislative effort by the government to date and contains a multitude of reforms to address the current mortgage crisis.

Among other things, the Act establishes a new financial regulator, the Federal Housing Finance Agency to oversee Fannie Mae, Freddie Mac, and the Federal Home Loan Banks (together, "Regulated Entities") and endows this new regulator with powers equivalent to the other federal financial regulators to ensure the safety and soundness of the Regulated Entities. The Act also temporarily increases the Treasury's authority under existing lines of credit to the Regulated Entities and gives the Treasury standby authority to purchase stock or debt in the Regulated Entities in order to increase confidence in the capital markets.

In addition, the legislation raises the permanent conforming loan limits and significantly increases the affordable housing component of the mission for Fannie Mae and Freddie Mac. The Act directs those government sponsored enterprises ("GSEs") to establish annual goals for the purchase of low-income purchase money mortgages and refinances as well as to provide leadership in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages with respect to the underserved markets of manufactured housing, affordable housing preservation and rural housing. The legislation also creates a permanent Housing Trust Fund and Capital Magnet Fund to increase the supply of affordable housing as well as appropriating \$100 million dollars to the Neighborhood Reinvestment Corporation for foreclosure mitigation activities and at-risk borrower outreach.

Another significant provision included within the legislation is the creation of the "Hope for Homeowners" program, which is a new, temporary housing program within the Federal Housing Administration of the U.S. Department of Housing and Urban Development ("FHA" and "HUD", respectively) to assist distressed borrowers. The HOPE Program is authorized to

insure up to \$300 billion in mortgages and is expected to serve about 400,000 homeowners. Significantly, this is an entirely *voluntary* program, and the Act specifically states that the Program may not be construed to require mortgagees and holders of existing mortgages to participate in the Program.

The Act also enacts a nationwide uniform licensing and registration system for all individual loan originators, including mortgage brokers and loan officers. All loan originators that are employed by depository institutions must be registered through the nationwide system and all other originators must be licensed through a state or HUD-backup system if a state does not establish a system.

Also included in the legislation are provisions to modernize HUD and the FHA. Among other things, the FHA loan limits are increased up to 150% of the conforming loan limit and mortgagors are now required to pay a 3.5% downpayment for new FHA-insured mortgages. In addition, the Act amends the Home Equity Conversion Mortgage (“HECM”) program to permit FHA to insure HECMs that are used to purchase a 1-4 family owner-occupied property and raises the maximum loan amounts for such loans. The Act also revises the limitations on origination fees for HECMs. The Act further places a 12-month moratorium on HUD’s risk-based pricing scheme that became effective July 14, 2008.

The Act modernizes HUD’s Title I Manufactured Housing Program and increases the program’s maximum loan limits as well as increasing the maximum insurance premium caps for manufactured home loans. The Act also directs HUD to revise the underwriting criteria to ensure that the program is financially sound.

With respect to military servicemembers, the Act temporarily increases the maximum guaranty amounts and enhances certain protections relating to mortgages and foreclosures. Lenders will now have to wait 9 months before beginning foreclosure proceedings on a servicemember. Further, the 6% interest rate limitation under the Servicemembers Civil Relief Act has been amended so that the interest rate cap remains in place for one year after the servicemember returns from duty.

Finally, the legislation provides for enhanced mortgage loan disclosures so that the early good faith estimates under the Truth-in-Lending Act (“TILA”) must now be provided for additional types of loans. A new disclosure is also implemented for variable-rate loans which requires the payment schedule to state that the payments will vary based on interest rate charges. The new disclosure must also include examples of adjustments to the regular payment. Civil money penalties under TILA are doubled so that the range of penalties for individual actions is now \$400 to \$4,000.

Please be advised that this memorandum does not address certain other sections of the Act. Specifically, we have not summarized herein those provisions of the Act relating to: (i) the Federal Home Loan Banks; (ii) the abolishment of the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board; (iii) miscellaneous provisions on studies regarding guarantee fees, default risk evaluation and bridge depository institutions; (iv) emergency assistance for the redevelopment of abandoned and foreclosed homes; (v) veteran’s

housing matters; (vi) small public housing paperwork reduction; (vii) housing preservation; (viii) amendment of the McKinney-Vento Homeless Assistance Act; (ix) eliminating barriers to provision of energy efficient mortgages; and (x) various tax-related provisions including provision on low-income housing tax credits, tax-exempt housing bonds, reforms related to real estate investment trusts and revenue provisions.

Please note that the majority of the Act became effective upon the President's signature, except as indicated in the various sections below. Also, note that a large number of provisions will require various agencies to implement them, such as the "Hope for Homeowners" program and the new mortgage licensing act. We will continue to keep you informed of any new regulations or guidance as they are released.

DIVISION A. HOUSING FINANCE REFORM

I. Reform of Regulation of the Regulated Entities

A. Improvement of Safety and Soundness Supervision

1. Establishment of the Federal Housing Finance Agency

The new legislation establishes a new independent agency, the Federal Housing Finance Agency ("FHFA"), to oversee Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, and empowers the FHFA with broad supervisory and regulatory powers, similar to those held by the other federal financial agencies. The FHFA is empowered to establish prudent managerial and operational standards as well as to establish minimum and risk-based capital requirements for the Regulated Entities, including the temporary increase of minimum capital requirements.

The Act also establishes a four-member Federal Housing Finance Oversight Board, which is comprised of the Secretary of the Treasury, the Secretary of Housing and Urban Development, the Chairman of the Securities and Exchange Commission and the Director of FHFA, to meet no less frequently than once every three months and to report to Congress on an annual basis on the safety and soundness and overall operational status of the Regulated Entities as well as to give an evaluation of the performance of the Regulated Entities in carrying out their respective missions. The Act would permit the FHFA to place the Regulated Entities into conservatorship or receivership in case of a financial crisis.

The Act also empowers the FHFA to oversee, and even directly restrict, executive compensation at the Regulated Entities, taking into consideration any factors such as wrongdoing by the executives.

2. Temporary Authority for Purchase of Obligations of Regulated Entities by the Secretary of Treasury

Significantly, as requested by Treasury Secretary Henry Paulson, the Act also temporarily increases the US Treasury's authority under existing lines of credit to the Regulated Entities and gives the Treasury standby authority to purchase stock or debt in the Regulated Entities. In order to use that authority, the Secretary of the Treasury must make an emergency

determination that such actions are required to: (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer. Further, in order to protect taxpayers, the Act directs the Secretary of the Treasury to take into consideration the need for preferences or priorities regarding payments to the government, limitations on the maturity or disposition of obligations or securities to be purchased, limitations on the payment of dividends and executive compensation, and other uses of resources.

The Act also provides for enhanced oversight of the Regulated Entities while the standby facility is in place and directs the FHFA to consult with the Board of Governors of the Federal Reserve System (the “FRB”) with respect to the safety and soundness of, and the risks posed by, the Regulated Entities. The Act provides that this temporary authority will expire on December 31, 2009.

B. Improvement of Mission Supervision

1. Increases in Permanent Conforming Loan Limits

The Act increases the permanent Fannie Mae and Freddie Mac conforming loan limits in high-cost areas up to 115% of the local area median home price, not to exceed a maximum nationwide loan limit of 150% of the current conforming loan limit, or \$625,500. This permanent increase becomes effective upon the expiration of the Economic Stimulus Act of 2008.¹ *Significantly, note that the increase in conforming loan limits will expand the coverage of certain anti-predatory lending laws which define their scope by reference to the conforming loan limits.*²

2. Revision of Housing Goals for Fannie Mae and Freddie Mac

In addition, the Act streamlines the affordable housing goals for both single-family and multifamily units to serve low-income and very low-income families. For single-family housing, the Act directs the FHFA to establish annual goals for the purchase by each GSE of purchase money mortgages and refinances, which goals must be established as a percentage of the total mortgage purchases by each GSE. For multi-family housing, the Act directs the FHFA to establish a single annual goal, by either unit or dollar volume, of purchases by each GSE of mortgages on multifamily housing that finance dwelling units affordable to low-income families.

3. Duty to Serve Underserved Markets

In order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets, the Act also directs the GSEs to provide leadership in developing loan products and flexible underwriting guidelines

¹ See TPW Memorandum dated February 2008 regarding The Economic Stimulus Act of 2008. Under the Stimulus Act, the conforming loan limits were temporarily increased to a maximum of 175% of the otherwise applicable Fannie Mae/Freddie Mac limits (i.e., \$729,750). The temporary increases remain effective until December 31, 2008.

² See TPW Memorandum dated March 2008 regarding Conforming Loan Limit Ceilings for a detailed summary of the relationship between the conforming loan limits and various anti-predatory lending laws.

to facilitate a secondary market for mortgages with respect to the underserved markets of manufactured housing, affordable housing preservation and rural housing. The Act improves reporting requirements for affordable housing activities and also provides substantial authority for the FHFA to enforce compliance with the housing goals.

4. Affordable Housing Programs

The Act provides for Affordable Housing Programs, which include the creation of a permanent Housing Trust Fund and Capital Magnet Fund. The Act directs each of the GSEs to set aside an amount equal to 4.2 basis points for each dollar of unpaid principal balance of its total new business purchases and allocate 65% of such amount to the Housing Trust Fund and the remainder to the Capital Magnet Fund.

The Housing Trust Fund is established to increase and preserve the supply of rental housing as well as to increase homeownership for extremely-low and very low-income families. The purpose of the Capital Magnet Fund is to attract private capital for and increase investment in the purchase, development, preservation and rehabilitation of affordable housing and economic development activities or community service facilities in order to stabilize or revitalize a low income or underserved area.

II. The “Hope for Homeowners” Program

Title IV of the Act is entitled, “Hope for Homeowners” (the “HOPE Program” or the “Program”), and establishes a new, temporary housing program within FHA to assist distressed borrowers.³ The Act provides that FHA may begin to insure new mortgages under the Program beginning October 1, 2008 until the Program expires on September 30, 2011. The HOPE Program is authorized to insure up to \$300 billion in mortgages and is expected to serve about 400,000 homeowners. Significantly, note that this is an entirely *voluntary* program, and the Act specifically states that the Program may not be construed to require mortgagees and holders of existing mortgages to participate in the Program.

The Act directs the Board of Directors of the HOPE Program, which is to be composed of the Secretary of HUD, the Secretary of the Treasury, the Chairperson of the FRB, and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, to establish requirements and standards for the Program. *As a result, note that the HOPE Program is not self-implementing and the Board of the HOPE Program must issue implementing regulations or guidance before mortgages can be insured under the Program.*

A. Criteria for the HOPE Program

Pursuant to the broad statutory requirements outlined by the Act, in order to be eligible for the HOPE Program:

³ Please note that the HOPE Program is a separate and distinct program from FHASecure, which is another HUD program which attempts to help distressed borrowers by refinancing their loans. Significantly, note that while FHASecure has a limit on the number of payments that a borrower may have defaulted on to still qualify for the program, the HOPE Program does not appear to have any such limitations.

1. The mortgagor must be the owner-occupant and the residence must be the principal residence and the only residence in which the mortgagor has any present ownership interest.
2. The mortgage being refinanced must have been originated on or before January 1, 2008.
3. The mortgagor must not be able to afford his or her current mortgage payments. The refinanced mortgagor must provide certification that the mortgagor has not intentionally defaulted on his or her current mortgage or other debt for the purpose of obtaining a mortgage under the Program;
4. The mortgagor must not have been convicted under federal or state law for fraud during the 10 year period prior to the refinanced loan.
5. The principal amount of the refinanced loan is to be determined by the reasonable ability of the mortgagor to make his or her payments, as such ability is determined by HUD pursuant to its underwriting standards, but in no case may the amount of the refinance loan exceed 90% of the appraised value of the related property.
6. Appraisers must be certified by the state where the property is located or by a nationally recognized professional organization and have “demonstrated verifiable education” in FHA appraisal requirements.
7. The maximum loan amount is set at 132% of the 2007 Freddie Mac conforming loan rate, or \$550,400.
8. As of March 1, 2008, the mortgagor’s debt-to-income ratio may not exceed 31%, or such higher amount as the Board of the HOPE Program may determine.
9. The new refinanced mortgage must have a single fixed interest rate and not exceed a 30 year term.
10. Current mortgagees must waive or forgive any prepayment penalties and delinquency fees that are associated with refinancing the mortgage.
11. All holders of current liens must agree to accept the proceeds of the new insured loan as payment in full of all indebtedness under the current mortgage. ***All subordinate liens must be extinguished through negotiation with the first lien holder.*** However, note that the Act provides that HUD may permit subordinate lien holders to share in any future appreciation that HUD might be entitled to under the HOPE Program.
12. The mortgagor’s income must be documented and verified by obtaining a copy of the mortgagor’s income tax returns or non-filing status for the past two years prior to obtaining the refinanced loan.

13. The mortgagor may not grant a new subordinate lien loan on the property within the first 5 years of the new refinanced loan. Any new outstanding liens may not reduce the value of the government's equity in the borrower's home and when combined with the existing mortgage indebtedness, may not exceed 95% of the home's appraised value at the time of the new second lien.

The Act directs HUD to collect a mortgage insurance premium of 3% of the amount of the original insured principal obligation to be paid from the proceeds of the refinanced mortgage and thereafter, to collect an annual premium of 1.5% of the amount of the remaining insured principal balance of the mortgage. Further, the Act directs the Board of the HOPE Program to establish: (i) a reasonable limitation on origination fees; and (ii) procedures to ensure that the interest rates on the refinanced mortgages are in line with market rates.

B. Shared Equity and Appreciation

The Act provides that upon the sale or disposition of any new refinanced mortgage, HUD and the mortgagor will be entitled to any equity created as a direct result of the sale or disposition in the following amounts:

1. During year 1, HUD is entitled to 100% equity;
2. During year 2, HUD is entitled to 90% equity and the mortgagor to 10% equity;
3. During year 3, HUD is entitled to 80% equity and the mortgagor to 20% equity;
4. During year 4, HUD is entitled to 70% equity and the mortgagor to 30% equity;
5. During year 5, HUD is entitled to 60% equity and the mortgagor to 40% equity.

After the fifth year, the equity is split evenly between HUD and the mortgagor at 50% each. Further, the Act provides that upon any sale or disposition of the property, HUD and the mortgagor are each entitled to 50% of any appreciation in the value of the property that has occurred since the date of insurance.

C. Standards to Protect Against Adverse Selection

In order to protect against adverse selection, the Act directs the Board of the HOPE Program to establish standards and policies to require the underwriter of the insured loan to provide such representations and warranties as the Board considers necessary or appropriate to enforce compliance with all underwriting and appraisal standards of the HOPE Program. The Act prohibits HUD from paying insurance benefits to a mortgagee who violates these representations and warranties or in any case in which the mortgagor fails to make his or her first payment on a refinanced mortgage. Further, the Act states that the Board of the HOPE Program may establish other standards or policies to protect against adverse selection including requiring loans identified by HUD as higher risk loan to demonstrate payment performance for a reasonable length of time prior to being insured under the HOPE Program.

D. Qualified Safe Harbor for Mortgage Servicers

In addition, the Act adds a new section 129A to the federal Truth-in-Lending Act to clarify the fiduciary duty of mortgage servicers when making loan modifications and to incentivize mortgage servicers to participate in the HOPE Program. Section 129A provides that *except as established in any investment contract between a servicer of pooled residential mortgages and an investor*, such servicer owes a duty to maximize the net present value of the pooled mortgages in an investment to *all* investors and parties having a direct or indirect interest in such investment.

Section 129A states that a servicer will be deemed to act in the best interests of all such investors and parties if the servicer agrees to or implements a modification or workout plan, including any modification or refinancing under the HOPE Program, for a residential mortgage or a class of residential mortgages that constitute a part or all of the pooled mortgages in the investment so long as any modified mortgage meets the following criteria:

1. Default on the payment of such mortgage has occurred or is reasonably foreseeable.
2. The property securing such mortgage is occupied by the mortgagor of the mortgage.
3. The anticipated recovery on the outstanding principal obligation exceeds, on a net present value basis, the anticipated recovery on the obligation through foreclosure.

Presumably, these criteria will be further detailed upon by the FRB in amendments to Regulation Z, which implements TILA. Further, note that the utility of this provision may be limited by the fact that any modification or workout will also have to be consistent with the pooling and servicing agreements, as mortgage servicers will be reluctant to antagonize certain classes of investors.

III. S.A.F.E. Mortgage Licensing Act

The Act also enacts the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” (the “SAFE Act”) in order to increase uniformity, reduce regulatory burden, provide accountability, enhance consumer protections and reduce fraud for mortgage originators. The SAFE Act applies to all loan originators, including mortgage brokers and loan officers, whether they are employed by a depository or nondepository institution (i.e., a bank or non-bank).

The Act defines a “loan originator” as an individual who: (i) takes a residential mortgage loan application; and (ii) offers or negotiates the terms of the mortgage loan for compensation or gain. The Act specifically carves out persons who only engage in clerical or administrative tasks, real estate brokers or persons or entities solely involved in extensions of credit relating to timeshare plans.

The Act prohibits individuals from engaging in the business of a loan originator without first obtaining, and maintaining annually a registration (in the case of loan originators employed by a depository institution or its subsidiary or by the Farm Credit Administration) or license and registration as a loan originator (in the case of originators employed by nondepository institutions) and obtaining a unique identifier.

The SAFE Act directs the federal banking agencies to jointly, with the Farm Credit Administration, develop and maintain a nationwide registration system within one year of enactment of the Act, to register loan originators employed by depository institutions. For loan originators employed by nondepository institutions, the SAFE Act requires states to create a licensing system within 1 year of enactment of the Act, or 2 years if that state's legislature only meets biennially, to ensure that applicants meet certain minimum standards including background checks, education requirements and examinations. If any state does not establish a licensing system within the required timeframe, the Act provides HUD backup authority to establish a licensing system within that state.

The SAFE Act permits borrowers and lending institutions to access information about all loan originators under the nationwide registration system, including their background and previous history as a loan originator.

DIVISION B – FORECLOSURE PREVENTION

I. FHA Modernization Act of 2008

A. Building American Homeownership Act of 2008

1. Increase in Maximum Loan Limits and Required Downpayments

The Act raises the loan limits for FHA-insured loans in high cost areas up to 115% of the local area median home price, not to exceed a maximum nationwide loan limit of 150% of the current Freddie Mac conforming loan limit, or \$625,500, or 100% of the appraised value of the property. This permanent increase becomes effective upon the expiration of the Economic Stimulus Act of 2008.⁴

In addition, the Act requires mortgagors to pay, in cash or its equivalent, at least a 3.5% downpayment or such larger amount as FHA determines. This downpayment may not come from the seller or any other person or entity that financially benefits from the mortgage transaction or by any third party that is reimbursed by such person or entity.⁵ The foregoing requirements apply to mortgages for which the mortgagee has issued credit approval on or after October 1, 2008.

⁴ See *supra* fn 1.

⁵ This prohibition also eliminates the FHA seller-funding Gift Downpayment Program, effective October 1, 2008.

2. Home Equity Conversion Mortgages

The Act also makes a number of changes to Home Equity Conversion Mortgages (“HECMs”), in an attempt to protect elderly mortgagors. The Act institutes counseling requirements by requiring adequate counseling by an independent third party that is not involved in the origination, servicing or funding of the HECM or otherwise involved in the sale of any type of financial or insurance products. In addition, the Act prohibits the mortgagee and any other party that participates in the origination of a HECM from providing other financial or insurance products or requiring seniors to purchase such products.

The Act amends the HECM program to permit FHA to insure a HECM that is used to purchase a 1-4 family dwelling, if it is owner-occupied as the owner’s primary residence. The maximum principal obligation for such loans is set at the Freddie Mac conforming loan limit for a single-family residence.

The Act also revises the limitations on origination fees for HECMs. The origination fee is now limited to 2% of the maximum claim amount of the HECM up to a maximum claim amount of \$200,000 plus 1% of any portion of the maximum claim amount that is greater than \$200,000. The origination fee: (i) is also subject to a minimum allowable amount; (ii) may be fully financed; (iii) may include any fees paid to HUD-approved correspondent mortgagees; and (iv) is subject to a maximum origination fee of \$6,000.⁶

3. Moratorium on Risk-Based Pricing

The Act provides that during the 12-month period beginning October 1, 2008, HUD may not take any action to implement or carry out risk-based premiums related to the insurance of any mortgage on a single-family residence under Title II of the National Housing Act. Note that HUD had issued a new regulation regarding risk-based pricing for FHA-insured mortgages which was published in the Federal Register on May 13, 2008 and which was to be implemented simultaneously with HUD Mortgagee Letter 2008-13,⁷ which implements the most recent expansion of HUD’s FHASecure program.

B. FHA Manufactured Housing Loan Modernization Act of 2008

The Act also enacts the FHA Manufactured Housing Loan Modernization Act of 2008 (“MHL Act”) to modernize HUD’s Manufactured Housing Loan program under Title I of the National Housing Act. The MHL Act increases the program’s maximum loan limits as follows:

1. \$25,090 for loans which finance alterations, repairs and improvements upon or in connection with existing manufactured homes;

⁶ The maximum origination fee is adjusted according to the annual percentage increase in the Consumer Price Index in increments of \$500 only when the percentage increase in the index, when applied to the maximum origination fee, produces dollar increases that exceed \$500.

⁷ See TPW Memorandum dated May 2008 regarding the Expansion of Eligibility Criteria for FHASecure.
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2. \$69,678 for loans for the purchase of a manufactured home
3. \$92,904 for loans for the purchase of a manufactured home and a suitably developed lot on which to place the home
4. \$23,226 for loans for the purchase, by an owner of a manufactured home which is the principal residence of that owner, of a suitably developed lot on which to place that manufactured home, and if the owner certifies that he or she will place the manufactured home on the lot acquired with such loan within 6 months after the date of such loan.

The MHL Act requires HUD to develop a method of indexing the loan amounts in order to annually adjust such amounts to keep up with inflation.

The MHL Act also increases the maximum insurance premium caps for manufactured home loans, so that the insurance premium may now be up to 2.25% of the amount of the original insured principal obligation at origination, plus an annual premium in an amount not to exceed 1% of the remaining principal balance. In addition, the MHL Act directs HUD to revise the underwriting criteria to ensure that the Manufactured Housing Loan program is financially sound within 6 months of the date of enactment of the Act.

Finally, the MHL Act also clarifies that the Real Estate Settlement Procedures Act applies to each sale of a manufactured home financed with a FHA-insured loan. The MHL Act clarifies that the term “federally related mortgage loan,” as that term is used under RESPA, includes a FHA-insured loan made to a borrower for the purpose of purchasing a manufactured home that the borrower intends to occupy as a personal residence.

II. Mortgage Foreclosure Protections for Servicemembers

A. Temporary Increase in Maximum Guaranty Amounts

The Act temporarily increases the maximum guaranty amount of purchase money loans used to purchase veterans’ homes which are guaranteed by the Secretary of Veteran’s Affairs (“VA Loans”) and refinances of any existing VA Loans. The temporary “maximum guaranty amount” is increased to an amount equal to 25% of the higher of: (i) the Freddie Mac single-family conforming loan limit; or (ii) 125% of the area median price for a single-family residence, but in no case to exceed 150% of the Freddie Mac single-family conforming loan limit, which is \$625,500.

B. Counseling on Mortgage Foreclosures for Returning Servicemembers

The Act also directs the Secretary of Defense to develop and implement a program to advise servicemembers who are returning from service on active duty abroad on actions to be taken by such members to prevent or forestall mortgage foreclosures.

C. Enhancement of Protections Relating to Mortgages and Foreclosures

The Act amends the Servicemembers Civil Relief Act (“SCRA”) so that a lender must now wait 9 months instead of 90 days from the time a servicemember returns from service before the lender may start foreclosure proceedings. The Act provides that the foregoing 9 month waiting requirement will expire on December 31, 2010.

Further, the Act amends the SCRA so that for mortgages, the 6% interest rate limitation will be effective both during the period of military service and for one year thereafter. The 6% interest rate limitation is effective only during the period of military service for any other obligation or liability.

III. Housing Counseling Resources

The Act appropriates \$100 million to the Neighborhood Reinvestment Corporation to remain available until December 31, 2008, for foreclosure mitigation activities and at-risk borrower outreach.

IV. Mortgage Disclosure Improvement Act of 2008

A. Timing and Applicability of Good Faith Estimates

The Act also provides for enhanced mortgage loan disclosures under the “Mortgage Disclosure Improvement Act of 2008” (“MDI Act”). The MDI Act amends TILA so that *all* mortgages which are secured by a dwelling must receive the good faith estimates (i.e., the early TIL disclosures) within 3 business days of application.⁸ Further, these estimates must be delivered at least 7 business days prior to consummation of the transaction so that borrowers may shop around for another loan if they are not satisfied with the offered loan terms. The good faith estimate must also include the following disclosure: “You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.”

B. New Disclosures for Variable Rate Loans

In addition, for loans in which the interest or payments are variable, the MDI Act provides for a new disclosure which requires that the payment schedule be labeled to state that payments will vary based on interest rate charges. In addition, the disclosure must include examples of adjustments to the regular payment based on the change in interest rates that are provided for in the mortgage contract. Among the required examples is an example that reflects the maximum payment amount based on the maximum interest rate permitted under the contract. The MDI Act also directs the FRB, the federal agency which administers TILA, to conduct consumer testing to determine the appropriate format for providing the disclosures to consumers so that such disclosures can be easily understood, including the fact that the initial regular payments are for a specific time period that will end on a certain date, that payments will adjust

⁸ Currently, only “residential mortgage transactions” (i.e., purchase money mortgages) are subject to this good faith estimate requirement.

afterwards potentially to a higher amount, and that there is no guarantee that the borrower will be able to refinance to a lower amount.

The MDI Act specifies that the foregoing disclosure provisions will become effective on the earlier of the compliance date established by the Board of Governors of the Federal Reserve or 30 months after the date of enactment of the Act.

C. Miscellaneous Provisions

In addition, the MDI Act provides that in any case in which the disclosure statement contains an inaccurate annual percentage rate, a corrected statement must be furnished to the borrower not later than 3 business days prior to the date of consummation of the transaction.

The MDI Act requires creditors to furnish the foregoing disclosures prior to payment of any fee to the creditor or other person in connection with the consumer's application for an extension of credit. However, a creditor or other person may impose a fee for obtaining the consumer's credit report before the consumer has received the disclosures provided the fee is bona fide and reasonable in amount.

Further, the MDI Act permits a consumer to waive the aforementioned timing requirements for a bona fide personal emergency if the consumer provides to the creditor a dated, written and signed statement describing the emergency and specifically waives or modifies the requirements and the creditor provides to the consumer at or before the time of such waiver or modification, the final disclosures that are required under TILA.

D. Increase in Civil Money Penalties

The MDI Act also increases the civil money penalties under TILA so that the range of civil money penalties for an individual action are increased to \$400 to \$4,000 from the current range of \$200 to \$2,000.

E. Effective Date

Aside from the new variable rate disclosures, the remainder of the MDI Act becomes effective 12 months from the date of enactment of the Act, i.e., July 30, 2009.

Please call Stephen F.J. Ornstein or Matthew S. Yoon at (202) 347-8400 with questions.

TPW