



## Outline of Draft Proposed Legislation “Mortgage Improvement and Regulation Act of 2009 (MIRA)” As of March 19, 2009

### Executive Summary

**Overview:** This legislation, entitled the “Mortgage Improvement and Regulation Act of 2009,” or “MIRA” would establish a tough new, federal regulatory scheme for mortgage lending. Specifically, it would establish new uniform national standards and a new national regulator, assisted by state officials, to replace the current patchwork of state and federal mortgage lending laws. The key sections of MIRA are as follows:

- I. **Purposes** – Describes MIRA’s purposes as: establishing a new, comprehensive framework for national regulation of mortgage lending to protect borrowers nationwide; to ensure consistent regulation of independent mortgage bankers and mortgage brokers; to invigorate a fairer and more competitive primary mortgage market and increase transparency; to facilitate greater secondary market investment; and to otherwise foster a return to stability of the nation’s financial system.

MIRA achieves these purposes by: establishing a new federal regulator responsible for mortgage lending standards; requiring the regulator to implement rigorous uniform national mortgage lending standards enacted under MIRA, as well as servicing standards, that are to be supplemented as necessary by the Director in consultation with state and federal regulators; assigning the regulator responsibility for regulating independent mortgage bankers and mortgage brokers including establishing uniform licensing and registration standards with increased net worth and bonding requirements; assigning disclosure, counseling and financial literacy responsibilities to the new regulator; and preempting state and local lending laws, as necessary;

- II. **Definitions** – Defines all necessary terms including the standards (or “triggers”) for higher priced or subprime loans which are subject to special requirements under the Act;
- III. **New Regulator** – Establishes a new Federal Mortgage Regulatory Agency (FMRA), within the Treasury Department, headed by a Director of Federal Mortgage Regulation (Director) to be responsible for regulating mortgage lending

including implementing and establishing Uniform National Mortgage Standards (UNMS) by regulation; regulating independent mortgage bankers and mortgage brokers in partnership with state financial regulators who also shall review for compliance with and examine and enforce the UNMS for such entities; consulting with federal and state financial regulators which shall examine, review and enforce the UNMS for federal and state depository institutions which they regulate respectively and operating national financial literacy, counseling and consumer information programs;

- IV. New Advisory Council** – Establishes a Council of State and Federal Regulators (CSFR) to consult at least quarterly with the Director and report to Congress annually on needed additions to UNMS to address abuses; to consult with the Director on regulations before they are publicly proposed; to advise on the regulation of independent mortgage bankers and brokers, including licensing standards and registration; and to consult on the development and operation of national financial literacy, counseling and consumer information;
- V. New Oversight Board** – Establishes a Mortgage Lending Oversight Board, comprised of the Secretaries of Treasury and Housing and Urban Development (HUD) and the Chairman of the Federal Reserve Board, to oversee operations of FMRA;
- VI. Uniform National Standards** – Establishes Uniform National Mortgage Standards (UNMS) which include substantive requirements and consumer protections. UNMS include all of the restrictions that the Federal Reserve recently promulgated by regulation under the Home Ownership and Equity Protection Act (HOEPA) for higher priced (nonprime) loans and for all closed-end loans and restrictions against unfair mortgage advertising. These include requirements that lenders determine a borrower's ability to repay, require documentation verifying income and/or assets, limit prepayment penalties, and establish escrow accounts for taxes and insurance. UNMS also includes key prohibitions from H.R. 3915 (passed by the House of Representatives in November 2007) including, but not limited to, additional provisions to improve mortgage servicing and the appraisal process to protect consumers as well as provisions developed by the Mortgage Bankers Association. For example, a revised duty of care would require that all loan originators including loan officers for mortgage lenders (lender loan officers) and loan officers for mortgage brokers (mortgage broker loan officers): (1) comply with all licensing and registration requirements; (2) present the consumer with a choice of loan products for which the consumer likely qualifies which is available from that lender, and which may be appropriate to the consumer's existing circumstances, based on information obtained by the originator; and (3) make full and timely disclosures to each consumer of (a) comparative costs and benefits of each loan product offered or discussed and (b) whether the originator is or is not acting as an agent for the consumer. The duty of care would also require that (4) the mortgage broker loan officer provide the borrower a disclosure of the mortgage broker's total

compensation including any amounts that the broker may receive from the lender based on a higher rate or the terms of the loan; and (5) a consumer must affirmatively, opt-in, in writing *prior to closing*, to a nontraditional mortgage product<sup>1</sup> after the lender's loan officer or mortgage broker discloses the costs and benefits of the loan to the borrower, also in writing;

- VII. Additions to Standards** – Requires the Director to meet at least quarterly in consultation with CSFR to supplement the UNMS as necessary, to promulgate such changes by regulation and to report to Congress annually on the need for additional changes and their disposition;
- VIII. Regulatory Responsibilities** – Requires the Director to implement the UNMS to regulate mortgage lending activities nationally; to supplement the UNMS as necessary in conjunction with the CSFR; to regulate activities of non-depository mortgage bankers and mortgage brokers including establishing uniform licensing and registry requirements for such entities in conjunction with the CSFR (including net worth and bonding requirements) with licensing and registration requirements to be applied by state officials; to work in partnership with state regulators to examine, review and enforce the UNMS for non-depository mortgage bankers and brokers; and to consult with federal and state financial regulators which shall examine, review and enforce the UNMS for federal and state depository institutions which they regulate respectively;
- IX. Penalties/Remedies** – Clarifies existing penalties for noncompliance such as the right of rescission, and also establishes alternative remedies for borrowers and a right to cure for lenders;
- X. Enforcement/Examination Authorities** – Authorizes the Director, federal agencies and state agencies to review, examine and enforce the UNMS concerning all mortgage lending operations and also confers rights on private parties to enforce provisions of MIRA;
- XI. Financial Literacy and Counseling** – Assigns the Director responsibility of operating a national financial literacy and counseling program including requiring mandatory counseling for reverse mortgages, HOEPA highest cost mortgages and interest-only mortgages for first-time homebuyers under certain conditions including the availability of sufficient counseling resources to avoid denying or unreasonably delaying the availability of mortgage credit;
- XII. Mortgage Fraud** – Provides increased resources for investigating and prosecuting mortgage fraud;

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<sup>1</sup> A nontraditional mortgage product is a mortgage product that allows a borrower to defer principal or interest, such as a payment option ARM or an interest-only loan.

- XIII. Initial Funding** – Authorizes start-up funds for establishment of the FMRA and its first two years of operations including the costs of consumer testing, financial literacy, counseling and anti-fraud activities;
- XIV. Resources for Regulation Going Forward/Sharing Funds With States** – Beyond the start-up period, authorizes FMRA to charge a reasonable assessment of each entity regulated by the FMRA to defray the costs of regulation. States would receive licensure and registry fees and would share in assessments on regulated entities for examination and enforcement to extent appropriate to avoid duplicate charges on regulated entities;
- XV. Improving Transparency** – Requires HUD and the Federal Reserve to work in consultation with FMRA to develop simplified, uniform and national disclosure forms and consumer information. This would include combined and coordinated RESPA and TILA Good Faith Estimate (GFE) disclosures, HUD-1 and final TILA disclosures as well as accompanying consumer information. Also, MIRA requires these agencies to develop forms to facilitate borrower understanding of the mortgage process and lender, broker and their loan officers' duty of care for consumers: (1) to provide information regarding their circumstances, including the consumer's risk appetite, to assist the loan officer or mortgage broker in deciding which loan products should be presented to the consumer; (2) to affirmatively opt-in to a nontraditional mortgage product following a disclosure explaining the option, including the risks and benefits of an adjustable loan; and (3) to disclose the amount of a mortgage broker's compensation;
- XVI. Preemption** – Amends federal and state laws as necessary including preempting contrary state laws.

## More Detailed Outline of MBA's MIRA Proposal

Specifically, MIRA:

- I. **Purposes** - Describes its purposes as: establishing a new, comprehensive framework for national regulation of mortgage lending to protect borrowers nationwide; to ensure consistent regulation of independent mortgage bankers and mortgage brokers; to invigorate a fairer and more competitive primary mortgage market and increase transparency; to facilitate greater secondary market investment and to otherwise foster a return to stability of the nation's financial system. The short-term responses to the mortgage crisis have been national in scope and so too should be the long-term solutions.

The Act indicates that it seeks to achieve this purpose by:

- A. Establishing a new federal regulator responsible for mortgage lending standards;
  - B. Requiring the regulator to implement rigorous uniform national mortgage lending standards enacted under MIRA, including substantive requirements for originations, servicing standards and means of making the market much more transparent, that are to be supplemented by the federal regulator in consultation with state and federal regulators, as necessary, with greater requirements applicable to subprime lending;
  - C. Assigning state and federal regulators concurrent responsibility for reviewing, examining and enforcing the uniform national standards while conferring new, more effective enforcement means;
  - D. Assigning the new regulator responsibility for regulating, and establishing uniform licensing and registration standards, with increased net worth and bonding requirements, for independent mortgage bankers and mortgage brokers;
  - E. Assigning disclosure, counseling and financial literacy responsibilities to the new regulator; and
  - F. Preempting state and local lending laws as necessary.
- II. **Definitions** - Defines all necessary terms including:
    - A. "Council of State and Federal Regulators (CSFR)" means an advisory body of mortgage regulators representing each of the 50 states, the District of Columbia and United States territories as well as

representatives of the Federal Reserve, Comptroller of Currency, Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Federal Trade Commission;

- B. "Federal Mortgage Regulatory Agency (FMRA)" means an independent office within the U.S. Treasury Department established under this Act;
- C. "Federal Mortgage Regulatory Agency Oversight Board" or "Oversight Board" shall be composed of the Secretary of Treasury, Chairman of the Federal Reserve Board and the Secretary of HUD;
- D. "Higher Priced Loans" for first lien residential mortgage loans are 1.5 percentage points above the average prime offer rate issued by Freddie Mac, and for second-lien loans are 3.5 percentage points over the same index. The Director may adjust these limits as necessary through rulemaking to more precisely define higher cost or subprime loans;
- E. HOEPA Covered Loans are Highest Cost or Section 32 residential mortgage loans that meet the following tests:
  - 1. For a first-lien loan, the annual percentage rate (APR) exceeds by more than eight percentage points the rates on Treasury securities of comparable maturity;
  - 2. For a second-lien loan, the APR exceeds by more than 10 percentage points the rates on Treasury securities of comparable maturity; or
  - 3. The total fees and points payable by the consumer at or before closing exceed the larger of \$561 or eight percent of the total loan amount. (The \$561 figure is for 2008. This amount is adjusted annually by the Federal Reserve Board, based on changes in the Consumer Price Index.) Credit insurance premiums for insurance written in connection with the credit transaction are counted as fees.
- F. "Nontraditional mortgages" are residential mortgage loans that allow borrowers to defer principal or interest;
- G. "Qualified mortgages" are residential mortgage loans that have APRs that do not exceed the Federal Reserve higher cost triggers;
- H. "Regulated entity" – Non-depository residential mortgage lenders and residential mortgage brokers;

- I. “Residential mortgage loans” are any extensions of credit to purchase, finance construction, or refinance secured by a 1-4 unit dwelling;
- J. “Uniform National Mortgage Standards (UNMS)” includes standards promulgated under this Act and amended by the FMRA in consultation with the CSFR.

**III. New Regulator** - Establishes a Federal Mortgage Regulatory Agency (FMRA) as an independent office within the federal government or within an agency of government:

- A. Headed by a Director, confirmed by the Senate, for a five-year term responsible for implementing and establishing UNMS, regulating independent mortgage bankers and brokers and operating national financial literacy programs and establishing national mortgage transparency and disclosure requirements in consultation with the Council of State and Federal Regulators (CSFR);
- B. Assigns powers to the FMRA and the Director on par with the general powers of the Federal Housing Finance Agency (FHFA) and its Director including, but not limited to, the power to appoint employees and examiners, to contract and to remain outside the appropriations process;
- C. Also assigns sufficient powers to the FMRA and the Director to assure consumer protection and prudential operations by mortgage bankers and mortgage brokers to provide financing needs to consumers. Such regulation should be principles-based to the greatest extent feasible to assure market innovation and lower borrower costs while assuring much better consumer protection;
- D. Stipulates that FMRA should have deputy directors, including:
  - 1. Deputy Director for Mortgage Standards
  - 2. Deputy Director for Regulation
  - 3. Deputy Director for Financial Literacy and Information.

**IV. New Advisory Council** - Establish a Council of State and Federal Regulators (CSFR) that shall include representatives of all members of the Federal Financial Institutions Examination Council (FFIEC), and representatives of the District of Columbia and all 50 state’s financial regulators. The CSFR shall:

- 1. Advise the FMRA on an ongoing basis of abuses occurring which are not addressed by the UNMS;
- 2. Make recommendations for additions to the UNMS;

3. Provide advice and guidance on regulating regulated entities, operation of the financial literacy counseling program and other matters at the request of the Director;
4. Be headed by an executive committee of nine members which shall be elected by the members and meet monthly with the Director, in person or by phone;
5. Meet quarterly with at least one annual in-person meeting; and
6. Report to the Congress annually on recommendations by the CSFR and their disposition.

**V. Oversight Board** - Establishes a Mortgage Lending Oversight Board.

The Oversight Board shall:

1. Meet regularly and oversee the operations of the FMRA;
2. Provide any necessary advice to the FMRA; and
3. Establish a strategic plan for the FMRA to carry out its mission.

**VI. Uniform Mortgage Standards** - Establish Uniform National Mortgage Standards (UNMS) that include standards for nontraditional and subprime loans and standards for all loans that include:

A. *Note - This section includes Federal Reserve HOEPA restrictions largely verbatim.* Enacting into legislation the requirements for higher cost or subprime loans (called “not qualified mortgages” pursuant to H.R. 3915) promulgated by the Federal Reserve in regulations under the Home Ownership and Equity Protection Act (HOEPA) that shall also apply to nontraditional loans and become effective October 1, 2009 that:

1. **Prohibition Against Failing to Consider Borrower’s Ability to Repay** - Prohibit creditors from extending a higher-priced mortgage or a HOEPA-covered loan without considering borrowers’ ability to repay the loan based on the consumer’s income or assets. Establishes a presumption of compliance with requirement where a creditor satisfies three requirements: (1) verifies and documents repayment ability of borrower; (2) determines repayment ability using the fully indexed rate and fully amortizing payment, except in certain circumstances, and considering other mortgage-related obligations such as property taxes and homeowners insurance; and (3) assesses the consumer’s repayment ability using either ratio of the consumer’s total debt obligation to income (DTI) or income the consumer will have after paying debt obligations. Does not

prescribe particular thresholds for the DTI or the residual income ratio.

2. Prohibition Against Failing to Verify Income - Prohibits creditor from relying on amounts of income (except for expected income) or assets to assess repayment ability for higher-priced loan or HOEPA-covered loan secured by consumer's principal dwelling unless the creditor verifies the amounts. Authorizes creditor to rely on W-2 forms, tax returns, payroll receipts, financial records or any other document providing reasonably reliable evidence of income, except a statement only from the consumer.
  3. Prohibition Against Certain Prepayment Penalties - Prohibits prepayment penalties for any higher-priced loan or HOEPA-covered loan where payments can change during the four-year period following loan consummation. For other higher-priced loans, where payments do not change for four years, prohibits prepayment penalties exceeding two years from loan consummation or applicable to refinancing by creditor or its affiliate.
  4. Requirement for Escrow Accounts - Requires creditors to establish escrow account for property taxes and homeowners insurance for at least one year. Servicer maintains the authority to continue or discontinue escrowing after required time. MIRA also provides FMRA authority to eliminate the requirement on servicer in case of emergency, such as loss of credit lines to advance taxes and insurance (T&I) payments.
- B. Enacting into legislation the requirements for all closed-end loans promulgated in regulation by the Federal Reserve under HOEPA, with additions from H.R. 3915, as well as the mortgage broker contract provisions that were proposed by the Federal Reserve Board but not finalized, as follows:
1. Appraisals – In order to regularize and protect against misconduct in the appraisal process, MIRA shall contain the following:
    - a. Prohibition Against Coercing or Otherwise Pressuring Appraisers – Prohibits creditors, mortgage brokers, real estate brokers, or anyone else interested in the transaction and their agents and affiliates from coercing, extorting, colluding, inducing, bribing, intimidating, pressuring, or otherwise encouraging an appraiser to misstate or misrepresent a dwelling's value, for all closed-end residential loans. MIRA also prohibits a

creditor from extending credit if the creditor knew of a violation, e.g., that an appraiser has been encouraged by creditor, mortgage broker or affiliate of either (including any of their employees) to misstate or misrepresent the principal dwelling's value, unless the creditor acts with reasonable diligence to determine that the appraisal was accurate or extends credit based on a separate appraisal untainted by coercion.

- b. Prohibition Against Appraiser Misconduct – No appraiser conducting an appraisal may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.
- c. Require FMRA to prescribe regulations and guidelines to:
  - i. Implement the foregoing prohibitions in “a.” and “b.” above, including detailing conduct which is permissible and impermissible under each section, combining the guidance in the Board’s final HOEPA rule and H.R. 3915;
  - ii. Prohibit other practices which are unfair or deceptive in the appraisal process, including establishing reasonable safeguards against flipping and to otherwise ensure adequate and independent appraisals; and
  - iii. Permit mortgage lenders to establish procedures including appropriate organizational structures to allow them to order appraisals or to engage the services of in-house appraisal staff for the purpose of attaining an independent and accurate appraisal, provided adequate safeguards, to be set by the Appraisal Standards Board to ensure that the ordering and operations of the lender are consistent with and do not violate the prohibitions of this section.
- d. Establish penalties for violations of appraisal requirements.
- e. Establish an Appraisal Oversight Board of federal and state regulatory officials to monitor appraisal practices and abuses and advise FMRA on the development of rules and guidance.

2. Assigns the Government Accountability Office (GAO) responsibility to study the appraisal process and standards for appraisers in each of the states and the District of Columbia, to recommend whether uniform national standards and a national mortgage fraud database are warranted for appraisers similar to the standards for loan originators, and to report to the Congress and FMRA on this subject and other improvements to the appraisal process within one year.
3. Prohibitions Against Certain Servicing Practices – Prohibits certain practices by servicers of closed-end consumer credit transactions secured by consumer’s principal dwelling, including: (i) failing to credit a consumer’s full periodic payment as of the date received, but creditors are not required to credit partial payments, and whether a payment is a full or partial payment is governed by the loan agreement or promissory note; (ii) imposing a late fee or delinquency charge where the only basis is consumer’s failure to include in a current payment delinquency charge imposed on earlier payments; and (iii) failing to provide an accurate payoff statement within reasonable time after request.

In addition, MIRA includes several provisions to facilitate servicing which are to be implemented by FMRA, including:

- a. Amend RESPA to allow FMRA to establish standards for forced placed hazard and flood insurance including proper notice and refunds when duplicative insurance is in place; and
  - b. Amend RESPA to decrease the time to respond to valid qualified written requests but also provide 30-day extension upon notification to the borrower that more time is needed to research the request.
4. MIRA includes a safe harbor to facilitate improved servicing, which is to be implemented by FMRA. The safe harbor would:
    - a. Help servicers implement strong streamlined modification programs using either a FDIC-style program, their own variants or the standards issued by the government pursuant to the Making Home Affordable Plan;

- b. Provide an official mechanism for a review of alternatives to or variations of the FDIC program, and allows them to be deemed within the safe harbor;
  - c. Standardize the net present value (NPV) test and allows servicers to modify a loan if the NPV of a loan modification is greater than the NPV of foreclosure (i.e., there is no requirement to maximize the investor return on each individual loan modification);
  - d. Provide a specific indemnification for losses to a securitization vehicle or investor regarding loan modifications authorized by this Section as long as the servicer acts in good faith in accordance with this Section;
  - e. Mitigate the risk of constitutional challenges by creating a right of recovery through the Troubled Assets Relief Program (TARP) for securitization vehicles and investors if they can show that a servicer's streamlined modification program has injured them and the safe harbor has resulted in a taking;
  - f. Set a workable standard of proof for the investor to prove that a streamlined modification program has damaged them; and
  - g. Allow removal of actions to federal court.
5. *The following provision, as indicated, was proposed but not finalized by Federal Reserve Board. Prohibits YSPs Unless Written Agreement – Prohibits creditor from directly or indirectly paying the mortgage broker unless the broker enters into a written agreement with the consumer that includes a disclosure to the consumer of the broker's total compensation that the broker will receive and retain from all sources, that the consumer will pay the entire compensation even if all or part is paid directly by the creditor, and that 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 or are not the most favorable the consumer could obtain. Also, prohibits broker from exceeding the compensation in the agreement.*
6. *Amends advertising rules for both open-end home equity plans and closed-end mortgages including applying "clear and*

*conspicuous” standard as was provided under the Board’s HOEPA rules. Requires:*

- a. Whenever rate or payment is included in advertisement for closed-end or open-end credit secured by dwelling, all rates or payments that will apply over term of loan must be disclosed with equal prominence and in close proximity to advertised rate or payment; and
  - b. For closed-end mortgages, no longer allows advertisement of any interest rate lower than rate at which interest is accruing on annual basis. Also, for closed-end mortgage loans, prohibits: (a) advertising fixed-rate or payments when rate or payments are fixed only for limited period of time rather than full loan term; (b) comparing an actual or hypothetical consumer’s current rate or payment to advertised loan unless the advertisement states rate or payments over the full term of the advertised loan; (c) advertising loan products as “government” or “government-sponsored” or otherwise government endorsed loan programs when they are not; (d) prominently displaying the name of a consumer’s current lender unless the advertisement also discloses that the advertising lender is not affiliated with current lender; (e) advertising claims of debt elimination if product advertised merely replaces one debt obligation with another; (f) advertising that creates false impression that mortgage broker or lender has fiduciary relationship with consumer; and (g) foreign language advertisements in which certain information such as teaser rate is provided in foreign language and other disclosures only in English.
7. Additional Standards from H.R. 3915 are to be included in the UNMS, with some revisions, as follows:
- a. Duty of Care – Requires all loan originators including loan officers for mortgage lenders (lender loan officers) and loan officers for mortgage brokers (mortgage broker loan officers): (1) comply with all licensing and registration requirements; (2) present the consumer with a choice of loan products for which the consumer likely qualifies available from that lender, and which may be appropriate to the consumer’s existing circumstances, based on information known by or obtained by the originator; and (3) make full and timely disclosures to

each consumer of (a) comparative costs and benefits of each loan product offered or discussed and (b) whether the originator is or is not acting as an agent for the consumer. The duty of care would also require that: (4) the mortgage broker loan officer provide the borrower a disclosure of the mortgage broker's total compensation including any amounts that the broker may receive from the lender based on a higher rate or the terms of the loan; and (5) a consumer must affirmatively, opt-in, in writing *prior to closing*, to a nontraditional mortgage product after the lender's loan officer or mortgage broker discloses the costs and benefits of the loan to the borrower, also in writing.

- b. Anti-Steering – All mortgage brokers, for all transactions are prohibited from receiving any incentive compensation (including yield spread premiums or equivalent compensation) that is based on or varies with the terms other than the amount of principal of any loan unless they enter into an agreement with the consumer that they are receiving such compensation and the amount of such compensation in accordance with the provisions of this Act. This restriction does not limit or affect the ability of a mortgage originator to sell residential mortgage loans to subsequent purchasers.
  - c. 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 date of the notice of foreclosure for 30 days after the date of a foreclosure, as long as the tenant receives notice from the servicer at the time the foreclosure is instituted stating that the property has entered the foreclosure process and that the tenant must vacate the property no later than 30 days after the foreclosure is complete, unless the successor waives the requirement.
  - d. Negative Amortization – Prohibited unless the creditor provides a complete disclosure to the consumer.
8. HOEPA High Cost Mortgages – Note: *MIRA does not include a third trigger for High Cost Mortgages in H.R. 3915 of a prepayment penalty for more than 36 months. The Federal Reserve Board rules are more restrictive for higher priced loans limiting prepayment penalties to two years or prohibiting them*

*entirely for some adjustable loans.* Would amend HOEPA in several ways, including expanding its coverage to purchase loans.

9. Servicing – Requires the Director in consultation with CSFR to promulgate rules governing mortgage servicers that ensure that servicing companies are competent and qualified and that servicers institute training, procedures and standards to assure borrowers are treated fairly and competently, including the Board’s servicing requirements at VI, b, 3 above and procedures for quick response and appropriate action when borrowers are delinquent and facing foreclosure. Also requires the Director to establish a new centralized servicing database, in lieu of existing inconsistent state and federal systems, which includes data on borrower requests for workouts and their disposition.
10. Miranda Warning – To improve mortgage servicing interactions with borrowers, amends the Fair Debt Collection Practices Act (FDCPA) which requires a debt collector to provide a debtor with a “Miranda” warning upon initial contact with debtor, and a shorter “mini-Miranda” in all subsequent contacts (written and oral) for the life of the loan.
  - a. Unfortunately, mortgage servicers are considered “debt collectors” in the vast majority of cases and must state that they are attempting to collect a debt and that any information will be used for that purpose. This statement is misleading when applied to loss mitigation activity and serves to chill a borrower’s willingness to work with the servicer to provide information required to execute loss mitigation.
  - b. MIRA amends the FDCPA to exclude mortgage servicers of first lien residential mortgages from the Miranda notice requirement. All of the other consumer protection under FDCPA would continue to apply. Thus, a mortgage servicer who, whether by assignment, sale or transfer, becomes the person responsible for servicing mortgage loans secured by first liens, including loans that were in default at the time such person became responsible for the servicing, shall be exempt from the FDCPA Miranda requirements in connection with the collection of any debt arising from such a defaulted related mortgage loan.

**VII. Additions to Standards** - Requires the Director in consultation with CSFR to meet at least quarterly to supplement the UNMS as necessary,

to promulgate such changes by regulation and report to Congress on the state of mortgage lending, the need for additional changes and their disposition by the Director, annually.

**VIII. Regulatory Responsibilities** - Requires the Director to apply the UNMS to regulate the mortgage lending activities of all federally and state regulated lending institutions in cooperation with their regulators, to regulate all activities of independent lenders and mortgage brokers including establishing uniform licensing and registry requirements for such entities, in consultation with CSFR, consistent with the requirements of the S.A.F.E. Act; and to work in partnership with federal and state regulatory and enforcement officials to examine, review and enforce the UNMS. Specifically, the Act:

- A. Establishes a new uniform federal regulatory structure for mortgage lending under which the FMRA would:
  - 1. Regulate all mortgage lending activities of all state and federally regulated lenders through the UNMS; such regulators would retain responsibility to regulate all other activities of such institutions and examine, review and enforce the UNMS; and
  - 2. Promulgate rules in consultation with CSFR governing mortgage servicers that ensure that servicing companies are competent and qualified and that servicers institute training, procedures and standards to assure borrowers are treated fairly and competently, including the Federal Reserve Board's servicing requirements at VI, b, 3 above and procedures for quick response and appropriate action when borrowers are delinquent and facing foreclosure.
- B. Requires FMRA to directly regulate all non-depository mortgage lenders and mortgage brokers and mortgage bankers and work cooperatively with current federal and state regulators to review, examine and enforce the UNMS established under this Act for those entities.
  - 1. In carrying out this function, FMRA is required, within one year of enactment, to establish uniform nationwide licensing and registry requirements to apply to all independent mortgage bankers and mortgage brokers which are not federally regulated. Such rules should provide rigorous requirements to ensure competent and qualified lenders and brokers and maximum competition across state lines to lower costs to consumers. *Note: The Act (below) would amend the S.A.F.E. Act which sets minimum requirements for licensing of mortgage originators and requires the states to enact laws specifying licensing and registry requirements for non-federally regulated originators within one year. The Act would*

*transfer responsibility for establishing licensing and registry requirements from the states to the FMRA;*

2. Also in carrying out this function, such rules should appropriately differentiate between the two types of entities where necessary considering their differing functions and the differing policy concerns which the respective industries present. The rules should require that bankers and brokers at the time of first licensure and on a continuing basis shall:
  - a. Meet appropriate educational, testing and character requirements;
    1. Meet net worth and bonding requirements-
      - i. For mortgage bankers – the corporate net worth requirement shall be at least \$500,000, plus \$50,000 for each branch office with a maximum limit of \$1 million, as evaluated by audited statements and the bonding requirement shall be a suitable amount to protect borrowers; and
      - ii. For mortgage brokers the corporate net worth requirements shall be at least \$150,000, plus \$25,000 for each branch office up to the requirement for a full eagle from FHA, and the bonding requirement shall be at least \$75,000.

**IX. Penalties/Remedies - Clarifies Penalties and Establishes New Penalties**

- A. Consumers who bring action against creditors for violations may seek:
  1. Actual damages;
  2. Statutory damages in an individual action of up to \$2,000 or, in a class action, total statutory damages for the class of up to \$500,000 or one percent of the creditor's net worth, whichever is less;
  3. Special statutory damages equal to the sum of all finance charges and fees paid by the consumer; and court costs and attorney fees;
  4. Refinance mortgages subject to the right of rescission. An action for rescission, costs and attorney's fees may be brought against a lender for violation of the Ability to Repay requirements for a higher priced mortgage;

5. In all cases where a claim for rescission and a claim for damages is made, a creditor has a right to cure non-compliance in lieu of rescission if no later than 90 days after receipt of notification of the consumer's claim, the creditor provides a cure at no cost to the consumer;
  6. Definition of Cure – Cure for a violation of the ability to repay requirement means modification or refinancing of the loan at no cost to the consumer to provide terms that would have satisfied the ability to repay requirement.
- B. Limited Assignee Liability – An action for rescission and costs may be brought against an assignee or securitizer. 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 higher cost mortgages meeting the requirements of the Act;
  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 higher cost mortgage meeting the requirements of the Act;
  3. Satisfies 2 above, by exercising due diligence per regulations issued by the Securities and Exchange Commission and banking regulators including through adequate sampling procedures; and has a contract with the assignee which represents and warrants that the seller or assignor is not selling loans which are not higher cost loans meeting the requirements of this Act.
- C. New penalties for disclosure violations. Amends Section 4 and 5, of RESPA, 12 USC 2603 and 12 USC 2604, to provide penalties for:
1. Failing to provide a consumer the disclosures under 4 and 5 as applicable;
  2. Failing to disclose the costs that the borrower is estimated to receive or is charged at closing on the HUD-1;
  3. Charging the consumer at closing an amount 10 percent greater than the total cost of lender, mortgage broker, title and other third party fees that was estimated at the time of application, provided the borrower qualifies for the loan in final underwriting and does not request a different loan;

4. Charging a consumer more than the maximum amount of mortgage broker compensation disclosed; and
  5. Wrongfully advising the consumer of the broker's function in the transaction; i.e., that he will shop for a borrower when he is not in fact an agent of the borrower. This provision may include a criminal penalty.
- D. MBA supports civil money penalties and private remedies instead of rescission or refund of finance charges for minor infractions and infractions that trigger from on-going or periodic servicing or lending responsibilities.
- X. Enforcement/Examination Authorities** - Authorizes FMRA, other federal agencies, state agencies and private parties to enforce the UNMS and to interact with federal and state banking regulators to review, examine and enforce UNMS concerning all mortgage lending operations.
- XI. Financial Literacy and Counseling** - Assigns the Director national responsibility of operating a national financial literacy and counseling program targeted at understanding credit and mortgages, including requiring mandatory counseling for certain mortgage products. The Director shall, with the advice of the CSFR and interested stakeholders:
1. Develop a curriculum for a national financial literacy program in conjunction with the CSFR for use by educational institutions at the elementary, middle school and secondary school levels;
  2. Develop a comprehensive Web site to inform the public about the mortgage process and to compare the mortgage products available;
  3. Establish and administer an assistance program to eligible recipients to develop counseling capacity;
  4. Require, through rulemaking, mandatory counseling for mortgage products that present an increased risk of default, in the judgment of the Director. These products should include all reverse mortgages, and, as long as adequate counseling resources are available such that loan closings are not delayed, HOEPA highest priced and higher priced loans which could result in negative amortization made to first-time homebuyers.
- XII. Mortgage Fraud** - Authorizes \$31,250,000 from 2009 through 2013 for new employees at the Department of Justice dedicated to combat mortgage fraud, and \$750,000 for the same period for additional funding for a mortgage fraud interagency task force.

- XIII. Initial Funding** - Authorizes start-up funds of \$\_\_\_\_\_ for establishment of the FMRA and its first two years of operations including the costs of consumer testing, financial literacy, counseling and anti-fraud activities.
- XIV. Resources for Regulation/Sharing Funds With States** – Beyond start up period, authorizes FMRA to charge a reasonable assessment on each entity regulated by the FMRA to defray the costs of regulation. States would receive licensure and registry fees and would share in assessments on regulated entities for examination and enforcement to extent appropriate to avoid duplicate charges on regulated entities.
- XV. Improving Transparency** – Requires HUD and the Federal Reserve to work together in consultation with the Director and CSFR to develop a simplified, combined RESPA/TILA disclosure that shall be uniform and used nationally. HUD would be directed to withdraw the pending RESPA rule prescribing a new GFE and HUD-1 and coordinate its efforts with the TILA reform efforts of the Federal Reserve Board. These joint efforts of the Federal Reserve Board and HUD should be placed on an aggressive timetable established by Congress which would implement the new disclosures in a coordinated manner that would avoid confusion and reduce consumer costs. Specifically, MIRA requires:
- A. Combined, coordinated and simplified RESPA and TILA Good Faith Estimate (GFE) disclosures, combined, coordinated and simplified HUD-1 and final TILA disclosures as well as accompanying consumer information meeting the requirements of TILA and RESPA that would require that disclosures be given at the same time and in accordance with the Mortgage Disclosure Improvement Act (enacted July 2008).
- B. The combined RESPA and TILA GFE would include:
1. A uniform one-page, box-type summary of the estimated costs and terms of each individual mortgage loan offer that would include:
    - i. the estimated loan amount; note rate and Annual Percentage Rate (APR); the total settlement costs;
    - ii. whether the loan is adjustable and, if so, how frequently;
    - iii. the note rate and APR for the loan;
    - iv. the estimated mortgage payment of principal and interest and estimated amounts for taxes and insurance (Estimated PITI);
    - v. whether the loan does or does not have a prepayment penalty with its duration and amount;
    - vi. whether the loan has a balloon payment with its timing and amount;

- vii. whether the lender automatically escrows taxes and insurance;
  - viii. whether private mortgage insurance or a second mortgage is needed with its cost(s); and
  - ix. which, if any, costs are or are not guaranteed to come within 10 percent of the final settlement costs subject to approval of the borrower and property securing the mortgage.
2. Group key settlement costs into major categories based on which service provider receives them, discloses the total cost for each category and then totals them as a total estimated cost. These categories would include: fees paid to the mortgage originator, lender or broker, fees paid for title insurance and closing services, fees paid to other third parties and government charges and not detail the sums for sub-costs within cost categories, except government charges, on the GFE or the HUD-1;
  3. Include the maximum amount of compensation the mortgage broker will receive in the transaction;
  4. Arrive at total estimated settlement costs: and monthly payment(s);
  5. Advise the borrower of possible payment shock, balloon payments, prepayment penalties, the cost of a no-doc or low-doc loan and the borrower's responsibility for taxes and insurance and mandatory homeowners' association dues or condominium fees, where applicable; and such other information regarding the transaction as the Director deems necessary for borrowers.
- C. A new standard, combined, brief plain language home purchase and mortgage financing handbook drawing from the current Special Information Booklet and the Consumer Handbook on Adjustable Rate Mortgages (CHARM) and other materials, to provide consumers generic information for both home purchase and mortgage refinance transactions that, among other things:
1. Clearly describes the key terms and costs of homeownership including the down payment, monthly payments, settlement costs, taxes and insurance and other monthly charges;
  2. Advises consumers of the importance of credit history, down payment and adequate reserves in obtaining a lower cost mortgage and maintaining homeownership;

3. Advises consumers of the risks and benefits of various mortgage products including providing information on payment adjustments, balloon payments, prepayment penalties, the need to pay taxes and insurance and the costs of no-documentation and low-documentation loans;
  4. Advises consumers of the roles and responsibilities of different players in the mortgage process including the differences between mortgage lenders and mortgage brokers, that only those mortgage brokers which identify themselves as such are borrowers' agents and the fact that all mortgage originators will receive additional income if a borrower agrees on a higher mortgage rate.
- D. A standard agreement intended to replace disparate state disclosures, regarding the cost and function of the mortgage broker in the transaction that: notifies a consumer of the maximum amount the mortgage broker will receive in the transaction; whether a broker is or is not acting as an agent for the borrower; and whether the mortgage broker may increase its commission based on the borrower's agreement to an increased interest rate. This form will be provided by mortgage brokers in addition to the GFE disclosure.
- E. A new combined HUD-1 and final TILA disclosure, for each mortgage loan covered by RESPA and TILA that easily corresponds to a new standardized GFE/TILA form so that a borrower can readily compare both documents including both the estimated and final settlement costs. Note: The current HUD-1, and even the one recently promulgated by HUD, is still not comparable to the GFE. The consumer, therefore, is not able to make an apples-to-apples comparison of the fees and terms at application and at settlement.
- F. New forms to facilitate borrower understanding of the mortgage process and lender, broker and their loan officers' duty of care for consumers: (1) to provide information regarding their circumstances including the consumer's risk appetite to assist the loan officer or mortgage broker in deciding which loan products should be presented to the consumer; (2) to affirmatively opt-in to a nontraditional mortgage product following a disclosure explaining the option, including the risks and benefits of an adjustable loan; and (3) to disclose the amount of a mortgage broker's compensation.
- G. New forms to provide reasonable notice to a borrower prior to reset of an adjustable rate mortgage

**XVI. Preemption and Revisions to Federal Laws -** Preempts contrary state laws and amends several federal laws as follows:

- A. Amends the S.A.F.E. Act to transfer responsibilities for establishing uniform national mortgage licensing and registry standards for originators of regulated entities from the states to FMRA;
- B. Amends TILA and RESPA to:
  - 1. Require HUD and the Federal Reserve Board to work together on a single set of uniform disclosures and accompanying borrower information for all mortgage transactions nationwide and for HUD to withdraw its pending rule until such a single set of disclosures can be issued;
  - 2. Make borrower remedies compatible without establishing a new right of rescission under RESPA; and
  - 3. Preempt state disclosures of the same information covered by RESPA and TILA.
- C. Amends TILA to provide that all settlement charges other than government charges must be included in the computation of the finance charge and the Annual Percentage Rate (APR) for the loan. The current APR is not a useful shopping tool since major settlement costs are not included in its calculation. An all-in APR would make the APR much more useful to borrowers for such purpose.
- D. Maintains the current preemption for federally regulated financial institutions.