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**2011 NAR MIDYEAR
DODD-FRANK FINANCIAL REFORM ACT
CONSUMER FINANCIAL PROTECTION BUREAU**

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I. INTRODUCTION

A. Background

1. Past Decades: Laissez-Faire
2. Atmosphere: Easy Money
3. Bubble had to burst
4. Core meltdown of the financial industry



I. INTRODUCTION (cont'd)

B. Result

1. Congress and regulators step in
2. Over Regulate/Over Control
3. Accountability, Responsibility,
Liability



DODD-FRANK OVERVIEW

And A Closer Look At The Consumer Financial Protection Bureau



I. FINANCIAL & MORTGAGE REFORM

A. Background: 2010 Dodd-Frank Act

1. Most sweeping financial reform since 1930s
2. Law is huge
 - In breadth – 2314 pages
 - In its impact on the industry
3. Don't confuse mortgage reform with mortgage simplification



II. FINANCIAL & MORTGAGE REFORM (cont.)

B. Top 5 Legislative Fixes

1. Consumer Protection
2. Too Big to Fail
3. Derivatives
4. Global Financial System
5. Regulatory shopping



III. BAKER'S DOZEN OF ISSUES AFFECTING THE LENDING INDUSTRY

1. Credit Risk Retention

- Securitizers retain 5% economic interest
- All about “qualified residential mortgages”

2. Bureau of Consumer Financial Protection

- Independent agency within FRB
- Authority to write rules for 18 different consumer protection laws
- To be created by July 21, 2011



III. BAKER'S DOZEN OF ISSUES AFFECTING THE LENDING INDUSTRY (cont.)

3. Duty of Care

- Loan originators must be qualified, licensed and registered
- Unique identifier

III. BAKER'S DOZEN OF ISSUES AFFECTING THE LENDING INDUSTRY (cont.)

4. Prohibition on Steering/LO Compensation

- Double whammy—Title XIV plus new Federal Reserve Board Rule which took effect April 2011.
- Prohibits paying originators based on loan terms
- ABAs worried about affiliate fees being counted toward loan originator compensation
 - Title XIV—Originator can pass along bona fide, third party charges that are not retained by creditor, originator, or their affiliate.
 - FRB—does flip flop and ultimately concludes that as long as affiliate provides bona fide services at reasonable rates...not LO comp

III. BAKER'S DOZEN OF ISSUES AFFECTING THE LENDING INDUSTRY (cont.)

5. Ability to Repay

- Good faith determination at consummation
- Reasonable ability to pay

6. Qualified Mortgages

- Verified and documented income
- Total points and fees do not exceed 3% total loan amount
 - **ABA Issues** – Originally fees paid to and retained by an affiliated title settlement service company count towards 3% threshold; does not count for unaffiliated third party title provider (even if they are the same or higher than the affiliated title fees)
 - FRB rethinks that one



III. BAKER'S DOZEN OF ISSUES AFFECTING THE LENDING INDUSTRY (cont.)

7. Liability for Mortgage Originators

- Greater of actual damages or
- 3 times gain accruing to originator
- Plus perpetual right to assert a violation of these ability to repay rules in future actions to collect the loan

8. Prepayment Penalties

- Prohibited on “not qualified loans”
- Restricts prepayment penalties on ARM loans



III. BAKER'S DOZEN OF ISSUES AFFECTING THE LENDING INDUSTRY (cont.)

9. Arbitration

- Mandatory arbitration prohibited for residential mortgage, open-end credit secured by principal dwelling
- Not applicable to Reverse Mortgages
- Bureau will consider whether to restrict mandatory arbitration in other contexts

III. BAKER'S DOZEN OF ISSUES AFFECTING THE LENDING INDUSTRY (cont.)

10. Expands High-Cost Mortgage (HOEPA)

- Now covers purchase money mortgages
- Lowers triggers/points and fees and again counts affiliate charges toward trigger but not unaffiliated charges

11. Alters/eliminates rules on lender preemption

- Preemption will not extend to operating subsidiaries
- Preemption for banks and thrifts subject to Barnett Bank test

III. BAKER'S DOZEN OF ISSUES AFFECTING THE LENDING INDUSTRY (cont.)

12. Appraisals, AMCs, AVMS

- Regs to protect appraiser independence (HVC Sunsets)
- Amount paid to appraisers must be “reasonable and customary”

13. Servicing

- New escrow disclosures, shorter time frames to respond to QWRs
- Tougher “forced-placed” insurance rules

III. BAKER'S DOZEN OF ISSUES AFFECTING THE LENDING INDUSTRY (cont.)

A. How will RE Industry Be Affected?

1. Clients will have fewer financing options
 - Qualified mortgage
 - Plain vanilla
 - Scratch or dent on credit, big problem
2. Time delays
 - Expect longer origination and processing delays
 - Check and double-check
 - Expect frustrations
3. May mean less ability to employ ABAs—loss of convenience and accountability



QUESTIONS AND ANSWERS



Dodd-Frank Reform Act

Consumer Financial Protection Bureau



II. BUREAU OF CONSUMER FINANCIAL PROTECTION

A. Background

1. Center piece of Dodd-Frank Act
2. Uber-agency
3. Transfer of agency personnel and 18 separate consumer protection laws
4. Nuclear penalties



II. BUREAU OF CONSUMER FINANCIAL PROTECTION (cont.)

B. What is the Bureau?

1. Executive Agency within Federal Reserve System
2. Director appointed by President
3. Extensive budget
4. Consumer Advisory Board to advise Bureau
5. Financial Oversight Council



II. BUREAU OF CONSUMER FINANCIAL PROTECTION (cont.)

C. Objectives

1. Timely, understandable information
2. Eliminate deceptive practices
3. Protection against discrimination
4. Eliminate outdated regulations
5. Enforce consumer protection laws

II. BUREAU OF CONSUMER FINANCIAL PROTECTION (cont.)

D. What's Covered (Financial Activities)

- Extension of Credit
- Acquiring, selling, brokering or servicing mortgage loans
- Real estate settlement (not defined but clearly covers closing/escrow services—less clear about things like home warranties not regulated by insurance)
- Appraisals
- Financial Advice
- Credit counseling, debt management, debt collection

II. BUREAU OF CONSUMER FINANCIAL PROTECTION (cont.)

E. Who's Covered

- Banks, Lenders
- Mortgage Brokers
- Mortgage Servicers
- Financial Advisers
- Appraisers
- Credit Counselors



II. BUREAU OF CONSUMER FINANCIAL PROTECTION (cont.)

F. Who Dodged a Bullet (Exemptions)

- Business of Insurance
- Real Estate Brokers/Agents
- Accountants
- Attorneys
- Persons regulated by state insurance regulators (Title Companies)
- Automobile dealers



II. BUREAU OF CONSUMER FINANCIAL PROTECTION (cont.)

G. Enormous Powers

1. Consumer functions and personnel transferred from

- FRB
- OCC
- OTS
- FDIC
- NCUA
- HUD

II. BUREAU OF CONSUMER FINANCIAL PROTECTION (cont.)

G. Enormous Powers (cont'd)

2. Transfer for Existing Consumer Laws

- EFTA
- ECOA
- FCRA
- GLB
- FDCPA
- HOEPA
- HMDA
- TIL
- RESPA
- SAFE Act
- FDIC
- INTERSTATE LAND SALES



II. BUREAU OF CONSUMER FINANCIAL PROTECTION (cont.)

G. Enormous Powers (cont'd)

3. Fair Housing Act/FTC Act Stay in Place
4. Power to Write Rules
 - a. “Carry out purposes and objectives” of federal consumer financial laws and “prevent evasions thereof”
 - b. Mandate form/content of disclosures
 - c. Identify unfair and deceptive practices
 - d. Restrict pre-dispute arbitration
 - e. Impose registration requirements

II. BUREAU OF CONSUMER FINANCIAL PROTECTION (cont'd)

H. Penalties

1. Nuclear arsenal of weaponry
2. Including:
 - Rescission
 - Refunds
 - Restitution
 - Damages
 - Unjust enrichment
 - Public notification
3. Enforcement authority beyond original statutes
 1. Can launch investigations (C&D power)
 2. Can bring litigation
 3. Can conduct studies, collect information and make reports



II. BUREAU OF CONSUMER FINANCIAL PROTECTION (cont.)

H. Penalties (cont'd)

4. Civil \$ penalties

- up to \$5,000 per day
- \$25,000 per day for reckless violation
- up to \$1.0 million for knowing violation



II. BUREAU OF CONSUMER FINANCIAL PROTECTION (cont.)

I. Effective Date

1. July 21, 2011
2. Date may be extended additional year
3. Real Estate Industry
 - No free ride
 - Pay attention



III. HOW DOES THE NEW CFPB PLAY AT YOUR HOUSE

A. Effect

1. Realtors
2. Title Industry
3. Lenders
 - Credit Risk Analysis (QRM)
 - Anti-Steering/LO Compensation
 - Ability to Repay (QM)
 - Liability for non-compliance



III. HOW DOES THE NEW CFPB PLAY AT YOUR HOUSE (cont'd)

B. What Can We Expect In The Bureau's First 12 Months?

1. Elimination of outdated regulation
2. Elimination of deceptive trade practices
3. New regulations
 - simplify process
 - increase consumer protection
4. One Page GFE/TIL Disclosure
5. Enforcement, enforcement, enforcement
 - New Sheriff in Town
 - Loud presence
 - Huge penalties/publicity



III. HOW DOES THE NEW CFPB PLAY AT YOUR HOUSE (cont'd)

C. What's A Settlement Service Provider To Do?

1. Emphases on sound practices and procedures
2. Internal Controls
3. Quality Control