

Highlights of
The Dodd-Frank Wall Street Reform
and
Consumer Protection Act

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**HIGHLIGHTS OF
THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT**

1. Financial Stability - addresses the core purpose of the bill by creating a new oversight regulator, the Financial Stability Oversight Council. This council of regulators will monitor the financial system for "systemic risk" and will determine which entities pose significant systemic risk. Generally speaking, it will make recommendations to regulators for the implementation of the increased risk standards, also known as prudential regulation, to be applied to bank-holding companies with total consolidated assets of \$50 billion or more and to designated non banks.

For community banks and bank holding companies, a key provision is the exemption for entities of less than \$500 million in assets from a provision that excludes from Tier I capital calculations trust preferred securities. The Federal Reserve's policy on small bank holding companies was also preserved. The Act also grandfathers trust preferred securities issued before May 19, 2010, by bank holding companies with less than \$15 billion in total assets.

2. Orderly Liquidation Authority - again, a core purpose section. It establishes a framework for the liquidation by the Federal Deposit Insurance Corporation (FDIC) of large institutions that pose systemic risk. The Treasury supplies liquidity for the liquidation that must be paid back in 60 months.

3. Enhancing Financial Institution Safety and Soundness - merges the Office of Thrift Supervision (OTS) into the Office of the Comptroller of the Currency (OCC). The OTS regulatory responsibilities will be spread among other regulators. The Federal Reserve will regulate savings and loan holding companies, the OCC will regulate federal savings

associations, and the FDIC will regulate state savings associations. For community banks, a key provision in this section changes the assessment base for deposit insurance. Before, the base was domestic deposits less tangible equity.

Now, the base is average consolidated total assets minus average tangible equity. The result is that larger financial institutions, which have more non-deposit assets, will pay a greater percentage of the aggregate insurance assessment and smaller banks will pay less than they would have, perhaps as much as \$4.5 billion less over the next three years.

Another key provision for community banks is the permanent increase in FDIC deposit insurance per depositor from \$100,000 to \$250,000, and the extension of the unlimited insurance coverage for non-interest bearing transaction accounts for two years. The Act also increases the minimum reserve ratio for the Deposit Insurance Fund from 1.15 percent to 1.35 percent, but exempts institutions with assets of less than \$10 billion from the cost of the increase.

4. Regulation of Advisers to Hedge Funds and Others - requires most advisors to "private funds" register with the Securities and Exchange Commission (SEC). "Private funds" are defined to cover most private equity funds, hedge funds, and venture capital funds.

A key provision of interest to community banks is a change in the definition of "accredited investor": for the next five years, the net worth calculation for determining an accredited investor is \$1 million excluding the value of a primary residence. Previously, there was no such exclusion. After five years, the SEC is required to adjust the \$1 million threshold for inflation. The change was effective when the Act was effective. On July 23rd, the SEC answered questions concerning how the indebtedness secured by the primary residence should be treated, indicating that such indebtedness should be deducted from an investor's net worth while any equity in the primary residence is excluded. Community banks engaged in capital raising activities must amend the definition of "accredited investor" to conform.

5. Insurance - establishes the Federal Insurance Office under the OTS. It is to review the insurance industry and study for Congress the federal regulation of insurance.

6. Improvements to Regulation of Bank and Savings Association Holding Companies and Depository Institutions - This section implements the so-called modified Volcker Rule. The rule limits the ability of certain bank and bank-related entities to engage in proprietary trading or investing in hedge funds and private equity funds to 3 percent of the entity's Tier 1 capital, among other restrictions. "Proprietary trading" is defined to include the purchase or sale of any security, any derivative, any contract for the sale of a commodity for future delivery, or option on such instrument. For community banks, the key provisions in this section are: a moratorium on deposit insurance applications for three years for new credit card banks, industrial loan companies and trust banks owned by commercial companies; the expansion of the definition of affiliate transactions to cover certain kinds of security transactions such as repurchase agreements, derivative transactions and securities borrowing; and the codification of the source of strength doctrine, the long-time view of the Federal Reserve that a holding company should serve as a source of financial strength for its subsidiary banks.

7. Regulation of Over-the-Counter Swaps Markets - imposes exchange trading for derivatives contracts and imposes new capital and margin requirements and various reporting obligations on Over The Counter swap dealers and major OTC swap participants.

For community banks, the most important provision in this title levels the competitive playing

field by prohibiting the Federal Reserve or the FDIC from providing assistance to insured depository institutions involved in the swaps markets, with certain exceptions.

8. Payment, Clearing, and Settlement Supervision - allows for a systemic approach to certain financial market payment, payment clearing and settlement systems. Designation as systemically important will require two-thirds of the Financial Stability Oversight Council.

9. Investor Protections and Improvements to the Regulation of Securities - has a number of provisions intended to protect investors, including for example: risk retention requirements for certain asset-backed securities; reforms to regulation of credit rating agencies; establishing an Investor Advisory Committee and an Office of Investor Advocate, and requiring the SEC to study whether a fiduciary duty standard of care for broker-dealers providing personalized investment advice to a retail customer should be created.

For community banks, the most important provisions of this section establish a number of changes to corporate governance procedures for public companies that perhaps will ultimately become the expected practices for all corporations large and small. The most important of these are: proxy access requirements for shareholders; disclosures about the failure to separate the role of the board chairperson and chief executive officer; shareholder voting on executive compensation; the establishment of an independent compensation committee; executive compensation disclosures and clawbacks. In addition, the Federal Reserve is required to issue regulations regarding incentive-based pay practices within nine months of the effective date of the Act; these regulations will apply to institutions with more than \$1 billion in assets.

For small, publicly held community banks, an important provision in this title is an amendment to the Sarbanes-Oxley Act to permanently exempt non-accelerated filers from section 404(b) of the Act.

This section also permits de novo branching by national banks and state-chartered insured institutions. Also, effective July 22, 2010 the Act eliminated the prohibition on the payment of interest on demand deposits, allowing businesses to hold interest-bearing checking accounts.

10. Bureau of Consumer Financial Protection - This is probably the most extensive Section in The Act and will greatly affect community banks. It will alter the way consumer credit is regulated, moving from a framework of the federal regulation of disclosure and the state law regulation of fairness and suitability, to an overall, nationwide federal suitability framework. It establishes the Bureau of Consumer Financial Protection, an independent entity housed within the Federal Reserve in order to provide a source of funding (initially \$500 million) and gives the Bureau the authority to prohibit practices that it finds to be "unfair," "deceptive," or "abusive" in addition to requiring certain disclosures. The words "unfair" and "deceptive" appear to reference and incorporate similar words in the enabling legislation of the Federal Trade Commission and some state consumer legislation. The "abusive" addition to this grant of regulatory authority is new and it is likely that defining the meaning of this term in this context will produce additional regulation and litigation. The Bureau may also prohibit consumer mandatory arbitration provisions and it will oversee the mortgage reform and enforcement provisions of Title XVI of the Act. Please see attached overview of the provisions of this section.

11. Federal Reserve System Revisions - gives the Government Accountability Office authority to conduct a one-time audit of the Federal Reserve's emergency lending during the credit crisis and gives the GAO other auditing responsibilities over the Federal Reserve. This section also tightens the conditions under which the FRB may provide emergency assistance to institutions and authorizes the FDIC to guarantee debts of banks and bank holding companies.

12. Improving Access to Mainstream Financial Institutions - is intended to provide alternatives to payday loans. This section is intended to encourage low and moderate income individuals to create accounts in insured depository institutions and it creates a program to provide low-cost loans of \$2,500 or less.

13. Pay It Back Act - is a largely technical section dealing with previous programs for emergency assistance to insured financial institutions. It reduces the TARP funds authorized under the Emergency Economic Stabilization Act of 2008 (the so-called TARP funds) from \$700 billion to \$475 billion.

14. Mortgage Reform and Anti-Predatory Lending Act - is another important provision for community banks. It places new regulations on mortgage originators and imposes new disclosure requirements and appraisal reforms, the most important of which are: the creation of a mortgage originator duty of care; the establishment of certain underwriting requirements so that at the time of origination the consumer has a reasonable ability to repay the loan; the creation of document requirements intended to eliminate "no document" and "low document" loans; the prohibition of steering incentives for mortgage originators; a prohibition on yield spread premiums, and prepayment penalties in many cases; and a provision that allows borrowers to assert as a foreclosure defense a contention that the lender violated the anti-steering restrictions or the reasonable repayment requirements. Please see the attached overview of the provisions of this section.

15. Miscellaneous Provisions - contains a number of provisions that have little to do with the credit crisis and more to do with finding a vehicle for passage of what is usually called special interest legislation. For example, this section restricts U.S. funding of certain loans to heavily indebted countries and declares that a trade of conflict minerals from the Congo is helping to finance the conflict. This section also articulates disclosure requirements for companies operating mines, and requires that any mining company that is a public company to include in its annual report all payments made to foreign governments or the Federal Government for development of oil, natural gas, or minerals.

OVERVIEW OF THE CONSUMER FINANCIAL PROTECTION ACT

1. Establishment of the Bureau of Consumer Financial Protection ("CFPB")

Title X of the Dodd-Frank Act establishes the Bureau of Consumer Financial Protection (CFPB), which has as its mission "ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive: The CFPB has exclusive authority to issue regulations, orders and guidance implementing "Federal Consumer Financial Law." Federal Consumer Financial Law includes the Consumer Financial Protection Act of 2010 (Title X of the Dodd-Frank Act), plus the Truth in Lending Act, the Truth in Savings Act, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, and numerous other consumer statutes.

- **Importance to Community Banks**

The CFPB will be an independent agency, focusing the attention of one federal agency on consumer financial issues and regulations.

2. Authority of the CFPB

The CFPB will have primary responsibility for examining, supervising, and enforcing compliance with Federal Consumer Financial Law by depository financial institutions with assets exceeding \$10 billion.

Community banks with assets of \$10 billion or less will still be subject to regulations issued by the CFPB and can be required to provide reports to the CFPB. The CFPB may also participate "on a sampling basis" in an examination by a bank's primary federal regulator to assess compliance with Federal Consumer Financial Law. The Act, however, gives exclusive authority to enforce Federal Consumer Financial Law with respect to banks with assets of \$10 billion or less to the bank's primary federal bank regulator.

The CFPB will supervise compliance with Federal Consumer Financial Law by all nondepository covered persons, including, for example, mortgage brokers and nondepository mortgage lenders, as well as larger participants in the market for consumer financial products or services (as determined by the CFPB and the Federal Trade Commission).

CFPB will subject many nonbank competitors, such as mortgage companies, to examination and enforcement. Most notably, however, automobile dealers who sell their paper will be exempt from supervision and examination by the CFPB.

• Importance to Community Banks

a. While the CFPB does not directly supervise community banks with assets of \$10 billion or less, its regulations, policies and procedures will likely be followed in step by the FRB, FDIC and OCC in their consumer protection review of community banks, and actions it takes in the regulation of larger financial institutions will likely have a significant impact on how the FRB, FDIC and OCC go about assuring compliance by community banks with Federal Consumer Financial Law;

b. The CFPB will refer potential violations of Federal Consumer Financial Law to a bank's primary federal regulator with a recommended action. The Act requires the bank's primary federal regulator to provide a written response to the CFPB within 60 days; and

c. In theory, this will help level the playing field for community banks by reigning in previously unregulated players in the market, such as mortgage brokers.

3. Authority to Prohibit Unfair, Deceptive and Abusive Practices

In addition to its rulemaking authority under Federal Consumer Financial Law, the CFPB is authorized to issue rules and take enforcement actions to prohibit unfair, deceptive or abusive acts or practices in connection with a consumer or a consumer financial product.

The CFPB may only issue such rules if it has a reasonable basis to conclude that (a) the act or practice causes, or is likely to cause, substantial injury to consumers that cannot reasonably be avoided, and (b) the substantial injury to consumers is not outweighed by countervailing benefits to consumers or to competition.

The CFPB may not declare a practice abusive unless the practice (a) "materially interferes with the ability of the consumer to understand a term or condition of a consumer financial product or service," or (b) takes unreasonable advantage of a consumer's lack of understanding of the

material risks, costs, or conditions of a product or service, the consumer's inability to protect his or her interests in selecting or using a consumer financial product or service, or the consumer's reasonable reliance upon the provider of the consumer financial product or service to act in the interests of the consumer.

- **Importance to Community Banks**

a. The Dodd-Frank Act specifically requires the CFPB to engage in cost benefit analysis, weighing the injury to consumers who the regulation is aimed at protecting against the benefit of the practice to consumers or competition. It will be interesting to see how that balance is struck;

b. State and federal law already prohibit unfair and deceptive acts or practices. The prohibition of "abusive" practices is new; and

c. "Abusive" is defined to include, among other things, taking unreasonable advantage of "the reasonable reliance by the consumer" that the bank will "act in the interests of the consumer." Here, and elsewhere in the Act, it appears to imply a duty of a financial institution to act in the best interests of the consumer rather than placing responsibility on the consumer.

4. Authority to Prohibit Predispute Arbitration Clauses

The CFPB is given the authority to prohibit or impose conditions and limitations on redispute arbitration clauses.

The Mortgage Reform Act also prohibits mandatory arbitration clauses in mortgage or home equity loans.

- **Importance to Community Banks**

Predispute arbitration clauses do not appear to be widely used by community banks, so this provision may have a limited impact.

5. Power to Enforce Fair Lending Laws

The Consumer Financial Protection Act creates the Office of Fair Lending and Equal Credit Opportunity within the CFPB, with oversight of and power to enforce the Equal Credit Opportunity Act, and the Home Mortgage Disclosure Act.

The Mortgage Reform Act requires the Federal Reserve Board to prescribe regulations that prohibit a mortgage originator from engaging in any abusive or unfair lending practice that promotes disparities based on race, ethnicity, gender or age among consumers of equal creditworthiness.

The Consumer Financial Protection Act significantly expands the information that must be included in a mortgage lender's Home Mortgage Disclosure Act submission. Lenders will be required to collect and report detailed information about each loan, including among other things, total points and fees at origination, the value of real property pledged as collateral, the channel through which the loan was originated, the applicant's age and credit score, the term of the loan and any provisions that provide for a prepayment penalty or allow for payments that are not fully amortizing. The Act allows the CFPB to require additional disclosures as it deems

appropriate.

The Act will require lenders to collect information regarding small business loans, including whether the business is female-owned or minority-owned. Information required to be collected and reported includes, among other information, the race, sex, and ethnicity of the principal owners of the small business, the gross annual revenue of the small business applicant, the census tract in which the business is located, and the type of action taken on the application. The CFPB may require additional information as it deems appropriate

- **Importance to Community Banks**

- a. While the CFPB does not directly regulate community banks with assets of \$10 billion or less, the CFPB's focus on fair lending will likely force the banking regulators to increase their focus as well;

- b. The Act arguably creates a new cause of action for discrimination. These requirements significantly increase the amount of information that a lender must disclose in preparing its HMDA submission. This information will give the federal government significantly more information that it can use to build a case that a lender has discriminated against borrowers in a protected class. In the past, lenders have been able to argue that HMDA data lacked sufficient information about the applicant's creditworthiness and the terms of the loan to draw conclusions about discrimination. The new data required by the Act will allow the government and private litigants to overcome the current weakness in HMDA data and target lenders more aggressively; and

- c. Over the past decade, the federal government has shown a greater interest in pursuing discrimination against small business borrowers based on race or sex. The new information that small business lenders must collect and report will give the government valuable information with which to select and prosecute targets.

6. Model Forms for Federal Consumer Financial Laws

The Act authorizes the CFPB to prepare model forms for the disclosures required under Federal Consumer Financial Laws. Model forms must be validated by the CFPB through consumer testing.

The Act requires the CFPB to propose rules to combine disclosures under the Truth in Lending Act and the Real Estate Settlement Procedures Act.

- **Importance to Community Banks**

- a. This will, at least initially, result in increased compliance costs as lenders implement new disclosures. The Act creates a safe harbor for using model forms; and

- b. The Federal Reserve Board and HUD have been trying to combine the disclosures of TILA and RESPA for many years.

7. Authority to Investigate Violations and Enforce Federal Consumer Financial Law

The CFPB is given broad powers to investigate violations of Federal Consumer Financial Law by banks over \$10 billion in assets and nondepository covered persons, including the power to issue subpoenas to compel testimony and require the production of documents, and the power

to issue cease and desist orders. The CFPB may also initiate civil lawsuits to enforce Federal Consumer Financial Law.

Among the remedies available to the CFPB are the power to require the rescission or reformation of contracts, the refund of moneys or return of real property, the payment of damages, and the payment of civil money penalties from \$5,000 to \$1,000,000 per day.

The CFPB does not have the authority to file criminal charges but can make referrals to the Department of Justice. In addition, the CFPB is required to make referrals to the Internal Revenue Service of potential violations of tax laws.

- **Importance to Community Banks**

Congress has provided the CFPB with the authority to aggressively enforce compliance with Federal Consumer Financial Law. While the CFPB will not have the authority to investigate and bring enforcement actions against community banks, the stepped-up enforcement of Federal Consumer Financial Law against other institutions will put pressure on a community bank's primary federal regulator to increase its enforcement efforts and the prosecution of other institutions by the CFPB will create precedent for bank regulators to follow suit.

8. Consumer Complaint Unit

The Act requires the CFPB to establish a unit to receive consumer complaints and to provide a timely written response to those complaints. The CFPB must establish a single toll-free telephone number, a website and a database to collect, monitor and respond to consumer complaints. The CFPB must report annually to Congress on consumer complaints.

- **Importance to Community Banks**

The CFPB is expected to take a more aggressive approach to addressing consumer complaints than do current bank regulators. Community banks should evaluate the effectiveness of their procedures for monitoring and responding to consumer complaints.

9. Authority of State Attorneys General to Enforce Regulations by the CFPB

The Act allows state attorneys general to enforce regulations issued by the CFPB against state-chartered banks after consulting with the CFPB and the bank's regulator.

State attorneys general may bring civil actions against a national bank or federal savings bank to enforce any regulation of the CFPB (but not the Act itself) after consulting with the CFPB and the bank's primary federal regulator. The Act expressly allows a state to bring an action against a national bank or federal thrift to enforce other "applicable" law.

- **Importance to Community Banks**

a. State attorneys general will have the ability to proceed against nondepository companies, such as mortgage brokers, that provide consumer financial services. However, the state attorneys general may also use this authority in regulating state-chartered banks; and

b. National banks and federal thrifts in Georgia may now be subject to suit by the Georgia

Attorney General.

10. Protection of Whistleblowers

The Act protects employees against retaliations for providing information to any local, state, or federal authority regarding violations of the Act or any regulation under the Act. Other conduct, such as testifying against a bank or refusing to engage in activity the employee reasonably believes would violate any law within the jurisdiction of the CFPB, is also protected. Whistleblower complaints are investigated by the Secretary of Labor.

• Importance to Community Banks

In light of the new whistleblower protections, community banks may wish to examine their policies and procedures to ensure that employees have an effective means of bringing violations of law to the attention of management.

11. Limitations on Federal Preemption

The Act limits federal preemption of state law to circumstances where the state law is inconsistent with federal law. A state law that is more protective of the consumer is not inconsistent and therefore is not preempted.

The Act now provides that a state consumer financial law will be preempted from applying to national banks only if (a) the state law has a discriminatory effect on national banks as compared to the effect on state-chartered banks, (b) the state law prevents or significantly interferes with the exercise by a national bank of its powers, or (c) the state law is preempted by other provisions of federal law.

Subsidiaries of national banks and federal thrifts will no longer benefit from the federal preemption given to their parent depository institution, but instead will be subject to state consumer financial laws to the same extent that they apply to any other person or entity subject to the law of the state.

• Importance to Community Banks

a. The Act allows states to have laws that are more protective than Federal Consumer Financial Law. This will impose a greater burden on interstate banks, which must comply with the laws of multiple states. But it will also create more uncertainty for state banks that have to determine whether state or federal law is more protective of consumers; and

b. The OCC will be limited in its ability to preempt state laws affecting community banks with a national bank or federal thrift charter, and subsidiaries of those banks, such as mortgage companies, will be not be subject to preemption and will need to comply with state licensing and lending laws.

OVERVIEW OF THE MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

1. Prohibited Payments to Mortgage Originators

The Mortgage Reform and Anti-Predatory Lending Act ("Act") (Title XIV) prohibits a lender from

paying, or a mortgage originator, including a loan officer or mortgage broker, from receiving, compensation that varies based on the terms of the loan (other than the amount of the principal). A lender may not pay, and a mortgage originator may not accept, an origination fee (other than a bona fide third-party charge that is not retained by the lender or the mortgage originator) if the lender knows, or has reason to know that the consumer has compensated, or will compensate, the mortgage originator.

- **Importance to Community Banks**

The Act prohibits lenders from paying a mortgage originator (other than its own employee) a yield spread premium on a loan.

2. Required Determination of the Consumer's Ability to Repay

Before making a mortgage loan, a creditor must make "a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance, and assessments."

To determine ability to pay, the lender shall consider the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures the loan. The determination must be based on a payment schedule that fully amortizes the loan over the term of the loan.

The Act creates a presumption of ability to repay in the case of a "Qualified Mortgage Loan." A "Qualified Mortgage Loan" is a fully amortizing loan with no balloon payment that does not provide for negative amortization at any time and for which the APR does not exceed an average prime rate offer by certain tolerances. To be a Qualified Mortgage Loan, the points and fees in connection with the loan may not exceed 3 percent of the total loan amount.

- **Importance to Community Banks**

a. The ability to repay must be based on a payment schedule that fully amortizes the loan over the term of the loan. If the property secures more than one loan, ability to repay must be based on repayment of all loans.

This obligation raises the potential for litigation over whether a lender's determination was reasonable and made in good faith. The borrower may raise the lender's failure to accurately make the determination of ability to repay as an offset in an action by the lender to foreclose on a mortgage unless the loan was a Qualified Mortgage Loan; and

b. By creating a safe harbor from liability regarding the determination to repay, Congress has provided lenders an incentive to offer standard mortgages without features, such as balloon payments, that have been widely used in mortgage lending. Lenders that offer mortgages other than Qualified Mortgage Loans take on an additional level of risk.

3. Prohibited Steering

The Act requires the Federal Reserve Board to draft regulations that prohibit a mortgage

originator, including a lender, from steering an applicant that qualifies for a Qualified Mortgage Loan to a residential mortgage loan that is not a Qualified Mortgage Loan. In addition, the regulations must prohibit a mortgage originator, including a lender, from (a) steering a consumer to a residential mortgage loan that the consumer lacks the ability to repay or that has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms), (b) mischaracterizing a consumer's credit history or the residential mortgage loan available to the consumer, (c) mischaracterizing or allowing the mischaracterization of the appraised value of a residential mortgage loan that secures a loan, and (d) if unable to offer a consumer loan that is no more expensive than the loan for which a consumer qualifies, discouraging an applicant from seeking a residential mortgage loan from another mortgage originator.

4. Debtor's Right of Offset

A debtor can assert an offset in any foreclosure action (judicial or otherwise) for damages if a mortgage originator or lender violates the provisions of the Act that prohibit certain payments to mortgage originators or require a determination of the borrower's ability to repay the loan. The debtor may do this even if the statute of limitations on the violations has run. If the mortgage loan is a Qualified Mortgage Loan, the borrower cannot assert ability to repay as a defense to foreclosure.

- **Importance to Community Banks**

The new right of offset will make non-judicial foreclosures more difficult by permitting borrowers to allege violations of the Act.

5. New Appraisal Requirements for Higher-Risk Mortgages

In connection with certain higher-risk mortgages to a consumer, the Act imposes new appraisal requirements, including among others requiring the appraiser to make a physical visit to the interior of the property. The consumer is entitled to receive one free copy of the appraisal. The Act requires a second appraisal by a different appraiser if the mortgage is a subprime mortgage made to finance the purchase of a residence if the seller purchased the dwelling at a lower price within 180 days of the proposed purchase.

The Act imposes new requirements to assure the independence of appraisers.

- **Importance to Community Banks**

High-risk mortgages will become more costly because of the new appraisal requirements.

6. Prohibition on Financing Single Payment Credit Insurance

The Act prohibits a creditor from financing single payment credit insurance, including debt cancellation insurance, in a residential mortgage loan or any extension of credit under an open-end credit plan secured by the consumer's principal dwelling.

7. Prohibition on Prepayment Penalties

The Act prohibits prepayment penalties except on certain Qualified Mortgage Loans. To qualify for this exception, a Qualified Mortgage Loan cannot be an adjustable rate loan or have any APR in excess of certain tolerances.

Prepayment penalties on a qualifying Qualified Mortgage Loans are capped during the first three years and prohibited in subsequent years. The prepayment penalty may not exceed 3 percent of the outstanding loan balance in the first year, 2 percent in the second year, and 1 percent in the third year.

If a creditor offers a loan with a prepayment penalty, it must also offer a loan without such penalty.

- **Importance to Community Banks**

The Act will restrict the ability of a community bank to recover its costs of making a loan in the event the loan is repaid. This could increase the initial cost of credit, as lenders seek to recover their costs in upfront fees.

8. Additional New Disclosures

The Act requires a new disclosure in a variable rate mortgage loan with a fixed introductory period. The lender must provide advance notice when the rate is about to reset.

The Act amends the Truth in Lending Act ("TILA") to provide new disclosures if an open-or-closed end loan secured by a dwelling or residential real property allows for negative amortization.

- **Importance to Community Banks**

Lenders will need to establish new procedures to provide the required disclosures.

9. Changes in Definition for HOEPA Loans

The Act lowers the pricing levels that trigger the applicability of the Home Ownership and Equity Protection Act ("HOEPA"). HOEPA will apply if:

- a. The credit is secured by a first mortgage in the consumer's principal dwelling and the APR exceeds the "average prime offer rate" on comparable transactions (as reported by the Federal Reserve Board) by more than 6.5 percentage points (8.5 percentage points if the dwelling is personal property and the transaction is for less than \$50,000), or
- b. The credit is secured by a junior mortgage and the APR exceeds the average prime rate offer by more than 8.5 percentage points, or
- c. The total points and fees payable in the transaction, other than bona fide third-party charges not retained by the mortgage originator or creditor exceeds 5 percent of the total transaction if the transaction is for \$20,000 or more or, if the transaction is for less than \$20,000, the lesser of 8 percent of the total transaction or \$1,000, or
- d. The credit documents permit the creditor to take prepayment fees more than 36 months after the transaction closes or such fees total more than 2 percent of the amount prepaid.

The Act also expands the definition of points and fees for purposes of the HOEPA calculation.

- **Importance to Community Banks**

Lenders will need to implement changes to their policies and procedures to address the changes in the applicability of HOEPA.

10. Applicant's Right to Get Copy of Credit Score

The Dodd-Frank Act amends the Fair Credit Reporting Act to require a lender that takes an adverse action on an application to give the consumer the consumer's numerical credit score and the factors that affected the score if the lender relied in part on the credit score in taking the adverse action.

11. Expansion of Truth in Lending Coverage and Extensions of Statute of Limitations

The Act increases the coverage of TILA to include credit transactions and consumer leases up to \$50,000 rather than the current \$25,000.

The Act amends TILA to double the civil penalties under the Act. It also extends from 1 year to 3 years the statute of limitations that would bar the federal government from suing for violations of TILA.

- **Importance to Community Banks**

The number of loans and leases subject to the requirements and penalties of TILA will increase. Many community banks in Georgia already provide TILA disclosures for loans in excess of \$25,000, but now they will be subject to penalties for violation, which have been doubled.

12. Regulations of Interchange Fees and Payment Card Networks

The Act gives the Federal Reserve Board the authority to regulate debit card interchange fees to require them to be both "reasonable and proportional" to the costs of the debit card issuer.

The Federal Reserve Board is required to write regulations that prohibit a payment card issuer or network from requiring electronic debit transactions to be processed exclusively on one network or two or more affiliated networks.

The Act prohibits a payment card network from prohibiting a merchant from providing a discount or in-kind incentive for payment by cash, check, debit card, or credit card so long as the discount or incentive does not differentiate on the basis of the issuer or the payment card network, is offered to all prospective buyers, and is disclosed clearly and conspicuously.

The Act also prohibits a payment card network from forbidding a merchant from setting a minimum transaction of not more than \$10 for accepting a credit card.

- **Importance to Community Banks**

Banks that, together with their affiliates, have under \$10 billion in assets are exempted. But many community banks are concerned that competitive pressure will require them to adhere to the limits placed on larger institutions, reducing the revenue community banks receive from debit card interchange fees.