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New Law Targets Broker Deceit

Fraud Enforcement and Recovery Act increases industry oversight

THE FRAUD ENFORCEMENT AND RECOVERY Act (FERA), which President Barack Obama signed into law this past May, aims to enhance, strengthen and rebuild the government's ability to investigate and prosecute mortgage and corporate fraud. To do so, FERA provides the U.S. Department of Justice with \$165 million per year for fiscal years 2010 and 2011.

Under FERA, mortgage brokers and originators will be subject to criminal liability for false statements and other fraud. The act's goal is to suppress financial fraud that contributed to the ongoing global economic crisis. Brokers should pay attention and ensure their business operates with complete honesty and adherence to all rules and regulations.

FERA requires that the Department of Justice use an appropriate percentage of the annually budgeted \$165 million to investigate mortgage fraud. It also authorizes appropriations to the U.S. attorney general for fiscal years 2010 and 2011 for investigation, prosecution, and utilization of civil and administrative proceedings for actions involving federal assistance programs and financial institutions.

In addition, FERA expands prosecutors' statutory authority for filing fraud charges by including private mortgage lenders within the definition of financial institutions. It also subjects recipients of Troubled Asset Relief Program and economic-stimulus-package funds to the statute.

As it pertains to mortgage fraud, FERA amends the criminal-fraud provision of the federal criminal code to include specifically "mortgage lending business," as defined by FERA, within those entities subject to the statute. By doing so, the law aims to enhance the government's ability to

prosecute fraud in mortgage-lending programs. FERA also amends provisions of the federal criminal code to subject mortgage-lending businesses to criminal penalties. FERA's key provisions, as it applies to mortgage fraud, are:

- **Expansion of the term** "financial institution" in the federal criminal code to include "mortgage lending business";
- **Expansion of restrictions** against false statements in mortgage applications;
- **Additional funding** for investigators and prosecutors to combat mortgage fraud; and
- **Establishment of a** Financial Crisis Inquiry Commission.

Here's a closer look at each.

'Financial institution'

FERA expands the definition of "financial institution" contained in the federal criminal code to include a "mortgage lending business or any person or entity that makes, in whole or in part, a federally related mortgage loan as defined in section 3 of the Real Estate Settlement Procedures Act of 1974."

FERA also defines a "mortgage lending business" as "an organization which finances or refinances any debt secured by an interest in real estate, including private mortgage companies and any subsidiaries of such organizations, and whose activities affect interstate or foreign commerce."

These expanded definitions of "financial institution" and "mortgage lending business" will ensure that private mortgage brokers and companies are held fully accountable under federal fraud laws, particularly where they are dealing in federally regulated or federally insured mortgages.

Expanding the term "financial institution"

to include "mortgage lending business" also will subject public and private mortgage companies to more-severe penalties for mortgage fraud, as well as civil forfeiture in mortgage-fraud cases.

The new definition of financial institution also would subject mortgage-lending businesses to enhanced penalties for mail and wire fraud conducted by a financial institution. By including mortgage-lending businesses under the federal criminal code, FERA also extends the statute of limitations for investigation of mortgage-fraud cases to 10 years, consistent with bank-fraud investigations.

The expansion of the financial-institution definition will result in private mortgage-lending companies being subject to stiff penalties for committing fraud. It also will protect those same companies from becoming victims of fraudulent conduct that others commit.

False statements

Fraud in the mortgage market has involved borrowers, lenders, brokers, appraisers and other parties. FERA amends the "false statements" provision in the

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mortgage-application provision of the federal criminal code to include false statements by mortgage brokers and agents of mortgage-lending businesses. By amending this portion of the statute, FERA prohibits employees and agents of a mortgage-lending business from making a materially false statement in a mortgage application or willfully overvaluing a property to influence any action. Previously, this section of the criminal code applied only to federal agencies, banks and credit associations. It did not include private mortgage-lending businesses.

FERA also expands the mortgage-application provision of the federal criminal code to make it a crime for mortgage brokers and agents of mortgage-lending businesses to make false statements in applications to lenders that aren't federally regulated.

Similarly, the expansion of the application of the false-statement provision also would ensure that private mortgage brokers and companies are held fully accountable under the federal fraud provision. This is particularly important as it relates

specifically to false-appraisal fraud, which has been an especially problematic type of mortgage fraud of late. Under this provision, private mortgage brokers who make false statements in mortgage applications will be subject to penalties of imprisonment or fines or both.

Additional funding

FERA authorizes the U.S. attorney general as much as \$165 million annually in fiscal years 2010 and 2011 for investigation and prosecution in civil and administrative proceedings for fraudulent action involving federal assistance programs and financial institutions, including financial institutions to which FERA and amendments made by FERA apply.

A portion of this money will go specifically to the investigation of mortgage fraud. The funding will be allocated among the FBI, several offices of the U.S. attorneys and several divisions of the Department of Justice.

The funds appropriated under this section will be limited to covering the costs of each listed agency or department for

investigating possible criminal, civil or administrative violations.

Inquiry commission

FERA also authorized the legislature to establish a Financial Crisis Inquiry Commission to combat mortgage fraud. The commission formed recently and launched its investigation this past September. One of the commission's functions is to examine the domestic causes of the economic crisis and to determine the role of fraud in the financial sector, including fraud committed by mortgage brokers. The commission also will investigate the role of lending practices and securitization, including the originate-to-distribute model for extending credit and transferring risk.

Ultimately, FERA should help improve the financial climate and assist in removing and prosecuting fraudulent brokers from the mortgage market. Brokers who remain in business should uphold the highest standards and avoid even the appearance of possible fraud. ●