Executive Summary

This memo describes the most important legislative and regulatory developments impacting the mortgage market in the 20th century. The memo is organized by year and by legislative trends (e.g. predatory lending legislation).

Each item was chosen for either its significant realized or desired impact. Descriptions of the selected legislation cover the most important implications for the mortgage industry.

The sections of the memo are as follows:

Section I: Early foundational legislation that established modern housing law and consumer lending law

Section II: Regulations that impacted loan terms or practices; laws aimed at housing equity

Section III: Early predatory lending legislation

Section IV: Subsequent federal and state predatory lending laws and regulatory actions.

I. Early Foundational Legislation

1934 – National Housing Act

The National Housing Act established the Federal Housing Administration (FHA). The National Housing Act and the FHA were a response to the Great Depression and were designed to promote lending activity for home construction, purchases, and improvements. The new FHA had a large role in reshaping mortgage industry practices. The FHA lowered risk of lending by insuring certain mortgages made by private banks and other lenders. These new insured loans prompted, in part, the eventual emergence of new loan terms, including 30-year and low-down payment mortgages. Mortgage insurance helped lower interest rates for borrowers and allowed more low-to-mid income borrowers to qualify for mortgages. The FHA also contributed to the emergence of the secondary market when mortgage originators began selling FHA-insured loans to Fannie Mae and other corporations. However, the FHA underwriting manuals negatively affected credit access for certain groups by rating the credit worthiness of each neighborhood, and systematically rating Black neighborhoods as less creditworthy in a practice which became known as redlining. The FHA became part of the Department of Housing and Urban Development (HUD) in 1965.

1968 – Fair Housing Act

The Fair Housing Act was Title VIII of the Civil Rights Act of 1968. It prohibited private individuals from discriminating based on any of the federal protected categories (race, color, national origin, religion, sex, disability, family status) in home sales, rentals, financing, and advertising. This federal law set a precedent as the first law to prohibit discrimination based on race in the housing market. Hence, the law reversed the federal government's stance on discrimination in housing, which had contributed to decades of redlining and other racially discriminatory practices.

1968 – Truth in Lending Act (TILA)

The Truth in Lending Act was landmark federal legislation that sought to ensure borrowers were informed when accessing consumer credit. TILA regulated consumer credit industries, including home and auto loans, by standardizing the information lenders were required to disclose. Lenders had to disclose loan amount, fees, annual percentage rate, payment schedule, and total amount to be repaid over the loan's lifetime. TILA did not regulate the interest rates lenders could charge or the reasons they could refuse to lend, but it did grant borrowers the right to cancel a loan within three days of signing and to bring certain enforcement actions through the courts.

1974 – Equal Credit Opportunity Act (ECOA)

The Equal Credit Opportunity Act was a civil rights law that prohibited creditors from discriminating based on race, sex, national origin, religion, age, marital status, or receipt of public assistance. The act covered mortgages, student loans, auto loans, consumer credit cards, and small business loans. "Creditors" included all entities involved in deciding whether to extend credit, from banks and other financial institutions to retailers. In the early 2000s, legislators and consumer advocates used ECOA to pursue cases against lenders allegedly targeting low-income and predominantly African American communities with predatory loans.

II. Laws Targeting Loan Terms, Practices, and Housing Equity

1975 – Home Mortgage Disclosure Act (HMDA)

The Home Mortgage Disclosure Act required financial institutions above a certain size to publicly release certain mortgage data each year. This legislation was in response to concern in the 1970s about lack of credit access in low-income and minority neighborhoods. As part of HMDA, financial institutions were required to maintain what was known as a Loan Application Register (LAR) to record financial and demographic data on each loan applicant. This data was reported annually to the institution's regulatory agency. The compilation of this new "HMDA data" was intended to help regulators determine whether institutions were fulfilling the credit needs of their communities, to identify discriminatory lending practices, and to determine whether and where enforcement action or policy intervention was necessary.

1977 – Community Reinvestment Act (CRA)

The Community Reinvestment Act was a major federal effort to encourage lenders to meet the credit needs of their entire community, particularly low- and mid-income neighborhoods. The CRA applies to all FDIC member institutions (i.e., any bank that receives deposit insurance from the FDIC), implicitly requiring that banks serve all segments of their community in exchange for deposit insurance. Institutions receive a rating based on their lending and other activities provided to low- and mid-income neighborhoods. The CRA rating can affect approval for mergers, acquisitions, deposit facilities, and branch expansion. Three federal agencies enforce the CRA for the institutions they regulate: The Office of the Comptroller of the Currency, the FDIC, and the Federal Reserve.

1980 – Depository Institutions Deregulation and Monetary Control Act (DIDMCA)

DIDMCA was passed in the wake of the Savings & Loan crisis. The main impact of the law for the mortgage industry was the deregulation of loan interest rates by preempting extant state usury ceilings for mortgage loans. States could re-enact limits only if they did so by April 1983. This deregulation was intended to allow state-chartered financial institutions to compete more effectively with nationally-chartered banks, which were regulated by the National Bank Act and hence not subject to the strict state regulations on mortgage loan rates.

1982 – Alternative Mortgage Transaction Parity Act (AMTPA)

Before 1982, only fixed-rate mortgages were legal in many states. The AMTPA overrode applicable state laws to allow other mortgage terms including adjustable rate, balloon payment, and interest-only mortgages. The law's motivation was to expand mortgage credit access to poorer borrowers by allowing additional features (and consequently arrangements with lower monthly payments) in mortgage terms. Partly as a consequence, the mortgage industry grew through the 1980s. The AMTPA was an early example of federal preemption, where federal laws or agencies acting on those laws overturn state laws.

1984 – Secondary Mortgage Market Enhancement Act (SMMEA)

The Secondary Mortgage Market Enhancement Act sought to encourage private sector involvement in the secondary mortgage market by removing many regulatory constraints on mortgage-backed securities (MBS). The SMMEA preempted state laws to allow both nationally chartered and state chartered financial institutions to invest in MBS. The SMMEA allowed broker-dealers trading MBS to maintain a level of reserve net worth and to extend credit to investors on an equal basis as when trading government securities such as Treasury bonds. This law contributed to the development of the secondary mortgage market as more institutions became investors in the MBS market. Consequently, mortgage lending expanded due to higher liquidity in the system.

1986 – Tax Reform Act

The Tax Reform Act modified tax brackets and increased the Home Mortgage Interest Deduction, among other revisions to the tax code. The home mortgage interest deduction allows homeowners to deduct interest paid on their mortgage for tax purposes. This act contributed to higher rates of home ownership and general mortgage industry growth.

III. Trendsetting predatory lending legislation

1994 – Home Ownership Equity Protection Act (HOEPA)

HOEPA was a landmark federal law that amended TILA to provide certain borrowers with protections against loans with excessive interest rates or fees. HOEPA's intent was to protect the existing equity of homeowners from predatory refinancing practices, so its protections were limited to refinance mortgages. Rather than banning "high-cost loans", HOEPA established interest rate and fee thresholds that triggered further disclosure requirements and prohibitions on certain loan terms, including prepayment penalties for loans. HOEPA also required lenders to verify that the borrower can repay the loan.

1999 – North Carolina Predatory Lending Law (NCPLL)

In 1999, North Carolina enacted the first state-level anti-predatory lending law. Modeled after HOEPA, the law defined "high-cost home loans" based on interest rates, fees, and prepayment penalty cutoffs. For these "high-cost home loans," the law restricted or banned certain loan terms. The law also wholly banned several practices considered predatory, including "flipping", which involved inducing a borrower into repeated refinancing without tangible benefits in order to capture fees. The law was supported by the NC state bankers' association, which provided input in the legislative process, while many mortgage brokers opposed the law. The NCPLL's overall structure and some individual provisions were adopted in subsequent state laws, including those in Georgia and Massachusetts.

IV. Additional state laws and federal regulations addressing predatory lending

2002 – Georgia Fair Lending Act (GFLA)

The Georgia Fair Lending Act was modeled after the North Carolina Predatory Lending Law. It relied on interest rate thresholds that, if met, triggered restrictions on certain loan terms. However, the GFLA included aggressive remedies for violations, including assignee liability (allowing the borrower to bring all claims against the mortgage originator against any purchaser or subsequent holder of the mortgage), a ban on mandatory arbitration clauses, and an avenue for class action lawsuits by borrowers. The law carried significantly increased penalties and risk for both banks and companies originating mortgages deemed high-cost, as well as for institutions trading these mortgages on the secondary market.

2003 – GFLA amended after conflict with national banks and ratings agencies

The original Georgia Fair Lending Act was criticized by the private sector, which argued that assignee liability, class action lawsuits, and other remedies created unsustainable liability for financial institutions in the secondary mortgage market. Nationally chartered banks also argued that the law broadly infringed on their right to be regulated only by federal regulators. In January 2003, Standard and Poor's, Moody's, and Fitch warned that they would stop rating securities containing Georgia mortgages, which threatened the state's secondary mortgage market. State legislators amended the law in March 2003 to remove assignee liability and scale back other remedies.

2004 – Office of the Comptroller of the Currency blanket preemption of state laws

In July 2003, the Office of the Comptroller of the Currency (OCC), which regulates nationally chartered banks, issued an order preempting the Georgia Fair Lending Act. In January 2004, the OCC issued a final rule preempting most provisions of state predatory lending laws from applying to national banks. Preempted provisions included any restrictions or requirements regarding terms of credit, interest rates, disclosure, advertising, or licensing. The OCC objected to the burden of "higher costs, potential litigation exposure, and operational challenges" faced by national and multinational banks. With this rule, states were largely stripped of the ability to regulate nationally chartered banks, creating new incentives for regulatory arbitrage.