



## Financial Services Update

January 22, 2015

### HIGHLIGHTS

#### Federal Regulatory Developments

CFPB Launches “Owning a Home” Toolkit on its Website

FHA Issues New HECM Guidelines for Non-borrowing Spouses and Clarifies the Seasoning Requirements for Existing Non-HECM Liens

#### Litigation Developments

Supreme Court Rules on TILA Rescission Deadline

#### WBK News

**Mitch Kider** participated on a webinar titled “Regulatory Outlook 2015: Compliance, Enforcement and What's Next” hosted by October Research on January 21. For more information contact Mitch at [kider@thewbkfirm.com](mailto:kider@thewbkfirm.com).

**Jim Milano** will participate on a panel addressing fair lending and regulatory compliance issues in consumer finance lending at the 21st American Conference Institute Consumer Finance Class Actions and Litigation Conference on January 29-30 in New York, NY. For more information contact Jim at [milano@thewbkfirm.com](mailto:milano@thewbkfirm.com).

**Michael Kieval** and **Jason McElroy** will conduct a webinar with SAI Global on February 4 titled “RESPA Section 8 Enforcement Trends: The CFPB Sets its Sights on Marketing Services Agreements.” For more information contact Jason at [mcelroy@thewbkfirm.com](mailto:mcelroy@thewbkfirm.com).

**Mitch Kider** will lead a panel session titled “What to Expect from Enforcement Actions” at MBA’s National Mortgage Servicing Conference on February 24 at 2:00 pm in Dallas, TX. For more information and to register, go to:

<http://events.mortgagebankers.org/Servicing2015/default.html>.

## **SUMMARIES**

### **Federal Regulatory Developments**

#### **CFPB Launches “Owning a Home” Toolkit on its Website**

On January 13, 2015, the CFPB announced the launch of a new online toolkit feature on its website called “Owning a Home.” The CFPB rolled out the Owning a Home toolkit as part of its “Know Before You Owe” initiative, and in connection with a report stating that nearly half of borrowers do not shop around for a mortgage when buying a home.

The CFPB’s report was based on results from a voluntary survey jointly conducted by the CFPB and the Federal Housing Finance Agency (FHFA). The key findings from the report include the following: 1) almost half of consumers do not shop around before applying for a mortgage (i.e., they only seriously consider one lender or broker before selecting the provider to whom they will apply); 2) three out of four consumers only apply with one lender or broker; 3) most consumers get their information from lenders or brokers, who have a stake in the outcome and therefore may not have completely aligned interests; 4) borrowers who prioritize the terms of the loan over the characteristics of the lender (such as having an established banking relationship with the lender) are more likely to shop; and 5) informed consumers who are confident in their knowledge about the mortgage process are twice as likely to shop for a mortgage.

The CFPB Owning a Home toolkit contains resources to educate borrowers on the home-buying process, with information about loan options, terminology, costs, and interest rates. It also includes an explanation of the closing forms and a closing checklist. The toolkit’s Rate Checker feature uses the same underwriting variables that lenders use on their internal rate sheets, and its data is updated daily and includes information from a mix of large banks, regional banks, and credit unions covering about 80% of the mortgage market.

**The CFPB’s Report (titled “Consumers’ mortgage shopping experience”) and related summary article can be found at the following link:**

<http://www.consumerfinance.gov/newsroom/cfpb-report-finds-nearly-half-of-borrowers-do-not-shop-for-a-mortgage/>.

**The Owning a Home toolkit can be found at the following link:**

<http://consumerfinance.gov/owning-a-home>.

## **FHA Issues New HECM Guidelines for Non-borrowing Spouses and Clarifies the Seasoning Requirements for Existing Non-HECM Liens**

On January 9, 2015, the Federal Housing Administration (“FHA”), under the authority granted to the U.S. Department of Housing and Urban Development (“HUD”) in the Reverse Mortgage Stabilization Act of 2013, issued Mortgagee Letter 2015-02 (“ML 2015-02”), which revises the Home Equity Conversion Mortgage (“HECM”) guidelines for non-borrowing spouses (“NBS”) and clarifies the seasoning requirements for existing non-HECM liens.

Pursuant to ML 2015-02, HECM mortgagees must identify at application any current NBS and determine if they are eligible or ineligible for a deferral period, based on the NBS qualifying attributes defined in Mortgagee Letter 2014-07, once the HECM borrower (*i.e.*, the NBS’ husband or wife) passes away. In addition, ML 2015-02 provides model provisions for the HECM loan documents and model disclosures that mortgagees may use for FHA Case Numbers assigned on or after January 12, 2015, but must use for FHA Case Numbers assigned on or after March 9, 2015.

With respect to the seasoning requirements for existing non-HECM liens introduced in Mortgagee Letter 2014-21 (“ML 2014-21”), ML 2015-02 clarifies that mortgagees may permit the payoff of such liens using HECM proceeds if: 1) the liens have been in place longer than 12 months; or 2) for liens in place for 12 months or less, the cash the borrower received was less than \$500, whether at closing or through cumulative draws. Previously, under ML 2014-21, FHA required lenders to obtain a HUD-1 to evidence such prior draws. With ML 2015-02, in addition to documenting the age of the lien, HECM mortgagees may use the HUD-1 or other documents such as a title report or credit reports or documents related to the transaction that contain the information required to document prior transactions.

The full text of ML 2015-02 can be found at:  
<http://portal.hud.gov/hudportal/documents/huddoc?id=15-02ml.pdf>.

## **Litigation Developments**

### **Supreme Court Rules on TILA Rescission Deadline**

The U.S. Supreme Court has resolved a dispute among lower courts about the deadline for a mortgage loan borrower to rescind under the Truth in Lending Act (“TILA”). In a unanimous opinion, the Court held that where an extended three-year rescission period is applicable under TILA, the borrower need only send the notice of rescission within the three year period, and need not file suit within that time.

TILA gives borrowers the right to rescind mortgage loans (other than purchase-money transactions) secured by their principal dwelling “until midnight of the third business day following the consummation of the transaction or the delivery of the [disclosures required by the Act], whichever is later, by notifying the creditor, in accordance with”

applicable regulations. If the lender fails to satisfy TILA's disclosure requirements, the rescission period is extended, expiring "three years after the date of consummation of the transaction or upon the sale of the property, whichever comes first."

Some courts had previously held that the borrower also needed to file suit within the same three-year period required for the rescission notice (where the three-day deadline does not apply), if the lender did not agree to rescind the transaction. In *Jesinoski v. Countrywide Home Loans, Inc.*, the Supreme Court clarified that the borrower need only give notice to the lender within the three-year period.

In *Jesinoski*, the borrowers gave notice of rescission exactly three years after refinancing their mortgage. The lender disputed the validity of the rescission, and the borrowers brought suit just over one year later, four years and one day after closing on their mortgage loan. In holding that their suit was timely, the Court explained that the borrower's notice itself is sufficient to trigger rescission, and that "[t]he clear import of § 1635(a) is that a borrower need only provide written notice to a lender in order to exercise his right to rescind."

The *Jesinoski* opinion does not address 12 U.S.C. § 1635(b), which sets forth procedures for unwinding the rescinded transaction. Disputes over borrowers' failure to tender loan proceeds will continue to give rise to litigation. As a result of this decision, however, such suits may be brought more than three years after origination, based on an alleged rescission within the three-year period. Consequently, litigation risk will increase, even where lenders have no record of receiving a notice of rescission, since borrowers may allege and try to prove that a rescission notice was timely sent.

The WBK Firm routinely defends lawsuits on behalf of mortgage lenders and servicers, including suits under TILA and other federal statutes, throughout the United States.

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