# Financial Services Update
**April 8, 2015**

## HIGHLIGHTS

### Federal Regulatory Developments

CFPB Issues New Homebuyer Toolkit Covering Integrated Disclosures

CFPB Issues Revisions to Examination Procedures for Integrated Disclosures

CFPB Details Consumer Mortgage Complaints in New Annual Report

FHA Matches GSEs, Unveils Electronic Appraisal Delivery

HUD Establishes HECM Life Expectancy Set-Aside Growth Rate

### State Regulatory Developments

Utah Enacts Reverse Mortgage Legislation

State Regulators Propose Prudential Standards for Non-Bank Servicers

### Litigation Developments

TILA Requires Servicers to Post Electronic Payments on Day Authorized, Not Date When Funds Received

Class Actions Removable from State Court within 30 Days from When Basis for Removal Is Known, Even if Other Basis to Remove Previously Existed

Arbitration Enforced in Tribal Loan Agreement

Arbitration Agreement Enforced, Despite Federal Agency's Ruling

## WBK News

**Jason McElroy** will give a presentation titled "How to Establish an Effective Compliance Management System" to the MBA of Greater Philadelphia on April 9 in Philadelphia, PA. For more information contact Jason.

**Jim Milano** will participate on a panel discussing CFPB regulatory updates and enforcement actions at the American Conference Institute's 22nd National Forum on Consumer Finance Class Actions & Litigation on April 13-14 in Los Angeles, CA. For more information contact Jim.

**Mitch Kider** will discuss RESPA Section 8 kickback and referral prohibitions during a national lender's regional managers meeting April 16-17 in Phoenix, AZ. For more information contact Mitch.

**Jim Milano** has been elected to the American College of Consumer Finance Services Lawyers and will be inducted into the College on April 18 in San Francisco at the College's annual dinner. Jim joins WBK's Managing Partner **Mitch Kider**, who was inducted into the College in 2014.

**Jason McElroy** and **Jeff Blackwood** published an article titled "CFPB Continues to Push HUD's Sham ABA Policy" in the April edition of Mortgage Compliance Magazine. Read the article at http://www.mcmag-digital.com/mcmag/april_2015?pg=11#pg11

**Weiner Brodsky Kider PC** recently held exclusive TRID Workshops for clients which provided an overview and understanding of the key elements of TRID, and how the rule will affect the policies, procedures and training implemented by mortgage lenders. The firm now has made available the WBK TRID Workbook, which covers integrated disclosure readiness as the workshops did, from pre-application to post-closing under TRID. Purchase a copy for $250.

## SUMMARIES

### Federal Regulatory Developments

### CFPB Issues New Homebuyer Toolkit Covering Integrated Disclosures

To prepare homebuyers for the introduction of the new TILA-RESPA Integrated Disclosures (TRID) on August 1, 2015, the CFPB just released a new toolkit as part of its Know Before You Owe mortgage initiative. This toolkit, entitled "Your Home Loan Toolkit," explains how the new Loan Estimate and Closing Disclosure forms will work.

The toolkit, issued on March 31, 2015, replaces the current settlement cost booklet as specified by Dodd-Frank and lenders must provide a copy to applicants from whom they receive applications for certain mortgage loans no later than three business days after receiving an application.

“We are releasing this toolkit well in advance of the [TRID] effective date to help the mortgage industry come into compliance with the new mortgage rules,” said Richard Cordray, CFPB Director, in a statement. The CFPB stated that lenders providing the toolkit in conjunction with the integrated disclosures will help consumers better understand the mortgage transaction.

In releasing the toolkit at this time, the bureau wanted to make sure the industry had plenty of time to order and obtain hard copies or print a PDF version, and integrate electronic versions into loan origination systems. The law stipulates that lenders and others may not alter the toolkit, such as adding or deleting information, other than making certain changes to the cover page.

The CFPB also encourages all industry participants, such as real estate agents, to give consumers the toolkit as early as possible in the home-buying process, since it is designed to help consumers make better informed decisions when shopping for mortgages and comparing opportunities.

The toolkit also alerts consumers that they should sufficiently shop for a mortgage and to make sure that they will benefit from the loan.

To enable consumers to take full advantage of the new TRID disclosures when comparing mortgage products, the toolkit offers “interactive worksheets and checklists, conversation starters between consumers and lenders, and research tips to help consumers seek out and find important information,” according to the CFPB. The online version includes text fields that can be filled and interactive check boxes to help consumers work their way through the toolkit.

Dodd-Frank added new content requirements for the toolkit, such as information on homeownership counseling services and an explanation of a consumer’s responsibilities, liabilities and obligations in a mortgage transaction. The law also required the booklet to include a list of questions consumers obtaining a mortgage should ask about the loan, on topics such as ability to repay, prepayment penalties and balloon payments.

A Spanish version of the booklet also is being prepared.

The CFPB announcement of the release of Your Home Loan Toolkit is available here: http://www.consumerfinance.gov/newsroom/cfpb-announces-new-know-before-you-owe-mortgage-shopping-toolkit/

The PDF version of the toolkit is available here: http://files.consumerfinance.gov/f/201503_cfpb_your-home-loan-toolkit-web.pdf

**CFPB Issues Revisions to Examination Procedures for Integrated Disclosures**

The CFPB on April 1 issued new updates to the examination procedures for the TILA/RESPA Integrated Disclosures ("TRID") rules that will go into effect on August 1, 2015. The updates give lenders and financial institutions guidance on how the CFPB will conduct exams for compliance with RESPA and TILA once TRID becomes effective.

The updated exam procedures were crafted by the Task Force on Consumer Compliance of the Federal Financial Institutions Examination Council to incorporate changes made to Regulation X and Regulation Z.

The updates to the CFPB's Supervision and Examination Manual are available here: http://www.consumerfinance.gov/guidance/supervision/manual/?utm_source=newsletter&utm_medium=email&utm_term=04012015_a1&utm_campaign=regimp

**CFPB Details Consumer Mortgage Complaints in New Annual Report**

Mortgages comprised the second highest number of consumer complaints about financial institutions received by the CFPB in 2014, as noted by the CFPB's Consumer Response Annual Report, issued March 30, 2015. Debt collection complaints came in first at 35%, while mortgages garnered 20% of the complaints.

The number of overall consumer complaints on all products received by the CFPB in 2014 reached 250,700, up 53% from 163,700 in 2013. In 2014, mortgages made up 51,200 of the complaints, down from 59,900 in 2013. Consumer complaints about servicing problems by far topped the types of mortgage complaints received last year.

For example, problems consumers face when they are unable to make payments, such as issues relating to loan modifications, collections and foreclosures, represented 49% of mortgage complaints, with problems related to making payments, including loan servicing, posting of payments and management of escrow accounts comprising 35%. Issues related to the origination process received 8% of the complaints, with complaints concerning settlement and credit decisions/underwriting receiving 4% and 2%, respectively.

In its report, the CFPB noted that “consumers still complain about delays and ambiguity in the review of their modification applications.” They also were concerned about documentation requests in modifications that did not mention a reasonable due date for the documents. Consumers also were dissatisfied with the terms of approved loan modifications, such as interest-only payments, and they complained about not being considered for all available loss mitigation options.

Consumers facing foreclosure found the fees associated with the process confusing, with the CFPB noting, “The fees often seem to represent a substantial barrier to a consumer’s ability to reinstate the loan and avoid foreclosure, as many servicers will not roll the fees into the loan balance.” Paying hundreds or thousands of dollars in fees separately from the reinstated loan amount places another burden on those facing foreclosure.

Concerns about servicers’ dual tracking foreclosure proceedings and loan modification reviews still were received in 2014 by the CFPB.

Servicing transfers generated complaints, including concerns about fees charged by the previous servicer and unexplained escrow deficiencies. Consumers complained about issues occurring when a loan modified by the old servicer is accepted by the new servicer, and also about the communication between old and new servicers when loss mitigation efforts are ongoing.

Another area in servicing that triggered consumers’ concerns was the lack of timely disbursements of escrow funds for tax payments and insurance premiums. For example, consumers noted that late tax payments by servicers resulted in the assessment of late fees and penalties. They also indicated that in some instances servicers in error charged them for force-placed insurance.

On the origination side, consumers tended to complain about “the lengthy application and approval processes and unauthorized credit inquiries,” according to the CFPB’s report. The report noted that lenders refusing to honor rate-locks and unclear disclosures of terms for loans with variable interest rates generated “a number of complaints.”

Delayed mortgage denials also concerned consumers, such as those that happened right before settlement, “but were based upon information that was disclosed early in the application process (*e.g.*, bankruptcy, lack of employment history, etc.),” the report noted.

After the CFPB receives complaints from consumers, from its website, phone calls, email, mail and referrals, it screens the complaints based on certain criteria and then sends them to the appropriate company, which reviews them and determines what action to take in response. After a company responds, the CFPB gives consumers the option to provide feedback about the response.

For responses to mortgage complaints, 64% of consumers did not dispute the company's response, while 23% disputed the response and 14% still were reviewing the company's response.

The CFPB recently expanded what consumers can include in their submitted complaints. On March 19, 2015, the CFPB began giving consumers the option to submit complaints with narratives that are shared publicly on the CFPB database. The CFPB said the narratives will provide context to the complaints that will spotlight specific trends and help consumers make informed decisions.

In a Final Policy Statement issued on March 19, 2015 announcing the new complaint policy, the CFPB noted that no narratives will be posted to the database site for at least 90 days after March 24, 2015, the date the policy statement was published in the Federal Register.

Many in the mortgage industry have noted their concern about aspects of the new policy, particularly that the complaint narratives would be unverified and not representative of companies in the industry.

The CFPB, in response to mortgage industry comments, also is considering giving consumers the ability to submit positive feedback about their interactions with financial institutions. Along with the Final Policy Statement, the CFPB issued a Notice and Request for Information to solicit comment on the potential collection and sharing of such positive feedback. Comments are due May 26, 2015.

The Consumer Response Annual Report covering January 1 through December 31, 2014 is available here: http://files.consumerfinance.gov/f/201503_cfpb_consumer-response-annual-report-2014.pdf

The Final Policy Statement on complaint narratives is available here: http://files.consumerfinance.gov/f/201503_cfpb_disclosure-of-consumer-complaint-narrative-data.pdf

The Notice and Request for Information on positive consumer feedback can be found here: http://files.consumerfinance.gov/f/201503_cfpb_request-for-information-regarding-the-consumer-complaint-database.pdf

## FHA Matches GSEs, Unveils Electronic Appraisal Delivery

FHA soon will require all FHA-approved lenders to deliver appraisals through the agency's new Electronic Appraisal Delivery (EAD) portal, which will largely mirror the same electronic appraisal technology currently in use for conventional mortgages.

The web-based platform was designed and is being hosted by the same technology provider that built the Uniform Collateral Data Portal, the electronic appraisal system used by Fannie Mae and Freddie Mac that debuted in December 2011. Appraisers can use the same Uniform Appraisal Dataset for the EAD portal that they currently use for GSE and FHA mortgages.

HUD on March 26, 2015 announced the launch and implementation of EAD in Mortgagee Letter 2015-08 (ML 15-08). All appraisals for FHA loans with case numbers assigned on or after June 27, 2016 are required to be delivered via the EAD portal.

Prior to the effective date, FHA mortgagees and their designated third-party service providers, such as appraisal management companies, will be permitted to submit appraisals through the EAD portal "as soon as they receive access credentials and validate that they are ready to use the new technology," according to ML 15-08.

Access to the EAD portal will be phased in, allowing lenders the flexibility "to choose a migration timeframe that accommodates their assessment of required systems and operation process changes," the letter stated. FHA will announce the registration phases on the EAD Portal Resource web page on or before June 15, 2015, with the phases beginning after this date.

Mortgagees and their third-party service providers can only upload appraisals on the EAD platform that comply with FHA's Appraisal Report and Data Delivery Guide. They also can access the portal in two different ways. First, through an interactive user interface via the portal's URL, with the ability to transmit up to 10 appraisal reports at a time. Or second, by building a direct system-to-system integration between the portal and a loan origination or production system, allowing for large batch uploads.

HUD in ML 15-08 reminds lenders that the EAD system does not change their appraisal obligations. They're still responsible for proper appraisal underwriting and "for ensuring the property meets FHA's minimum property requirements and standards for serving as security for the FHA insured mortgage."

FHA offers web-based training about the EAD portal and also technical assistance covering lender implementation of the system. Additionally, user guides with detailed information on user access, including the role of EAD Lender Administrators, and data and delivery requirements are available on the EAD Resource web page.

Mortgage Letter 2015-08 is available here:
http://portal.hud.gov/hudportal/documents/huddoc?id=15-08ml.pdf

The EAD Resource web page can be found here:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/lender/origination/ead

**HUD Establishes HECM Life Expectancy Set-Aside Growth Rate**

HUD recently made changes to FHA's Home Equity Conversion Mortgage (HECM) program by establishing a monthly growth rate for Life Expectancy Set-Asides (LESA) and clarifying a discrepancy between property charges and property taxes on the Financial Assessment Worksheet.

In FHA Mortgagee Letter 2015-09 (ML 15-09), issued March 27, 2015, HUD introduced a LESA growth rate that will increase "each month at a rate equal to one-twelfth of the sum of the mortgage interest rate (Note Rate), plus the annual mortgage insurance premium rate (currently at 1.25%), from the date the loan is funded."

The original LESA amount is calculated when a HECM is originated and then the balance is adjusted monthly. Property taxes, and hazard and flood insurance are paid from this set-aside.

HUD also resolved an inconsistency between the HECM Financial Assessment and Property Charge Guide and the model HECM Financial Assessment Worksheet. In Section 3.98 of the charge guide, mortgagees are required to compute property charges as a percentage of gross income. But on the worksheet there is a space to enter property taxes as a percentage of gross income.

HUD now requires the calculation of property taxes as a percentage of gross income and this figure must be entered on the worksheet. HUD, in the Mortgagee Letter, stated that it made this move, because FHA has identified situations in which property taxes exceed 10% of the borrower's gross income "as carrying greater levels of risk of default."

ML 15-09 also revises the model Financial Assessment Worksheet and it now replaces the Worksheet in Appendix 1 of the HECM Financial Assessment and Property Charge Guide attached to Mortgage Letter 2014-22 (ML 14-22).

HUD introduced the new Financial Assessment requirements on November 10, 2014 in Mortgagee Letters 2014-21 (ML 14-21) and 2014-22. ML 14-21 consolidated and revised policy requirements issued in Mortgagee Letters 2013-27 and 2013-33 and therefore it supersedes these letters in their entirety.

The effective date for all the requirements listed in Mortgagee Letter 2015-09 is on or after April 27, 2015. The original effective date had been March 2, 2015, but HUD delayed that date in Mortgagee Letter 15-06.

The text of Mortgagee Letter 2015-09 is available here:
http://portal.hud.gov/hudportal/documents/huddoc?id=15-09ml.pdf
Current and past Mortgagee Letters can be found here:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee

The HECM Financial Assessment and Property Charge Guide is available here:
http://portal.hud.gov/hudportal/documents/huddoc?id=14-22ml-atch2.pdf

## State Regulatory Developments

### Utah Enacts Reverse Mortgage Legislation

The Utah state legislature recently passed the Utah Reverse Mortgage Act, which was signed into law on March 27, 2015 by Governor Gary Herbert. The bill, S.B. 120, includes a definition of reverse mortgage, requires disclosures, limits fees and requires borrowers to go through independent counseling before applying for a reverse mortgage, among other provisions.

S.B. 120, which goes into effect on May 12, 2015, also contains limited exemptions from some disclosure requirements, fees and counseling for FHA-insured Home Equity Conversion Mortgages (HECMs) that comply with the FHA HECM program requirements.

The bill also enacts a required seven-day cooling off period between a borrower's acceptance in writing of the lender's written commitment for a reverse mortgage and the closing of the loan. During the seven-day period, a lender may not require the prospective borrower to close or proceed with the reverse mortgage.

A reverse mortgage must be made on a borrower's "principal residence," which the bill defines as the borrower's permanent place of residence in which he or she spends the majority of the calendar year. The bill defines an eligible dwelling as a one-to-four family residence in which at least one of the units is occupied by the borrower, a HUD-approved condominium project or a manufactured home built after June 1976.

At the time a lender provides an application to a prospective borrower, the lender must give the borrower a disclosure that explains any adjustable-rate features of the reverse mortgage and a disclosure that lists at least five HUD-approved independent housing counselors.

Another disclosure must be provided to borrowers at least 10 days before the day the loan closes that describes prospective borrowers' limited liability and their rights, obligations and remedies relating to absences, late payments and payment default by the lender, among other items.

The counseling obligations of the bill require prospective borrowers to meet with a HUD-approved independent housing counselor to discuss the financial implications of a reverse mortgage before signing an application. The counselor must provide the prospective borrower with a written disclosure covering, among other things, the tax implications of a reverse mortgage and how it may affect a borrower's eligibility for assistance under certain state and federal programs.

The bill requires that before initiating a foreclosure proceeding lenders must provide borrowers with a written notice stating the grounds for default and foreclosure. Borrowers must be provided 30 days after the day they receive the written notice to cure their default.

Conversely, a lender that fails to make a loan advance on a non-federally insured reverse mortgage in accordance with the mortgage agreement must forfeit any right to repayment of the outstanding loan balance. And after the lender forfeits rights to repayment, the loan agreement becomes void.

The enrolled copy of S.B. 120 can be found here:
http://le.utah.gov/~2015/bills/sbillenr/SB0120.pdf

## State Regulators Propose Prudential Standards for Non-Bank Servicers

State banking and mortgage regulators recently proposed baseline prudential standards for non-bank mortgage servicers, seeking to improve transparency, accountability, corporate governance and risk management standards. The proposal also is designed to improve regulatory oversight and market discipline of non-bank servicers.

The Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) issued the proposed standards for public comment on March 25, 2015. Comments are due by June 23, 2015. The standards are to apply to all non-bank mortgage servicers licensed by and operating in the states.

The baseline standards focus on eight key areas that would apply to all non-bank servicers, including capital, liquidity, risk management, data standards, data protection (cyber risk), corporate governance, servicing transfer requirements and change of control requirements.

For larger and more complex servicers, state regulators propose enhanced prudential standards with enhanced planning, modeling, metric and audits for capital, liquidity, stress testing, and living will and recovery and resolution plans.

State regulators plan to incorporate existing standards or generally accepted business practices into the new standards to the extent possible in order to provide an easier transition for servicers. Their aim also is to lessen the regulatory burden on small, less complex servicers, “while incorporating a comprehensive regime that maintains safety and soundness and consumer protection for even the largest, most complex firms,” according to a CSBS and AARMR statement.

In 2014, the Financial Stability Oversight Council in its annual report recommended that state regulators develop prudential non-bank servicing standards, collaborating in its regulatory efforts with the CFPB and FHFA. The council cited the rapid growth of non-bank servicing as a market development warranting more robust risk management and supervisory attention.

These developments helped lead to the formation by CSBS in October 2014 of the Mortgage Servicing Rights Task Force with the goal of drafting options for prudential non-bank servicing standards. The task force included regulators from the states of California, Illinois, Massachusetts, Minnesota, New York, Pennsylvania, South Dakota, Texas and Washington.

In a summary of the proposed standards, state regulators pointed out a number of unique benefits provided by non-bank servicers, especially their ability to successfully service delinquent and other troubled mortgages. They also highlighted some key weaknesses in non-bank servicing and the regulatory framework, most notably that these servicers are more susceptible to economic downturns than depository institution servicers, because “they do not operate under a prescribed capital standard and therefore, may retain less capital.”

The regulators noted that currently there are no liquidity standards for non-bank servicers that require them to maintain sufficient reserves so they can continue servicing loans “in the event of material financial stress.”

The CSBS and AARMR press release on the prudential standards is available here: [http://www.csbs.org/news/press-releases/pr2015/Pages/PR-032515.aspx](http://www.csbs.org/news/press-releases/pr2015/Pages/PR-032515.aspx)

The proposed prudential standards for non-bank mortgage servicers is available here: http://www.csbs.org/regulatory/Documents/MSR-ProposedRegulatoryPrudentialStandardsforNon-BankMortgageServicers.pdf

## Litigation Developments

### TILA Requires Servicers to Post Electronic Payments on Day Authorized, Not Date When Funds Received

The Court of Appeals for the 7th Circuit recently ruled that the Truth in Lending Act (TILA) requires servicers to post payments made through electronic authorizations on the date the consumer authorizes the electronic payment, not the date the servicer receives the funds as a result of that authorization.

In *Fridman v. NYCB Mortg. Co., LLC,* the Court considered TILA's requirement to credit payments on consumer credit accounts "as of the date of receipt." The Court relied on the CFPB's official interpretation under Regulation Z that "date of receipt" means the date that the "payment instrument or other means of payment reaches the mortgage servicer."

Plaintiff had authorized her mortgage servicer to take a payment from her bank account through an electronic Automated Clearing House (ACH) transaction shortly before the grace period on her monthly payment expired. The mortgage servicer had a policy of waiting two days after receiving such authorizations to credit payment from a consumer's bank. Because of this delay, plaintiff's payment was received by the mortgage servicer after the grace period had expired, and she was charged a late fee.

Without determining the degree of deference to afford the CFPB's interpretation, the Court was persuaded that the CFPB's interpretation was reasonable and more consistent with TILA's underlying purposes. Electronic ACH authorizations are a "payment instrument or other means of payment," and thus the mortgage servicer was required to credit the plaintiff's payment on the date that authorization was received, not the date it received the funds.

WBK regularly represents mortgage servicers nationwide in state and federal courts.

### Class Actions Removable from State Court within 30 Days from When Basis for Removal Is Known, Even if Other Basis to Remove Previously Existed

The Court of Appeals for the 9th Circuit recently ruled the Class Action Fairness Act (CAFA) allows removal of class actions from state courts within 30 days of ascertaining any basis for removal, even if a different basis for removal previously existed.

In *Jordan v. Nationstar Mortgage LLC*, plaintiff filed a putative class action complaint in Washington state court alleging multiple state law violations, as well as multiple violations of the federal Fair Debt Collection Practices Act, which could have been used as a basis for removal to federal court. Nine months later, in January 2013, plaintiff filed an amended complaint. She did not specify an amount of damages in either of the pleadings. The state court certified a class in May 2014.

In June 2014, plaintiff responded to interrogatories that her total amount of monetary damages exceeded $25 million. Shortly after receiving these responses, defendant removed the case to federal court, because the damage claims exceeded $5 million under CAFA.

Plaintiff subsequently moved to remand as untimely. The federal trial court granted plaintiff's motion and remanded the case to state court. Defendant appealed to the Ninth Circuit.

The Ninth Circuit held removal was timely. The Court explained CAFA allows for removal to federal court within 30 days of receipt of any paper from which it may be first ascertained that the case is removable. Since the case was removed within 30 days of ascertaining the $5 million in controversy, removal was timely, despite the fact that the removal could have been previously based on federal question jurisdiction under the FDCPA.

The Court relied heavily on the U.S. Supreme Court opinion in *Dart Cherokee Basin Operating Co., LLC v Owens*, which indicated that there is no presumption against removability in CAFA. Rather, CAFA's intent is strongly to favor removal of class actions with interstate implications.

WBK regularly defends clients throughout the United States against class action claims in state and federal courts.

**Arbitration Enforced in Tribal Loan Agreement**

The District Court for the Northern District of Illinois recently enforced arbitration agreements in online lending agreements, despite the agreements being affiliated with sovereign tribal courts. Other courts had denied enforcement of similar provisions.

In *Kemph v. Reddam*, the plaintiffs sued a variety of companies and individuals involved in servicing loans obtained from an online lender incorporated under the laws of the Cheyenne River Sioux Tribal Nation. The loans allegedly carried interest rates ranging from 116% to 232%, which violated state usury laws.

Each loan agreement contained a choice of law provision stating it was governed solely by the laws of the Cheyenne River Sioux Tribe. The agreements also stated the tribal courts had sole jurisdiction over disputes arising from the loan agreements. The loan agreements further required arbitration, and included a right for the borrower to utilize an independent arbitration organization to conduct the arbitration proceedings, or to utilize the Cheyenne River Sioux Tribal Nation as the arbitral body.

The court ruled that this ability to utilize an independent arbitral body, such as the American Arbitration Association, addressed the argument that the arbitration provision was unconscionable. An arbitral forum was reasonably available, and a similar case decided by the 7th Circuit Court of Appeals in 2014, was not applicable.

The Court also explained that the arbitral body could determine choice of law issues, and determine whether or not tribal law actually should be applied. Finally, the court pointed to the fact that the American Arbitration Association has accepted cases under substantially similar loan agreements and arbitration clauses. Consequently, the arbitration provision enforceable.

WBK regularly assists clients throughout the United States with arbitration proceedings.

**Arbitration Agreement Enforced, Despite Federal Agency's Ruling**

The District Court for the District of Idaho recently enforced an arbitration clause in an employment agreement, despite a contrary ruling by the National Labor Relations Board.

In *Brown v. Citicorp Credit Services, Inc.*, plaintiff alleged violations of state and federal wage laws. Defendant moved to compel arbitration as provided in the employment agreement. The arbitration clause included a class action waiver. Plaintiff argued the arbitration clause was void because it violated her rights under the Fair Labor Standards Act and the National Labor Relations Act.

The Court reversed its own prior ruling denying arbitration, in which the Court relied heavily on a decision by the NLRB, stating that arbitration clauses with class waivers violate the Fair Labor Standards Act's collective action provisions. Instead, the Court relied heavily on opinions from the Fifth and Ninth Circuit Courts of Appeals, which had been subsequently issued to the trial court's previous ruling denying arbitration.

In *D.R. Horton v. N.L.R.B.*, the Fifth Circuit had expressly rejected the NLRB's analysis based upon Supreme Court precedent favoring arbitration of disputes.  In *Richards v Ernst & Young*, the Ninth Circuit had expressed an inclination towards the same result, specifically naming the Idaho Court's original denial of arbitration as an example of a wrong decision.

WBK regularly assists clients throughout the United States with arbitration proceedings.

*This Financial Services Update is for general information purposes only and is not in any way intended, nor shall it be construed, as legal advice, legal opinion or any other advice on any specific facts or circumstances. No person or entity ("Person") should act or refrain from acting upon this information without seeking professional advice. No Person may rely on this information or its applicability to any specific circumstances. The information in this Financial Services Update is in no instance to be taken as an indication of completeness, applicability to a particular situation, or an indication of future developments or results.*