



Financial Services Update

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WBK News

Weiner Brodsky Kider PC conducted 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 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 Updates TRID Reference Materials

The CFPB made housekeeping updates to the TILA-RESPA Integrated Disclosure (TRID) rule implementation materials available on its webpage.

First, the CFPB updated the webinar index document with easily accessible hyperlinks to navigate the questions and answers from a series of five TRID webinars presented by the CFPB. Next, the CFPB revised the TRID implementation materials – the small entity compliance guide, guide to forms, and timeline example – to reflect the new effective date of October 3, 2015.

You can access the updated forms and webinar question index here: consumerfinance.gov/regulatory-implementation/tila-respa/.

Final Orders Issued Against Company and Four Individuals for Alleged Violations of FTC Act and the Credit Repair Organizations Act

The FTC recently announced a settlement with FTC Credit Solutions and four individuals (individually and as officers or managers of the company) regarding allegations that the defendants deceptively marketed and sold credit repair services to consumers, with the emphasis of their business targeted primarily to Spanish-speaking consumers seeking to modify burdensome debts or to improve low credit scores. These actions allegedly violated FTC Act Section 5(a) (which prohibits unfair or deceptive acts or practices in or affecting commerce) and sections of the Credit Repair Organizations Act. The final orders resulted in the following, among other actions: (i) a general permanent ban of the defendants from marketing or offering to sell credit repair services; (ii) a general permanent ban of the defendants and individuals acting on their behalf from various misrepresentations; and (iii) judgment in an amount of \$2.4 million entered in favor of the FTC against each individual defendant, jointly and severally with the other defendants, as equitable monetary relief.

The four named individuals acted in the following roles with the company: Marketing Director; Chief Executive Officer, Secretary, and Director; General Manager and VP Sales Accountant; and Chief Financial Officer.

Among the purported deceptive acts or practices, the defendants allegedly: (i) misrepresented that they were affiliated or licensed with the FTC; (ii) misrepresented that they could lawfully remove negative information, including accurate and non-obsolete information, from consumers' credit reports; and (iii) misrepresented, expressly or by implication, that they could guarantee consumers a credit score of 700 or higher within six months or less. The defendants also allegedly violated the Credit Repair

Organizations Act in the following ways: (i) making untrue or misleading representations to consumers, such as the misrepresentations noted in the prior sentence; and (ii) charging or receiving money or other valuable consideration for the performance of credit repair services before those services were performed in full.

The FTC's summary of the orders and documents regarding the same can be found at: <https://www.ftc.gov/news-events/press-releases/2015/08/operators-bogus-credit-repair-scheme-settle-ftc-charges>.

FHA Publishes Updates and Makes Corrections to Single Family Handbook

On August 5, 2015, the FHA published for review a draft of the Claims and Disposition section of the new Single Family Housing Policy Handbook 4000.1 (HUD Handbook 4000.1). FHA initially indicated that it is accepting comments on the draft section through September 4, 2015, but subsequently announced that it had extended the comment period to October 5, 2015.

The Claims part of the new section provides guidance on submission of claims for single family FHA mortgage insurance benefits. This includes claims calculation and submission, post-claim review, withdrawal or cancellation of insurance claims, and debt collection and administrative offsets. The Disposition part of the new section provides guidance on the disposition of HUD Real Estate Owned (REO) single family properties. This covers the management and marketing program and activities from acquisition of title by HUD to disposition of the property. The Disposition section also covers registration and approval for Real Estate Brokers and Closing Agents.

The draft Claims and Disposition section is available on the FHA's Single Family Housing Policy Drafting Table page at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/SFH_policy_drafts.

In addition, on August 14, 2015, the FHA published a number of updates to the existing sections of the HUD Handbook 4000.1. According to the FHA, after hearing concerns and feedback from industry stakeholders, it made certain corrections to the HUD Handbook 4000.1. The updates and corrections are outlined in the August 14, 2015 transmittal that can be found in the online version of the HUD Handbook 4000.1, available at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgq.

State Regulatory Developments

Ohio Substantially Revises Mortgage Broker and Loan Originator Regulations

The Ohio Division of Financial Institutions (the “Division”) recently published substantial changes to Ohio Admin. Code 1301:8-7-01 *et seq.*, the regulations that govern licensing and other requirements applicable to mortgage brokers and loan originators. Several highlights for these revisions are summarized below, by regulation number. However, please note that due to the number and complexity of these revisions, we recommend that you review independently the new regulations in order to ensure compliance with them when they take effect.

The section titles below refer to the current section titles, some of which will change once the revisions take effect.

1301:8-7-01 – Definitions

A number of definitions have been added to this section in order to comply with revisions to the following sections. For example, the phrase “transaction of business as a mortgage broker in this state” has been defined as the origination of a residential mortgage loan (1) for any resident of Ohio, (2) for any property in Ohio, or (3) by a person who is physically located in Ohio but who regularly provides or offers to provide mortgage broker services only to borrowers or for property located in other states. A definition for “advertisement” has also been added, which means “any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, on-hold script, upsell script, training materials provided to telemarketing firms, program-length commercial (‘infomercial’), the internet, cellular network, or any other medium[;] [p]romotional materials and items and Web pages are included in the term advertisement and advertising.”

Various other new terms have been defined as well.

1301:8-7-02 – Mortgage broker registration; office requirements and restrictions

Among the many other revisions to this section, the Division has amended the registration requirements for a mortgage broker’s offices. Under these revisions, a mortgage broker must register every office where any of the following conditions occur or exist:

1. Leads are solicited or received, directly or indirectly, from residents of Ohio, for property in Ohio, or from a location physically in Ohio;

2. Records pertaining to business conducted pursuant to Chapter 1322 of the Ohio Revised Code are maintained in paper form; or
3. A mortgage broker's licensees originate residential mortgage loans for residents of Ohio, property in Ohio, or from a location physically located in Ohio regardless of the location of the borrower or property.

1301:8-7-03 – Mortgage broker application for a certificate of registration-main office; branch office; issuance and expiration of certificate

This section has been substantially revised to, among other things, describe how a person seeking to register to do business as a mortgage broker in Ohio can do so through the Nationwide Mortgage Licensing System (“NMLS”).

1301:8-7-04 – Mortgage broker renewal application for registration; issuance of renewal certificate; expiration

This section has been rescinded by the revisions.

1301:8-7-05 – Special account requirements

The requirements for special accounts required to be established and maintained by a mortgage broker registrant have been revised slightly. For example, under the new revisions, when a mortgage broker receives a check from closing that includes both the broker's fee and a payment for third party service providers, the broker no longer has the option to deposit the entire check into the special account and transfer excess funds into the general business bank account later.

1301:8-7-06 – Recordkeeping

The recordkeeping requirements of this section have been revised to, among other things, more clearly define the requirements applicable to a mortgage broker who chooses to maintain records on an electronic storage or media system. For example, such an electronic storage system must serialize the original and the duplicate units of storage media, and affix a date and time for the required period of retention on both the original and the duplicate.

1301:8-7-07 – Advertising

In addition to the definition of “advertising” described above, this rule has been revised to include several new requirements, including a prohibition on using the name of a person or entity that confuses or misleads a borrower as to the true identity of the mortgage broker placing or sending the advertisement regardless of any statement elsewhere in the advertisement identifying the true identity of the mortgage broker or loan originator licensee.

1301:8-7-08 – Loan officer license requirement; exemptions; license status.

This section has been rescinded by the revisions.

1301:8-7-09 – Loan officer license application; issuance of loan officer license; license display

This section has been rescinded by the revisions.

1301:8-7-10 – Loan officer renewal application for licensure; issuance of renewal license; expiration

This section has been rescinded by the revisions.

1301:8-7-11 – Loan officer license transfer

This section has been rescinded by the revisions.

1301:8-7-12 – Operations manager

The newly-revised section removes several provisions that formerly applied to operations managers. For example, the revised rule does not contain any provisions regarding the posting of the Division's approval letter for the operations manager in each of the applicable mortgage broker's offices. Additionally, the revised rule does not address the process that must occur if the individual ceases to act as the operations manager for any reason.

1301:8-7-13 – Division examinations and investigations

The examination procedures described in this section have been slightly amended. For example, the revised rule now notes that a written response submitted in response to a request for further information from the Division must address the issues raised by the examination or investigation to the superintendent's satisfaction. The previous examples of "The issue is resolved" or "We are compliant" without further explanation that were noted as being nonresponsive in the old rule are not contained in the revised rule.

1301:8-7-14 – Surety bonds

Several changes have been made under the revised rule. For example, a loan originator licensee may not perform the clerical or support duties of a loan processor or underwriter as described in 12 U.S.C. § 5102(4)(B) in Ohio as an employee of a loan processing or underwriting company or as an independent contractor unless either the licensee or the company on the licensee's behalf maintains at all times a corporate surety bond.

1301:8-7-15 – Mortgage loan origination disclosure statements and good faith estimates and other required disclosures to buyers

Among other changes to this section, the revised rule now requires that the affiliated business disclosure required by Ohio Rev. Code Ann. § 1322.075(A) must be provided on a form acceptable to the superintendent, or must conform to the statement format notice required by 12 C.F.R. § 1024.15(b).

1301:8-7-16 – Prohibited practices

Several of the practices prohibited by this section have been amended. For example, the revised rule now prohibits abandoning or improperly disposing of loan files containing financial and mortgage information of borrowers.

1301:8-7-17 – Licensing examination

This section has been rescinded by the revisions.

1301:8-7-18 – Continuing education

The revised rule substantially reduces the loan originator licensee continuing education requirements contained in the current rule. For example, this revised rule no longer requires licensees to complete at least six credit hours of approved continuing education for each calendar year.

1301:8-7-19 – Notification requirements

This section has been revised to, among other things, provide that the notification requirements shall be made via the NMLS. Additionally, a registered mortgage broker must notify the superintendent of the termination of a loan originator licensee by removing its sponsorship of the licensee via the NMLS no later than five business days after the licensee's employment or association has been terminated.

1301:8-7-20 – Compensation

The revised rule now provides, among other changes, that registered mortgage brokers and licensed loan originators must comply with the loan originator compensation requirements contained in 12 C.F.R. Part 1026.

1301:8-7-21 – Character, general fitness, and financial responsibility

The revised rule expands the character eligibility requirements. For example, under the revised rule, the superintendent may consider a number of factors when determining a person's financial responsibility, including whether the person has:

1. Any current outstanding civil or criminal judgments for money, restitution, or damages of any kind;

2. Any current outstanding tax liens or other government liens;
3. A foreclosure filed within the past five years whether residential or commercial;
4. A bankruptcy filed within the past five years; or
5. Any current accounts that are past due, in collection, or charged off, and which in the aggregate exceed five thousand dollars.

1301:8-7-22 – Trade names, alternative business names and service marks

The revisions have shortened and simplified this rule. For example, the revised rule no longer generally prohibits the use of more than three trade names.

1301:8-7-23 – Mortgage broker appraisal misconduct

The revised rule substantively is similar to the current rule.

1301:8-7-24 – Restrictions on promises of future refinancing

This section has been rescinded by the revisions.

1301:8-7-25 – Affiliated business disclosures

This section has been rescinded by the revisions.

1301:8-7-26 – Challenge to information maintained in the NMLS

This is a new regulation addressing how the holder of a loan originator license may challenge information entered into the NMLS by the superintendent.

1301:8-7-27 – Expedited hearing upon automatic suspension

The revised rule has been simplified to provide that an order of suspension shall set a date, not more than thirty days later than the date of the order of suspension, for a hearing on the continuation or termination of such suspension.

1301:8-7-28 – Pre-licensing education

This section has been rescinded by the revisions.

1301:8-7-29 – Public actions database

This section has been rescinded by the revisions.

1301:8-7-30 – Temporary loan originator license application

The revisions have added a new subsection to the current rule, addressing how the superintendent shall consider an applicant's experience in the field of residential mortgage lending.

1301:8-7-31 – Nonprofit organizations exemption

This new regulation describes the requirements that a nonprofit organization must meet in order to be exempt from the mortgage broker registration requirements, as well as how such an organization can apply for a letter of exemption.

1301:8-7-32 – Loan processors and underwriters

This new regulation provides that an individual who only performs clerical or support duties is not required to obtain a loan originator license under certain conditions. The regulation further describes how an exemption for such an individual may be obtained.

These revisions will take effect on January 4, 2016.

Litigation Developments

Servicing Transfer Notice Is an Attempt to Collect a Debt, Subject to the Fair Debt Collection Practices Act

According to the Second Circuit Court of Appeals, a servicing transfer notice for a mortgage loan was an “attempt to collect a debt.” Consequently, the notice could violate the Fair Debt Collection Practices Act (FDCPA) for failing to provide the debtor all the information required by the FDCPA.

In *Hart v. FCI Lender Services, Inc.*, the Second Circuit recently reversed and remanded the lower court’s decision that the plaintiff failed to state a claim to relief under the FDCPA, because the servicing transfer notice was not sent in connection with the collection of a debt.

In reaching its holding, the Second Circuit explained that the servicing transfer notice could reasonably appear to a consumer to be a communication in connection with the collection of a debt. The Court also observed that the FDCPA, as a remedial statute, should be construed in favor of the consumer. The Court rejected the servicer’s explanation that the notice was not intended to be an attempt to collect a debt. It was, rather, only intended for informational purposes. The Court noted that the test is an objective one: what would a consumer reasonably believe?

The Second Circuit also explained that the notice referred to the plaintiff’s particular debt, directed him where to mail his payments, and cited the FDCPA by name. The Court highlighted the fact that the notice stated the recipient had to dispute the debt’s validity within thirty days or risk it being assumed valid, and the notice announced itself as an attempt to collect a debt, stating, “THIS IS AN ATTEMPT TO COLLECT UPON A DEBT[.]”

Defendants argued that it was unfair to use this statutorily-required language as evidence that the notice was actually an attempt to collect a debt, but the Court stated “a debtor receiving the [notice] has no reason to know that the language is required by the FDCPA or to believe that the language mandated by §1692e can safely be disregarded on that basis.”

Weiner Brodsky Kider regularly represents mortgage lenders and servicers throughout the United States against alleged violations of federal and state laws.

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