



## **Financial Services Update**

**September 30, 2015**

### **HIGHLIGHTS**

#### **Federal Regulatory Developments**

CFPB Releases Monthly Complaint Report for September

CFPB Updates the Readiness Guide and Examination Procedures to Include TRID

FHA Announces New Automatic Extensions to its Foreclosure Timeline

Ginnie Mae Updates Requirements Regarding Change in Issuer Status

CFPB Adjusts Annual TILA Thresholds

CFPB Provides Consumers with Mortgage Shopping Tools

#### **State Regulatory Developments**

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#### **Litigation Developments**

Florida Supreme Court Upholds Quiet Title Default Judgment Despite Lack of Merit

#### **WBK News**

**Mitch Kider** will discuss marketing services agreements, joint ventures, and RESPA Section 8 issues in the enforcement environment lenders face today, at the Maryland MBA Educational Seminar on October 1 in Fulton, MD. [MORE INFO](#)

**Jim Milano** will address fair housing issues and the recent U.S. Supreme Court case of Texas Department of Housing v. Inclusive Communities Project and what it means for the manufactured housing industry at the Manufactured Housing Institute Annual Meeting on Oct. 4-6 in Boca Raton, FL. [MORE INFO](#)

**Mitch Kider** and **Jason McElroy** will speak on several panels regarding CFPB enforcement and administrative litigation at the Annual Consumer Financial Services Conference sponsored by the Conference on Consumer Finance Law and held at Loyola University Chicago School of Law on November 19-20. For more information go to [http://www.ccfonline.org/attachments/ccfl\\_annual\\_cfs\\_conf\\_2015.pdf](http://www.ccfonline.org/attachments/ccfl_annual_cfs_conf_2015.pdf).

**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 Releases Monthly Complaint Report for September

According to the [September 2015 Monthly Complaint Report](#) (Vol. 3), consumer loan complaints (which include complaints about vehicle, installment, title, and pawn loans among others) showed the greatest percentage increase from June -August 2014 (857 complaints) to June - August 2015 (1,262 complaints), representing about a 47 % increase. Payday loan complaints showed the greatest percentage decrease from June - August 2014 (526 complaints) to June - August 2015 (463 complaints), representing about a 12 % decline.

Mortgage and Student loan complaints showed the greatest month-over-month percentage increase (1 percent). Credit reporting complaints showed the greatest month-over-month percentage decrease (-13 percent). For the 24th consecutive month, the CFPB handled more complaints about debt collection than any other type of complaint. Debt collection complaints represented about 29 percent of complaints submitted in August 2015. Debt collection, credit reporting, and mortgage complaints continue to be the top three most-complained-about consumer financial products and services, collectively representing about 70 percent of complaints submitted in August 2015.

For the September 2015 complaint report, the Denver, Colorado metro area mortgage complaints and complaints from consumers was the geographical spotlight.

## **CFPB updates the Readiness Guide and Examination Procedures to include TRID**

On September 15, 2015, the CFPB issued supervisory publications that are updated to include the new, October 3, 2015 effective date for the Know Before You Owe mortgage disclosure rule that integrates the mortgage loan disclosures required under the Truth in Lending Act (TILA) and sections 4 and 5 of the Real Estate Settlement Procedures Act (RESPA).

[The CFPB Dodd – Frank Mortgage Rules Readiness Guide](#) was dated September 2015 and is Version 4.0

The CFPB Supervision and Examination updates are all dated September 15, 2015 and include:

- [Mortgage Origination Exam Procedures](#)
- [TILA Procedures-TILA RESPA Integrated Disclosures](#) (applicable for examinations after the October 2015 effective date)
- [RESPA Procedures - TILA RESPA Integrated Disclosures](#) (applicable for examinations after the October 2015 effective date)

## **FHA Announces New Automatic Extensions to its Foreclosure Timeline**

On September 28, 2015, FHA issued Mortgagee Letter 2015-21, that provides guidance regarding FHA's regulatory requirement for lenders to utilize a Loss Mitigation Option or initiate foreclosure within six months of the date of loan default.

This Mortgagee Letter reiterates the existing eight automatic extensions presently available to mortgagees when they are unable to initiate foreclosure within the allotted timeframe. It also introduces two new automatic extensions to align with the Consumer Financial Protection Bureau's (CFPB) Regulation X. The following are the new extensions.

### *Automatic Extensions for Loss Mitigation Denials*

The CFPB under the Real Estate Settlement Procedures Act, Regulation X, requires an appeal process for loan modification denials when a complete loss Mitigation application is received under this requirement.

FHA now provides an automatic 90-day extension to the initiation of the foreclosure timeline for cases in which the lender needs additional time to comply with the appeal process required by the CFPB. This 90-day extension begins on the date the lender denies the loss mitigation application and sends the borrower the notice required under CFPB regulations.

### *Automatic Extension for Federal Regulations*

Where a federal regulation requires a delay in the initiation of foreclosure and the delay is not covered by any other available FHA automatic extensions, the lender must initiate foreclosure no later than 90-days after the expiration of the time during which foreclosure is prohibited.

FHA requires lenders to document the use of an automatic extension. Also, the lender must self-curtail interest when it fails to meet FHA's reasonable diligence or reporting requirements.

This Mortgagee Letter is available on HUD's website: [hudclips@hud.gov](mailto:hudclips@hud.gov).

**Effective Date: All FHA insured mortgages in default on or after October 1, 2015.**

### **Ginnie Mae Updates Requirements Regarding Change in Issuer Status**

On September 8, 2015, Ginnie Mae announced updates to its requirements in the event that an Issuer undergoes certain changes in its business status, including 1) a change in its relationship with certain federal or state agencies; 2) a merger; 3) a change in ownership or control; or 4) a transfer of assets. These updates, which are contained in Section 3-13 of the Ginnie Mae Mortgage-Backed Securities Guide (MBS Guide), are effective immediately.

First, Ginnie Mae revised its requirements in the event that an Issuer undergoes a material adverse change with respect to an agency. Ginnie Mae already required that an Issuer notify Ginnie Mae within five days of any material adverse change in its relationship with Fannie Mae, Freddie Mac, FHA, VA, Rural Development, PIH, or any other supervisory or regulatory agency. Under Ginnie Mae's updated requirements, this notification requirement also applies to a material adverse change in an Issuer's business relationship with any banking agency, the FDIC, the CFPB, and state licensing or regulatory agencies.

Second, Ginnie Mae changed its documentation and timing requirements with respect to Issuers undergoing a merger. Prior to the change, an Issuer was required to provide written notice, and certain financial and legal documents, to Ginnie Mae at least 30 days before the effective date of a merger. Under the new requirements, Ginnie has streamlined the documents that must be provided, and an Issuer now has 30 days from the date of the merger to provide these documents. However, Issuers must now provide written notification to Ginnie Mae at least 60 days prior to the desired effective date of a merger so that Ginnie Mae has sufficient time to approve or deny the surviving entity's continued participation in the MBS program. In a merger where the surviving entity is not a Ginnie Mae Issuer, but wishes to become one, it must submit an application to Ginnie Mae at least 90 days prior to the effective date of the merger. If it does not wish to become an Issuer, it must provide written notice to Ginnie Mae at least 90 days prior to the proposed effective date.

Third, for purposes of its change of principal ownership or control requirements, Ginnie Mae has aligned the definitions of “principal owner” and “control” with the Statement of Financial Accounting Standards No. 57 (FAS-59) issued by the Financial Accounting Standards Board. If an Issuer or its Guarantor will undergo a change of principal ownership or control, the Issuer must provide written notice to Ginnie Mae at least 30 days before the prior effective date of the change, and must provide certain legal and financial documents within 30 days after the change is complete. The documentation required by Ginnie Mae in connection with such changes has been reduced.

Finally, if an Issuer plans to execute a transfer of assets (other than non-Ginnie Mae mortgage servicing rights), it must provide written notice to Ginnie Mae at least 30 days prior to the desired effective date so that Ginnie Mae can determine whether the Issuer should be able to continue to participate in the Ginnie Mae program. For Ginnie Mae purposes, a transfer of assets is any transfer of a principal element of the Issuer’s business assets related to the origination, underwriting, or servicing of mortgage loans without the transfer of accompanying liabilities.

Ginnie Mae’s announcement of the changes can be found here:

[http://www.ginniemae.gov/doing\\_business\\_with\\_ginniemae/issuer\\_resources/Pages/mb\\_sguideapmslibdisppage.aspx?ParamID=57](http://www.ginniemae.gov/doing_business_with_ginniemae/issuer_resources/Pages/mb_sguideapmslibdisppage.aspx?ParamID=57)

## **CFPB Adjusts Annual TILA Thresholds**

The CFPB issued a final rule amending Regulation Z, which implements TILA, to update the dollar amounts of various thresholds that are adjusted annually based on the annual percentage change in the Consumer Price Index. The rule amends the dollar amounts for provisions for the CARD Act penalty fees safe harbor, the HOEPA loan amount threshold, and the points and fees threshold for qualified mortgages (QMs).

The adjusted dollar amount for the penalty fees safe harbor in 2016 for card issuers under the CARD Act is \$27 for a first late payment and \$37 for each subsequent violation within the following six months. The adjusted total loan amount threshold is \$20,350, and the adjusted statutory fee trigger is \$1,017 for HOEPA loans.

Additionally, for the purpose of a creditor’s determination of a consumer’s ability to repay, a covered transaction is not a QM unless the transaction’s total points and fees do not exceed:

- 3 percent of the total loan amount for a loan greater than or equal to \$101,749;
- \$3,052 for a loan amount greater than or equal to \$61,050 but less than \$101,749;
- 5 percent of the total loan amount for a loan greater than or equal to \$20,350 but less than \$61,050;
- \$1,017 for a loan amount greater than or equal to \$12,719 but less than \$20,350; and

- 8 percent of the total loan amount for a loan amount less than \$12,719.

The minimum interest charge disclosure thresholds will remain unchanged in 2016. The final rule is effective on January 1, 2016.

## **CFPB Provides Consumers with Mortgage Shopping Tools**

As part of its Know Before You Owe initiative, the CFPB issued new resources on its website for consumers to explain the new TILA RESPA Integrated Disclosure (TRID) forms that will be required beginning this Saturday, October 3. The website aims to explain the home buying and home financing process, and provides various interactive tools to assist consumers in shopping for a mortgage.

Among the tools available are the controversial interest rate calculator, a monthly payment worksheet, a section-by-section explanation of the new Loan Estimate and Closing Disclosure forms, a closing checklist, and a guide to closing forms (i.e., the note, mortgage/security instrument, initial escrow disclosure, and right to cancel notice).

The tools are available on the CFPB's website at:  
<http://www.consumerfinance.gov/owning-a-home/>.

## **State Regulatory Developments**

### **California and Missouri Pave the Way for Adoption of Uniform State Test for MLOs**

Regulatory agencies in California and Missouri recently took steps to adopt a national uniform test for purposes of mortgage loan originator ("MLO") licensing in those states.

In California, the California Department of Business Oversight and the California Bureau of Real Estate have jointly announced that they will adopt the Uniform State Test ("UST") for state-licensed MLOs effective January 1, 2016. This move was made possible in part by regulatory amendments enacted by the Department of Business Oversight on August 19, 2015 that expanded the MLO testing requirements to permit an applicant to take the UST rather than the California state component. Regulation PRO 06/14, Regulatory Action Number 2015-0709-025.

Additionally, on September 16, 2015, the Missouri legislature overrode a veto by Governor Jay Nixon of Senate Bill 345, which included a provision requiring UST adoption. The next step is for the Missouri Department of Insurance, Financial Institutions and Professional Registration to establish an effective date.

The UST, launched by the Nationwide Mortgage Licensing System ("NMLS") in April 2013, replaces state-specific test components for states that adopt it. A passing result

on the NMLS National Test with Uniform State Content satisfies the testing requirements for licensure in any states that adopt the UST.

A copy of California Regulation PRO 06/14 can be found at:

[http://www.dbo.ca.gov/Licensees/Residential\\_Mortgage/pdf/PRO%2006-14%20-%20MLO%20Education%20and%20Testing%20Requirements.pdf](http://www.dbo.ca.gov/Licensees/Residential_Mortgage/pdf/PRO%2006-14%20-%20MLO%20Education%20and%20Testing%20Requirements.pdf). A copy of Missouri

Senate Bill 345 can be found at: <http://www.senate.mo.gov/15info/pdf-bill/tat/SB345.pdf>.

## **Litigation Developments**

### **Florida Supreme Court Upholds Quiet Title Default Judgment Despite Lack of Merit**

The Florida Supreme Court recently held that a bank holding a first-lien mortgage could not set aside a default judgment that quieted title to real property, even though the judgment was based on a complaint that did not state a claim. Since such a judgment was not void, but merely voidable, a bank that waited too long to challenge the default judgment, and which had been given proper notice, could not enforce its lien.

In *Bank of New York Mellon v. Condominium Association of La Mer Estates, Inc.*, the Florida Supreme Court faced the question whether a judgment quieting title that was entered by default and had no legal merit—that is, the underlying quiet title complaint failed to state a claim as a matter of law—was void, or merely voidable. In that case, a condominium association had recorded and foreclosed on a lien for unpaid assessments. When the bank, as beneficiary of a first-lien mortgage, failed to accept title to the property when offered by the association, the association filed an action to quiet title by removing the mortgage lien. The bank was served but did not respond, and default judgment was entered. Because of concerns regarding the validity of service, the association had that judgment vacated and served the bank again. Again, the bank did not respond and another default judgment was entered. More than eighteen months later, the bank moved to vacate the judgment as void, because the complaint failed to state a claim for which relief could be granted.

Under Florida law, a voidable judgment can be vacated if a motion to vacate is filed within one year, but if no such motion is filed, it remains valid. A void judgment, by contrast, is void whether or not it is timely challenged, and a motion to vacate a void judgment is not subject to the one-year limitation.

The Florida Supreme Court held that the default judgment was merely voidable, but not void, in part because failure to state a claim is a defense that must be raised by motion in the answer, or at trial, and is waived if not so raised. Because the bank had notice of the action and did not timely raise the defense of failure to state a claim, and because no attempt was made to vacate the judgment within the one-year period, the judgment was valid despite being based on a complaint that failed to state a claim.

*The WBK Firm regularly represents mortgage lenders and servicers throughout the United States in mortgage-related litigation, including quiet title claims.*

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