



## Financial Services Update

October 28, 2015

### HIGHLIGHTS

#### Federal Regulatory Developments

FHA Provides Information to Lenders on its Position Regarding Implementation of the TILA-RESPA Integrated Disclosure (TRID) Rule

Ginnie Mae Announces Updates to Assignment Agreement Form In the Pool Transfer System

House Committee Investigates CFPB Fair Lending Office

Treasury Releases Guidance Regarding Maintenance of False Hit Lists for OFAC's Specially Designated Nationals List

HUD Proposes Rule to Protect Victims of Harassment

#### Litigation Developments

D.C. District Protects Parties' Privacy During CFPB Investigation

#### WBK News

**Jim Milano** will speak on state regulatory compliance issues in consumer lending and federal preemption at the American Conference Institute Consumer Lending Conference on October 29-30 in New York, NY. [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

#### **FHA Provides Information to Lenders on its Position Regarding Implementation of the TILA-RESPA Integrated Disclosure (TRID) Rule**

In recognition of the procedural and operational challenges during the initial implementation period of TRID, and the recent announcements by the CFPB and the GSE's regarding compliance monitoring of the new rule, FHA will not include technical TRID compliance as an element of its routine quality control reviews. FHA expects lenders to make good faith efforts to comply with TRID, which at a minimum requires the use of the TRID required forms. Consistent with its current practices, FHA will evaluate whether the correct forms were used in originating FHA mortgages. The information in this announcement expires on April 16, 2016.

This announcement is available at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/sfh/lender/SFH\\_LEN\\_D\\_Performance](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/lender/SFH_LEN_D_Performance)

### **Ginnie Mae Announces Updates to Assignment Agreement Form In the Pool Transfer System**

Ginnie Mae issued an All Participants Memorandum (APM 15-16) on October 13, 2015, announcing that it has updated the policies and procedures that govern the execution of assignment agreements in the Pool Transfer System. These updates aim to provide issuers and document custodians involved in a transfer of issuer responsibility with more accurate and detailed information about the related transaction.

Transfers of issuer responsibility are processes through PTS, and as a part of that process, issuers are required to execute an assignment agreement electronically in the PTS system. The standard form of the assignment agreement in the PTS has been modified to incorporate two new clauses, Section 2.03 and Section 2.04 which identify the sale date, the servicing transfer date, and the effective reporting date for the

transfer. Section 2.04 identifies the document custodians affected by the transfer and authorizes them to begin transferring the loan files and loan documents as of the servicing transfer date. Document custodians are encouraged to begin preparing for the transfer of all relevant loan files and loan documents before the servicing transfer date.

Effective immediately, all assignments agreements generated through PTS will reflect the new standard form that incorporates Sections 2.03 and 2.04. The dates and names required by these sections, respectively, will be populated automatically in the assignment agreement based on information the buyer and seller entered into PTS when requesting approval of the transfer. The standard form of the assignment agreement may also be found in Appendix VIII-03 of the Mortgage-Backed Securities Guide 5500.3 REV.1, which has been updated in accordance with this memorandum.

Ginnie Mae's announcement of the updates can be found at:

[http://www.ginniemae.gov/doing\\_business\\_with\\_ginniemae/issuer\\_resources/Lists/MBS\\_GuideAPMsLib/Attachments/59/APM\\_15-16.pdf](http://www.ginniemae.gov/doing_business_with_ginniemae/issuer_resources/Lists/MBS_GuideAPMsLib/Attachments/59/APM_15-16.pdf)

### **House Committee Investigates CFPB Fair Lending Office**

In a letter to Director Cordray this month, the U.S. House of Representatives Committee on Financial Services expressed their significant concerns about findings detailed in recent American Banker articles. Specifically, the publication provided that it examined internal Bureau documents which, according to the Committee, indicated that the Bureau “knowingly overestimates disparities when identifying alleged discrimination by indirect auto lenders and has been strategizing how to eliminate dealer reserves.” The Committee expressed further concern over the Bureau’s lack of transparency in its continual disregard of the Committee’s requests for information about the Bureau’s policies regarding indirect auto lending, including requests for information about the methodology used to determine fair lending violations in that context. As a result, the Committee asked the Bureau to produce an extensive amount of records (including related emails) and expressed its intention to conduct transcribed interviews of relevant Bureau staff.

### **Treasury Releases Guidance Regarding Maintenance of False Hit Lists for OFAC’s Specially Designated Nationals List**

The Department of Treasury recently issued guidance on the maintenance of “false hit lists” to comply with regulations administered by the Office of Foreign Asset Control (OFAC) – specifically with regard to screening individuals to detect and block transactions with individuals on OFAC’s Specially Designated Nationals and Blocked Persons list (SDN List).

Under OFAC regulations, individuals must be screened through the SDN List to ensure that any transaction with that individual is not a prohibited transaction involving

countries, regions, or activities subject to OFAC sanctions. The guidance document notes that many companies, in an attempt to comply with OFAC regulations, develop a “false hit” list comprised of individuals and entities whose characteristics trigger a screening match to one or more entities or persons on the SDN list, but are not in fact those entities or persons.

The guidance confirms that maintenance of such lists is a good practice, but warns that such lists must be reviewed, evaluated, and re-assessed to ensure the “false hits” on the list are correct and proper. Treasury further states that policies and procedures should be in place to ensure these lists are evaluated properly.

## **HUD Proposes Rule to Protect Victims of Harassment**

On October 21, HUD issued a proposed rule that would formalize standards for victims of harassment in housing under the Fair Housing Act. The proposed rule specifies how HUD would evaluate complaints of quid pro quo harassment and hostile environment harassment.

According to the [announcement](#), “while no formal regulation has been in place, HUD and courts have long held that harassment in housing or housing-related transactions on the basis of race, color, national origin, religion, sex, disability, and familial status is prohibited under the Fair Housing Act.” The proposed rule would cover both private and publicly-assisted housing, and provide clear guidance for the benefit of housing consumers and providers.

Under the proposed rule, quid pro quo harassment includes subjecting a person to an unwelcome request or demand and relating that to a person’s housing. For example, an employee of a homeless shelter might request sexual favors from shelter residents as a condition of staying at the shelter, or a manager of rental properties conditions to rent amount on whether tenants grant sexual favors.

Hostile environment harassment includes subjecting a person to unwelcome conduct that is sufficiently severe or pervasive such that it interferes with or deprives the person the right to use and enjoy their home. For example, the owner of a rental home enters a tenant’s unit and makes unwelcomed sexual advances, or if a landlord allows harassment of a tenant with disabilities. National origin-based harassment is also covered.

Finally, the proposed rule addresses the operation of direct and vicarious liability under the Fair Housing Act. The standards for both types of liability follow well-established common law tort and agency principles and do not create new legal obligations or subject defendants to enhanced liability for violations of the Fair Housing Act.

The general public will have 60 days from the date of publication in the Federal Register to comment on the proposed rule.

The proposed rule is available at:  
<http://www.gpo.gov/fdsys/pkg/FR-2015-10-21/pdf/2015-26587.pdf>.

## **Litigation Developments**

### **D.C. District Protects Parties' Privacy During CFPB Investigation**

The U.S. District Court for the District of Columbia recently found that parties hold a substantial privacy interest in not being identified as targets of an investigation by the Consumer Financial Protection Bureau ("CFPB"). The Court did not seal the entire case docket, but ruled that Plaintiffs' names should be redacted from all documents filed in a lawsuit they initiated against the CFPB in connection with its investigation.

Plaintiffs are a collection of businesses and an individual who were subject to a Civil Investigative Demand ("CID") served by the CFPB, as the CFPB considered initiating an enforcement action against them. In connection with its investigation, the CFPB also issued a CID to Plaintiffs' longtime business partner, who had also previously served as Plaintiffs' counsel. The CID sought the testimony of the former attorney, who had voluntarily agreed to testify.

Plaintiffs' current counsel subsequently requested permission to attend the investigational interview of the former attorney for the purpose of protecting the Plaintiffs' attorney/client privileges. Upon the CFPB's denial of this request, Plaintiffs filed suit in federal district court, seeking a temporary restraining order ("TRO") to prevent the CFPB from conducting the investigational interview without Plaintiffs' counsel.

Accompanying their complaint and TRO motion was a motion to seal the case before the Court. The CFPB opposed the motion, claiming that Plaintiffs had not overcome the "strong presumption" in favor of public access to judicial proceedings. The case was temporarily sealed pending the Court's ruling on Plaintiffs' motion.

Events at the evidentiary hearing on the TRO motion "largely mooted the case." Plaintiffs then voluntarily dismissed their entire action, leaving the Court with the sole issue of whether the court records should remain under seal.

Balancing the public's interest in access to judicial proceedings against Plaintiffs' privacy interests in maintaining the confidentiality of the CFPB's investigation, the Court explained, "it is not difficult to show how disclosure of the fact that an entity is subject to investigation by federal authorities would inflict non-trivial reputational, and possibly associated financial, harm on that entity." Sealing the entire case was unnecessary, but the Court did decide to "re-caption" the case as a "John Doe" suit. Plaintiffs' names were also redacted from all record in the federal district court case file.

Weiner Brodsky Kider regularly defends clients throughout the United States against CFPB investigations and enforcement actions.

*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.*