



Financial Services Update

November 11, 2015

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WBK News

Jim Milano presented his paper “Reverse Mortgages: An Idea Whose Time Has Come” at the 49th Annual William W. Gibson, Jr. Mortgage Lending Institute, hosted by the University of Texas, on November 5 in Dallas, TX. On November 11, Jim will participate on a panel to discuss data security and privacy issues for manufactured housing

community operators at the Manufactured Housing Institute/National Communities Council Fall Leadership Forum in Chicago, IL. [MORE INFO](#)

Jack Konyk will speak about “Lender Issues, Enforcements and Points of Pain” at the Iowa Finance Authority’s Title Guaranty 2015 Conference on November 12 in Altoona, IA. On November 18, Jack will present a seminar exploring how to “Live, Survive and Thrive in these New Regulatory Times”, and speak at the dinner meeting of the Central New York MBA in Syracuse, NY. [MORE INFO](#)

Mitch Kider, Fed Kamensky and Jason McElroy will present an MBA Compliance Essentials Webinar “Understanding the Latest With UDAAP” on November 16 at 2:00 pm. [MORE INFO](#)

Jim Brodsky and Jim Milano will participate on several panels addressing reverse mortgage regulatory compliance issues and best practices for reverse mortgage lenders at the National Reverse Mortgage Lenders Association Annual Meeting on November 16-18 in San Francisco, CA. [MORE INFO](#)

Jason McElroy will discuss E-Notes from a warehouse lender perspective at the Texas Mortgage Bankers Association’s Warehouse Conclave on November 17 in Dallas, TX. [MORE INFO](#). Jason also 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

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

FFIEC Issues Statement on Cyber Extortion

On November 3, the Federal Financial Institutions Examination Council (FFIEC) issued a [statement](#) alerting financial institutions of the increasing frequency and severity of cyber attacks involving extortion.

Cyber criminals and activists use a variety of tactics that have caused significant impacts on businesses’ access to data and ability to provide services. Among these

tactics, cyber attacks on financial institutions to extort payment in return for the release of sensitive information are increasing, the FFIEC said in a press release.

According to the FFIEC, financial institutions should address the threat with ongoing cybersecurity risk assessments, as well as monitoring of controls and information systems. Specifically, the FFIEC notice recommends that financial institutions take the following steps to mitigate risk:

- Conduct ongoing information security assessments.
- Securely configure systems and services.
- Protect against unauthorized access.
- Perform security monitoring, prevention, and risk mitigation.
- Update information security awareness and training programs, as necessary, to include cyber attacks involving extortion.
- Implement and regularly test controls around critical systems.
- Review, update, and test incident response and business continuity plans periodically.
- Participate in industry information-sharing forums.

The FFIEC notice also states that victims of cyber attacks involving extortion should inform the appropriate law enforcement authorities and regulators, and take the necessary steps to comply with the Gramm-Leach Bliley Act and applicable state laws in the event the attack results in authorized access to sensitive customer information.

FDIC Announces CRA Examination Schedule

The Federal Deposit Insurance Corporation (FDIC) today issued its [list of state nonmember banks](#) recently evaluated for compliance with the Community Reinvestment Act (CRA). The list covers evaluation ratings that the FDIC assigned to institutions in August 2015.

The CRA is a 1977 law intended to encourage insured banks and thrifts to meet local credit needs, including those of low- and moderate-income neighborhoods, consistent with safe and sound operations. As part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Congress mandated the public disclosure of an evaluation and rating for each bank or thrift that undergoes a CRA examination on or after July 1, 1990.

State Regulatory Developments

House of Representatives Approves Expanded Use of NMLS Background Checks

The U.S. House of Representatives recently approved H.R. 2643, the State Licensing Efficiency Act, which would pave the way for more efficient state criminal background

checks by expanding the authority of state regulators to use the Nationwide Multistate Licensing System & Registry (“NMLS”) to process background checks for purposes other than mortgage loan originator (“MLO”) licensing.

Currently, the Secure and Fair Enforcement for Mortgage Licensing Act (the “SAFE Act”) only specifically grants authority to use the NMLS to access criminal history information for purposes of regulating and licensing individual mortgage loan originators (“MLOs”). This current authorization permits state regulators to use the NMLS to communicate directly with the FBI to conduct background checks for MLOs, but fails to provide the same authority in other important contexts, such as to conduct individual background checks in connection with mortgage company licensing. As a result, states wishing to conduct a criminal background check on non-MLO individuals, such as “control persons” of a mortgage company, must currently do so through traditional means that take significantly longer to process and often require such individuals to submit a multitude of fingerprint cards in hard copy.

H.R. 2643 would amend the SAFE Act to specifically grant state regulators the ability to obtain criminal background check information through the NMLS in connection with regulating and licensing “financial service providers” in addition to MLOs. Therefore, H.R. 2643 would pave the way for all individual state criminal background checks in connection with financial services licensing to be conducted through the NMLS using the more streamlined process currently available only to MLOs.

The bill, which must still pass the U.S. Senate, has been referred to the Senate Committee on Banking, Housing, and Urban Affairs for consideration.

A copy of H.R. 2643 can be found at:

<https://www.congress.gov/114/bills/hr2643/BILLS-114hr2643rfs.pdf>.

North Carolina Passes Legislation Establishing Registration System for Processors or Underwriters Not Engaged in the Mortgage Business

On October 29, 2015, North Carolina passed House Bill 126 (“the bill”), which amends the North Carolina Secure and Fair Enforcement Mortgage Licensing Act by authorizing the Office of the Commissioner of Banks to establish a registration system for “mortgage origination support registrants or registrants,” which are defined under the bill as persons engaged exclusively in the processing or underwriting of residential mortgage loans and not engaged in the mortgage business.

Upon issuance of the registration, a registrant can sponsor and employ licensed mortgage loan originators or transitional mortgage loan originators to control and supervise the registrant’s loan processors or underwriters in accordance with the federal S.A.F.E. Act.

In addition, the bill amends existing provisions relating to, in part, license issuance and renewal, application fees, bond requirements, recordkeeping, and reporting with respect to this new registration requirement.

House Bill 126 also provides that if any provision of the bill is deemed by HUD to conflict with its interpretation of the federal S.A.F.E. Act, the provision shall be interpreted, applied, or amended in such a way as to comply with the federal S.A.F.E. Act as interpreted by HUD.

These provisions were effective November 1, 2015.

The full text of North Carolina House Bill 126 can be found at the link below:
<http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H126v4.pdf>

Florida Adopts Provisions Relating to Miscellaneous Licensing Requirements under the Mortgage Brokerage and Lending Act

On October 20, 2015, the Florida Department of Financial Services, Division of Finance adopted provisions governing miscellaneous licensing requirements under the Mortgage Brokerage and Lending Act. These provisions, in part, include changes regarding updated application procedures for loan originators, mortgage brokers, mortgage broker branch offices, mortgage lenders and mortgage lender branch offices. In addition, the new provisions include updated recordkeeping requirements for licensees.

These provisions went into effect on November 9, 2015.

The full text of these new provisions can be found at the link below:
<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=69V-40>

Litigation Developments

Second Circuit Court of Appeals Holds NY Fair Credit Reporting Act Claims *Not Preempted* By Federal Fair Credit Reporting Act

The Second Circuit Court of Appeals recently decided that an alleged violation of New York's Fair Credit Reporting Act for identity theft against a bank, was not preempted by the federal Fair Credit Reporting Act ("FCRA"). Since the FCRA is narrowly focused on the activities of furnishers of consumer information to credit reporting agencies, and since the claims did not appear to be based on the furnishing of consumer information within the meaning of the FCRA, there was no preemption.

A bank customer sued JPMorgan Chase Bank in state court claiming violations of the NY Fair Credit Reporting Act. The bank's employees allegedly stole her identity and used it to open bank accounts for fake corporations to launder the proceeds of a

Medicare fraud scheme. Plaintiff alleged bank employees used these falsified accounts to deposit and withdraw proceeds of the scheme. Some withdrawals resulted in overdrafts, which eventually had a negative impact on plaintiff's credit when the information was furnished to credit reporting agencies.

Chase removed the case to federal district court and moved to dismiss on federal preemption of the NY Fair Credit Reporting Act by the federal Fair Credit Reporting Act ("FCRA"). The Motion was granted, but reversed on appeal by the Second Circuit.

The Second Circuit explained that the FCRA is focused on the "responsibilities of persons who furnish information to consumer reporting agencies." Consequently, plaintiffs' claims could only be preempted if the claims were limited to the furnishing of negative credit information by the bank. The Second Circuit also acknowledged that the pleadings were less than clear, so to the extent that plaintiff attempted to recover from the bank only because of credit information it furnished, the Court stated those claims would be preempted.

The New York statute, however, was not as narrowly focused as the FCRA. Under the NY Fair Credit Reporting Act, the bank could be liable for the negative reporting of credit information related to identity theft, if the bank was found vicariously liable for the actions of its employees. This liability was not limited to the bank's activities as a furnisher of consumer credit information. Consequently, the plaintiffs' claims were not necessarily preempted by the FCRA, and the case was remanded for further proceedings.

Weiner Brodsky Kider regularly defends clients against alleged violations of state and federal fair credit reporting laws throughout the United States.

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