Buckley Sandler LLP

InfoBytes

FINANCIAL SERVICE HEADLINES & DEADLINES FOR OUR CLIENTS AND FRIENDS

June 15, 2012

Topics In This Issue

Federal Issues

CFPB Seeks Additional Private Student Loan Complaints. On June 13, the CFPB issued a Notice of Request for Information seeking information on existing private student loan complaints collected by state agencies, institutions of higher education, consumer and legal advocates, and lenders. In addition to its general solicitation, the CFPB specifically invited the participation of state attorneys general, schools, and advocacy groups. The responses received by the CFPB will be incorporated into the student loan ombudsman's report it provides to Congress pursuant to the Dodd-Frank Act. In conjunction with its general solicitation, the CFPB also published the nearly 2,000 comments it received in response to a Notice and Request for Information on private student loans that it issued on November 17, 2011. The CFPB identified the following common themes from the data collected to date in connection with its earlier solicitation: (i) many borrowers report relying on school financial aid offices for information and guidance on which loan products to use, (ii) many borrowers struggling in today's economy are finding their private student loan debt to be unmanageable, and (iii) many borrowers report finding it difficult to navigate the repayment process.

Federal Bank Regulators Seek Comment on Three Proposed Regulatory Capital Rules, Finalize Market Risk Rule. On June 12, the Federal Reserve Board, the OCC, and the FDIC jointly issued three proposed rules, which would implement the risk-based and leverage capital requirements in the Basel III framework and relevant provisions mandated by the Dodd-Frank Act. The first proposed rule would, among other things, (i) raise the minimum regulatory capital levels; (ii) introduce an additional common equity capital buffer; and (iii) adopt a stricter definition of capital. Taken together, these requirements would require banking organizations to increase the quality and quantity of their regulatory capital. The second proposed rule incorporates aspects of Basel II's Standardized Approach to enhance the risk-sensitivity of a banking organization's risk-weighted assets calculations. In addition, the second proposed rule sets forth alternatives that would replace the use of external credit ratings, a change required by Section 939A of the Dodd-Frank Act. The third proposed rule would apply to banking organizations that are currently subject to the advanced approaches rule or to the market risk rule, and for the first time, to savings and loan holding companies that meet the relevant size, foreign exposure, and trading activity thresholds. This rule seeks to enhance the risk-based capital rules' sensitivity to trading risks and also would eliminate the use of external ratings as required by Section 939A of the Dodd-Frank Act. Comments on each of the proposed rules can be submitted through September 7, 2012.

Concurrent with the proposed rules, the federal regulators released a final rule regarding market risk. By amending the calculation of market risk, the final rule seeks to better characterize the risks facing a particular institution and to help ensure the adequacy of capital related to the institution's market

risk-related positions. The final rule incorporates comments received in response to a January 2011 proposed rule, as well as a December 2011 amended proposed rule, and applies to a banking organization with aggregate trading assets and liabilities equal to 10 percent of total assets, or $1 billion or more. According to the regulators, the most significant change from the proposals relates to the methods for determining the capital requirements for securitization positions. The final rule will impose greater capital requirements on the more subordinate tranches in a securitization because the final rule mechanism to calculate the capital charges on securitization exposures when the underlying pool of assets demonstrates credit weakness was altered to focus on delinquent exposures rather than on cumulative losses. This rule takes effect January 1, 2013.

OCC Finalizes Rule to Replace Certain Credit Rating References with Alternative Creditworthiness Standards. On June 13, pursuant to Section 939A of the Dodd-Frank Act, the OCC published a final rule with regard to regulations applicable to investment securities, securities offerings, and foreign bank capital equivalency deposits. The final rule is identical to the rule proposed by the OCC in November 2011 and will require national banks to assess whether a security issuer has an "adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure," a standard which may be met if the risk of default by the issuer is low and timely repayment of principal and interest is expected. For federal savings associations, the definition of "investment grade" would cross-reference the requirement established by the FDIC. Simultaneously, the OCC finalized guidance to outline measures (i) banks should put in place to demonstrate they have properly verified their investments, and (ii) institutions should put in place to demonstrate their compliance with due diligence requirements when making investments and reviewing investment portfolios. Specific due diligence factors will depend on the type of security, and firms will need to adjust the depth of due diligence to match the credit quality of the security, its complexity, and the size of the investment.

Freddie Mac Updates Multiple Servicing Requirements. On June 13, Freddie Mac published Bulletin 2012-13, which updates multiple servicing requirements in the *Single-Family Seller/Servicer Guide*. With regard to the state foreclosure timeline, the Bulletin (i) adds several circumstances in which the timeline will be extended for all foreclosure sales completed on or after January 1, 2012, (ii) revises the calculation for compensatory fees associated with exceeding a state foreclosure timeline, and (iii) alters the compensatory fee appeal process. With regard to certain operational procedures, the Bulletin (i) adds a time frame for reimbursement of taxes that were incurred and paid to a taxing authority for non-real estate owned expenses, (ii) allows wire transfers for REO-related remittances, and (iii) clarifies the time frame for submitting modification agreements to document custodians. The Bulletin also makes changes to the Guide related to unemployment forbearance, the quality right party contract performance standard, fraud prevention and reporting, and MERS Rule 14.

Fannie Mae Updates Data Breach Policy, Compensatory Fees, and Allowable Foreclosure Timeframes. On June 13, Fannie Mae published Announcement SVC-2012-10, which updates its notice of data breach and incident response policy to require servicers to provide written notice to Fannie Mae of a data breach in addition to any reporting to consumers or state authorities required under applicable state law. A servicer also must request permission to use Fannie Mae's name if it intends to refer to Fannie Mae in any notices sent to affected borrowers or regulatory agencies. On

the same day, Fannie Mae also published Announcement SVC-2012-11, which updates and clarifies for all mortgages with a foreclosure sale date on or after January 1, 2012, (i) the maximum allowable foreclosure time frames for twelve jurisdictions, (ii) compensatory fee assessments and appeals, and (iii) the preferred method of foreclosure in Montana and Nebraska.

FHFA Submits Annual Report to Congress. On June 13, the FHFA submitted to Congress its annual report on its 2011 examinations of Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. The report rates Fannie Mae and Freddie Mac as "critical supervisory concerns" and states that their continuing credit losses stem primarily from loans originated during 2005-2007. The report cites certain key challenges of Fannie Mae and Freddie Mac, which include (i) the ongoing stress in the national housing market, (ii) the broader economic environment, and (iii) the lack of certainty about the future of Fannie Mae and Freddie Mac. Among other things, the report provides updated information about the Fannie Mae and Freddie Mac portfolios and foreclosure prevention efforts. The report also notes that the financial condition of the Federal Home Loan Banks remained stable, though exposure to private-label mortgage-backed securities continues to impact certain of the Banks.

FTC Settles FCRA Charges Against Data Broker. On June 12, the FTC announced that a data broker agreed to settle charges that it marketed and sold consumer profiles to companies engaged in human resources, background screening, and recruiting without taking steps to protect consumer information as required by FCRA. The FTC claimed that the data broker operated as a consumer reporting agency and violated FCRA when it failed to ensure that the information it compiled and sold would be used only for permissible purposes. The broker also allegedly failed to ensure that consumer information it sold was accurate and failed to inform buyers of their FCRA obligations. Among other things, the settlement requires the data broker to pay an $800,000 civil penalty and prohibits the firm from any future violations of FCRA.

New Interagency FCRA Examination Procedures Released. On June 1, the Federal Reserve Board announced that the Consumer Compliance Task Force of the Federal Financial Institutions Examination Council approved revised FCRA examination procedures. The revised procedures (i) incorporate changes required by Dodd-Frank Act revisions of FCRA, which require disclosure of credit scores and information relating to credit scores in adverse action notices and risk-based pricing notices, and (ii) reflect amendments to Regulation V that are consistent with the risk-based pricing amendments to FCRA.

State Issues

New York Requires New Premium Rates for Lender-Placed Insurance. On June 12,

New York Governor Andrew Cuomo and the New York Department of Financial Services (DFS) announced that insurers offering lender-placed insurance must submit new premium rate schedules by July 6, 2012, along with justifications for those new rates. The DFS argues that new rates and justifications are needed based on information derived from recent hearings, which DFS

Superintendent Lawsky believes proves that a lack of competition, unnecessarily high rates, and low loss ratios are harming borrowers in New York.

Courts

Tenth Circuit Holds Notice Does Not Extend Three-Year TILA Rescission Right. On June 11,

the U.S. Court of Appeals for the Tenth Circuit held that mere notice from a borrower does not extend the three-year period for filing an action for rescission under TILA. *Rosenfield v. HSBC Bank, USA*, No. 10-1442, 2012 WL 2087193 (10th Cir. Jun 11, 2012). In so holding, the unanimous three-judge panel rejected the position of the *amicus* brief filed by the CFPB and sided with the defendant-lender and three financial industry trade groups. Relying on *Beach v. Ocwen Federal Bank*, 523 U.S. 410 (1998), the Tenth Circuit emphasized that TILA's three-year statute of repose was a strict limit on the time for filing suits for rescission. According to the court, an attempt to extend the period by filing a notice within the three-year period would be inconsistent with that strict limit. Furthermore, the court reasoned that adopting the borrower's position would make TILA enforcement difficult and expensive, all while clouding title on foreclosed homes. This decision deepens an already-existent circuit split between the Ninth Circuit (which took the same approach as the Tenth Circuit) and the Fourth Circuit (which concluded that notice within the three-year period was sufficient). The Eighth and Third Circuits currently are considering the same issue in pending cases.

Ninth Circuit Holds Debt Validation Notice That Implicitly Requires Debtor to Dispute Debt in Writing Does Not Violate FDCPA. On June 8, the U.S. Court of Appeals for the Ninth Circuit held that a debt validation notice does not violate the FDCPA if it only implicitly, rather than expressly, requires a debtor to dispute his or her debt in writing. *Riggs v. Prober & Raphael*, No. 10-17220, 2012 WL 2054640 (9th Cir. June 8, 2012). In *Riggs*, a debt collection law firm, in seeking to collect a debt owed to one of its clients, sent a debt validation notice to a debtor which implied that if the debtor wanted to dispute the debt, she would need to do so in writing. The debtor failed to contact the firm and made no payment towards her debt. Instead, after settling an action brought against her by the firm in state court, the debtor filed suit against the firm in federal court, alleging that the firm violated the FDCPA and its California equivalent because it required her to dispute her debt in writing and therefore misrepresented her right to dispute the debt. In affirming the ruling of the district court, the Ninth Circuit acknowledged that the "least sophisticated consumer" could interpret the firm's debt validation notice to imply that any dispute of the debt must be in writing. Nevertheless, recognizing that the FDCPA itself can be read to imply that a debtor must dispute a debt in writing, the Ninth Circuit held that there is a violation of the FDCPA only where the debt validation notice expressly requires the dispute be in writing.

Federal Court Holds Offset Against Delinquent Card Account May Violate TILA. On June 4, the United States District Court for the District of Maryland in a pending class action denied defendant's motion for summary judgment, and ruled that the plaintiffs properly alleged that a federal credit union violated the TILA and Regulation Z prohibition on offsets when it withdrew funds from members' deposit accounts to satisfy amounts due on the members' credit card accounts without clearly establishing a security interest in such deposit accounts. *Gardner v. Montgomery County Teachers*

Federal Credit Union, No. 10-02781, 2012 WL 1994602 (D. Md. Jun 4, 2012). The court rejected the credit union's argument that it had a consensual security interest in the members' deposit funds. In doing so, the court closely analyzed the Federal Reserve Board's Official Staff Commentary on § 226.12(d) of Regulation Z, and determined that the credit union did not meet any of the conditions necessary to claim a security interest in the deposit funds.

Firm News

STAGE Network Webinar - Civil Litigation with State Entities: Trends in Mortgage Backed Securities-Based Litigation

This webinar will examine recent lawsuits based upon Mortgage Backed Securities (MBS) and related claims concerning initial risk representation, underlying asset values, and other issues, that have been initiated by public sector actors such as state and local pension funds.

The webinar will also include a discussion of trends in MBS-based litigation that will be led by Jason M. Halper and Martin L. Seidel of Cadwalader, Wickersham & Taft LLP. Their presentation will include a look at recent claims brought under the Trust Indenture Act (TIA) regarding oversight of Mortgage-Backed securities trusts. The discussion will be moderated by Bradley J. Bondi of Cadwalader, Wickersham & Taft LLP and **Jeremiah S. Buckley** of BuckleySandler LLP.

When: Thursday, June 21, 2012 from 2:00 to 3:30 pm ET

To register for this complimentary webinar, please visit: https://www1.gotomeeting.com/register/706940360.

Jeffrey Naimon and **Howard Eisenhardt** will participate in the Mortgage Bankers Association's Anti-Money Laundering and Suspicious Activity Report Programs for Nonbank Mortgage Lenders and Originators Webinar on June 19, 2012. Mr. Naimon and Mr. Eisenhardt will discuss the role of AML programs and SARs in fighting mortgage fraud and preventing losses; the background of the Bank Secrecy Act; the AML program structure; the roles and responsibilities of various staff at the lender and of the lender compliance officer; what triggers a SAR filing; filing and submitting SAR forms; the importance of filing SARs in a timely manner; and the risks of violating BSA/AML requirements.

Tom Sporkin will speak at the BIO International Convention: The Global Event for Biotechnology on June 21, 2012 at the Boston Convention & Exhibition Center in Boston, MA. Mr. Sporkin will be on the panel entitled "Anti-Corruption Compliance on the Road to Regulatory Approval," adding his expertise on the SEC and its whistleblower incentive program to the views of other government, industry, lawyers, and accountants on strategies to comply with global anti-corruption regulations.

Jeffrey Naimon will speak at National Mortgage News' 4th Annual Best Practices in Loss Mitigation Conference in Dallas, TX on July 19, 2012. Mr. Naimon's panel is entitled "Current Regulatory Issues and Political Outlook" and will provide an overview of the regulatory and legislative developments

affecting the mortgage servicing market, review current regulatory issues, and discuss how the issues and election year political moving parts might affect the current regulatory landscape.

Mortgages

Freddie Mac Updates Multiple Servicing Requirements. On June 13,

Freddie Mac published Bulletin 2012-13, which updates multiple servicing requirements in the *Single-Family Seller/Servicer Guide*. With regard to the state foreclosure timeline, the Bulletin (i) adds several circumstances in which the timeline will be extended for all foreclosure sales completed on or after January 1, 2012, (ii) revises the calculation for compensatory fees associated with exceeding a state foreclosure timeline, and (iii) alters the compensatory fee appeal process. With regard to certain operational procedures, the Bulletin (i) adds a time frame for reimbursement of taxes that were incurred and paid to a taxing authority for non-real estate owned expenses, (ii) allows wire transfers for REO-related remittances, and (iii) clarifies the time frame for submitting modification agreements to document custodians. The Bulletin also makes changes to the Guide related to unemployment forbearance, the quality right party contract performance standard, fraud prevention and reporting, and MERS Rule 14.

Fannie Mae Updates Data Breach Policy, Compensatory Fees, and Allowable Foreclosure Timeframes. On June 13, Fannie Mae published Announcement SVC-2012-10, which updates its notice of data breach and incident response policy to require servicers to provide written notice to Fannie Mae of a data breach in addition to any reporting to consumers or state authorities required under applicable state law. A servicer also must request permission to use Fannie Mae's name if it intends to refer to Fannie Mae in any notices sent to affected borrowers or regulatory agencies. On the same day, Fannie Mae also published Announcement SVC-2012-11, which updates and clarifies for all mortgages with a foreclosure sale date on or after January 1, 2012, (i) the maximum allowable foreclosure time frames for twelve jurisdictions, (ii) compensatory fee assessments and appeals, and (iii) the preferred method of foreclosure in Montana and Nebraska.

FHFA Submits Annual Report to Congress. On June 13, the FHFA submitted to Congress its annual report on its 2011 examinations of Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. The report rates Fannie Mae and Freddie Mac as "critical supervisory concerns" and states that their continuing credit losses stem primarily from loans originated during 2005-2007. The report cites certain key challenges of Fannie Mae and Freddie Mac, which include (i) the ongoing stress in the national housing market, (ii) the broader economic environment, and (iii) the lack of certainty about the future of Fannie Mae and Freddie Mac. Among other things, the report provides updated information about the Fannie Mae and Freddie Mac portfolios and foreclosure prevention efforts. The report also notes that the financial condition of the Federal Home Loan Banks remained stable, though exposure to private-label mortgage-backed securities continues to impact certain of the Banks.

New York Requires New Premium Rates for Lender-Placed Insurance. On June 12, New York Governor Andrew Cuomo and the New York Department of Financial Services (DFS) announced that

insurers offering lender-placed insurance must submit new premium rate schedules by July 6, 2012, along with justifications for those new rates. The DFS argues that new rates and justifications are needed based on information derived from recent hearings, which DFS Superintendent Lawsky believes proves that a lack of competition, unnecessarily high rates, and low loss ratios are harming borrowers in New York.

Tenth Circuit Holds Notice Does Not Extend Three-Year TILA Rescission Right. On June 11, the U.S. Court of Appeals for the Tenth Circuit held that mere notice from a borrower does not extend the three-year period for filing an action for rescission under TILA. *Rosenfield v. HSBC Bank, USA*, No. 10-1442, 2012 WL 2087193 (10th Cir. Jun 11, 2012). In so holding, the unanimous three-judge panel rejected the position of the *amicus* brief filed by the CFPB and sided with the defendant-lender and three financial industry trade groups. Relying on *Beach v. Ocwen Federal Bank*, 523 U.S. 410 (1998), the Tenth Circuit emphasized that TILA's three-year statute of repose was a strict limit on the time for filing suits for rescission. According to the court, an attempt to extend the period by filing a notice within the three-year period would be inconsistent with that strict limit. Furthermore, the court reasoned that adopting the borrower's position would make TILA enforcement difficult and expensive, all while clouding title on foreclosed homes. This decision deepens an already-existent circuit split between the Ninth Circuit (which took the same approach as the Tenth Circuit) and the Fourth Circuit (which concluded that notice within the three-year period was sufficient). The Eighth and Third Circuits currently are considering the same issue in pending cases.

Banking

Federal Bank Regulators Seek Comment on Three Proposed Regulatory Capital Rules, Finalize Market Risk Rule. On June 12, the Federal Reserve Board, the OCC, and the FDIC

jointly issued three proposed rules, which would implement the risk-based and leverage capital requirements in the Basel III framework and relevant provisions mandated by the Dodd-Frank Act. The first proposed rule would, among other things, (i) raise the minimum regulatory capital levels; (ii) introduce an additional common equity capital buffer; and (iii) adopt a stricter definition of capital. Taken together, these requirements would require banking organizations to increase the quality and quantity of their regulatory capital. The second proposed rule incorporates aspects of Basel II's Standardized Approach to enhance the risk-sensitivity of a banking organization's risk-weighted assets calculations. In addition, the second proposed rule sets forth alternatives that would replace the use of external credit ratings, a change required by Section 939A of the Dodd-Frank Act. The third proposed rule would apply to banking organizations that are currently subject to the advanced approaches rule or to the market risk rule, and for the first time, to savings and loan holding companies that meet the relevant size, foreign exposure, and trading activity thresholds. This rule seeks to enhance the risk-based capital rules' sensitivity to trading risks and also would eliminate the use of external ratings as required by Section 939A of the Dodd-Frank Act. Comments on each of the proposed rules can be submitted through September 7, 2012.

Concurrent with the proposed rules, the federal regulators released a final rule regarding market risk. By amending the calculation of market risk, the final rule seeks to better characterize the risks facing

a particular institution and to help ensure the adequacy of capital related to the institution's market risk-related positions. The final rule incorporates comments received in response to a January 2011 proposed rule, as well as a December 2011 amended proposed rule, and applies to a banking organization with aggregate trading assets and liabilities equal to 10 percent of total assets, or $1 billion or more. According to the regulators, the most significant change from the proposals relates to the methods for determining the capital requirements for securitization positions. The final rule will impose greater capital requirements on the more subordinate tranches in a securitization because the final rule mechanism to calculate the capital charges on securitization exposures when the underlying pool of assets demonstrates credit weakness was altered to focus on delinquent exposures rather than on cumulative losses. This rule takes effect January 1, 2013.

OCC Finalizes Rule to Replace Certain Credit Rating References with Alternative Creditworthiness Standards. On June 13, pursuant to Section 939A of the Dodd-Frank Act, the OCC published a final rule with regard to regulations applicable to investment securities, securities offerings, and foreign bank capital equivalency deposits. The final rule is identical to the rule proposed by the OCC in November 2011 and will require national banks to assess whether a security issuer has an "adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure," a standard which may be met if the risk of default by the issuer is low and timely repayment of principal and interest is expected. For federal savings associations, the definition of "investment grade" would cross-reference the requirement established by the FDIC. Simultaneously, the OCC finalized guidance to outline measures (i) banks should put in place to demonstrate they have properly verified their investments, and (ii) institutions should put in place to demonstrate their compliance with due diligence requirements when making investments and reviewing investment portfolios. Specific due diligence factors will depend on the type of security, and firms will need to adjust the depth of due diligence to match the credit quality of the security, its complexity, and the size of the investment.

Consumer Finance

CFPB Seeks Additional Private Student Loan Complaints. On June 13,

the CFPB issued a Notice of Request for Information seeking information on existing private student loan complaints collected by state agencies, institutions of higher education, consumer and legal advocates, and lenders. In addition to its general solicitation, the CFPB specifically invited the participation of state attorneys general, schools, and advocacy groups. The responses received by the CFPB will be incorporated into the student loan ombudsman's report it provides to Congress pursuant to the Dodd-Frank Act. In conjunction with its general solicitation, the CFPB also published the nearly 2,000 comments it received in response to a Notice and Request for Information on private student loans that it issued on November 17, 2011. The CFPB identified the following common themes from the data collected to date in connection with its earlier solicitation: (i) many borrowers report relying on school financial aid offices for information and guidance on which loan products to use, (ii) many borrowers struggling in today's economy are finding their private student loan debt to be unmanageable, and (iii) many borrowers report finding it difficult to navigate the repayment process.

New Interagency FCRA Examination Procedures Released. On June 1, the Federal Reserve Board announced that the Consumer Compliance Task Force of the Federal Financial Institutions Examination Council approved revised FCRA examination procedures. The revised procedures (i) incorporate changes required by Dodd-Frank Act revisions of FCRA, which require disclosure of credit scores and information relating to credit scores in adverse action notices and risk-based pricing notices, and (ii) reflect amendments to Regulation V that are consistent with the risk-based pricing amendments to FCRA.

Ninth Circuit Holds Debt Validation Notice That Implicitly Requires Debtor to Dispute Debt in Writing Does Not Violate FDCPA. On June 8, the U.S. Court of Appeals for the Ninth Circuit held that a debt validation notice does not violate the FDCPA if it only implicitly, rather than expressly, requires a debtor to dispute his or her debt in writing. *Riggs v. Prober & Raphael*, No. 10-17220, 2012 WL 2054640 (9th Cir. June 8, 2012). In *Riggs*, a debt collection law firm, in seeking to collect a debt owed to one of its clients, sent a debt validation notice to a debtor which implied that if the debtor wanted to dispute the debt, she would need to do so in writing. The debtor failed to contact the firm and made no payment towards her debt. Instead, after settling an action brought against her by the firm in state court, the debtor filed suit against the firm in federal court, alleging that the firm violated the FDCPA and its California equivalent because it required her to dispute her debt in writing and therefore misrepresented her right to dispute the debt. In affirming the ruling of the district court, the Ninth Circuit acknowledged that the "least sophisticated consumer" could interpret the firm's debt validation notice to imply that any dispute of the debt must be in writing. Nevertheless, recognizing that the FDCPA itself can be read to imply that a debtor must dispute a debt in writing, the Ninth Circuit held that there is a violation of the FDCPA only where the debt validation notice expressly requires the dispute be in writing.

E-Commerce

FTC Settles FCRA Charges Against Data Broker. On June 12,

the FTC announced that a data broker agreed to settle charges that it marketed and sold consumer profiles to companies engaged in human resources, background screening, and recruiting without taking steps to protect consumer information as required by FCRA. The FTC claimed that the data broker operated as a consumer reporting agency and violated FCRA when it failed to ensure that the information it compiled and sold would be used only for permissible purposes. The broker also allegedly failed to ensure that consumer information it sold was accurate and failed to inform buyers of their FCRA obligations. Among other things, the settlement requires the data broker to pay an $800,000 civil penalty and prohibits the firm from any future violations of FCRA.

Credit Cards

Federal Court Holds Offset Against Delinquent Card Account May Violate TILA. On June 4, the United States District Court for the District of Maryland in a pending class action

denied defendant's motion for summary judgment, and ruled that the plaintiffs properly alleged that a federal credit union violated the TILA and Regulation Z prohibition on offsets when it withdrew funds from members' deposit accounts to satisfy amounts due on the members' credit card accounts without clearly establishing a security interest in such deposit accounts. *Gardner v. Montgomery County Teachers Federal Credit Union*, No. 10-02781, 2012 WL 1994602 (D. Md. Jun 4, 2012). The court rejected the credit union's argument that it had a consensual security interest in the members' deposit funds. In doing so, the court closely analyzed the Federal Reserve Board's Official Staff Commentary on § 226.12(d) of Regulation Z, and determined that the credit union did not meet any of the conditions necessary to claim a security interest in the deposit funds.