

March 25, 2011

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Federal Issues

Federal Reserve Board Issues Rule Amending Regulation Z to Clarify Its Earlier Rules Implementing the CARD Act. On March 18, the Federal Reserve Board (Board) issued a rule to clarify certain aspects of its prior rules implementing the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act). The Credit Card Act primarily amended the Truth in Lending Act (TILA) by instituting a number of new requirements to establish fair and transparent practices relating to open-end consumer credit plans. The Board's new rule is intended to enhance protections for consumers who use credit cards and to resolve areas of uncertainty concerning credit card issuers' compliance obligations. The Credit Card Act requires such issuers to consider a consumer's ability to make the required payments on the account prior to either opening a new account or increasing the credit limits on an existing account. The Board's rule addresses practices that can result in extensions of credit to consumers who lack the ability to pay. Specifically, the rule provides that credit card applications generally cannot request a consumer's "household income" because that term is too vague to allow issuers to accurately determine the consumer's ability to pay. Instead, issuers must consider the consumer's individual income or salary in making that determination. Further, the Board's rule makes clear that issuers' promotional programs that fully waive interest charges for a specified time period are subject to the same Credit Card Act protections as such programs that apply a reduced rate of interest for a specified time period. The rule also states that application fees, and similar fees that a consumer is required to pay before a credit card account is opened are covered by the same limitations as fees charged during the first year after the account is opened. The total amount of these fees cannot exceed 25 percent of the account's initial credit limit. For a copy of the press release and the Board's rule as prepared for submission to the *Federal Register*, please see <http://www.federalreserve.gov/newsevents/press/bcreg/20110318b.htm>.

Freddie Mac Amends Foreclosure and Bankruptcy Guidelines. On March 23, the Federal Home Loan Mortgage Corporation (Freddie Mac) issued Bulletin 2011-5 (Bulletin) to announce changes to its servicing requirements, including certain changes regarding foreclosure and bankruptcy processes, reimbursable expenses, and interactions with state Housing Finance Agencies (HFAs).

With respect to foreclosure and bankruptcy processes and requirements, the guidelines now (i) permit servicers to postpone scheduled foreclosure sales if they are handled by designated counsel, provided any new sale date is still within the applicable state foreclosure timeline, (ii) prohibit foreclosure counsel from foreclosing in the name of the Mortgage Electronic Registration Systems, Inc. for all foreclosures referred on or after April 1, (iii) contain additional prohibitions on foreclosure and bankruptcy referrals and additional remedies, and (iv) prohibit servicers from charging Freddie Mac, trustees, or attorneys for obligations compensated by the servicing spread. The Bulletin also revamps property preservation and other expense reimbursement requirements (i) by introducing new reimbursable expenses for property inspections and invoice processing, and (ii) by increasing the expense limits for certain existing property preservation expenses. Finally, the Bulletin rolls out streamlined requirements for servicer interactions with state HFAs regarding mortgage assistance programs. Unless otherwise noted in the Bulletin, all of the changes are effective immediately. For a copy of Bulletin 2011-5, please see <http://www.freddiemac.com/sell/guide/bulletins/pdf/bl1105.pdf>.

State Issues

Kentucky Adds Exemption to Mortgage Loan Originator Licensing Law. On March 16, Kentucky Governor Steve Beshear signed into law H.B. 470, a bill which amends the Kentucky Mortgage Licensing and Regulation Act to exempt from the state's mortgage loan originator licensing requirement a person (i) who originates a dwelling-secured mortgage loan, (ii) who is exempted by an order of the Commissioner of the Kentucky Department of Financial Institutions, and (iii) whose exemption would not run afoul of the mortgage loan originator registration requirements set forth under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. H.B. 470 becomes effective June 8, 2011. [Click here for a copy of H.B. 470.](#)

Courts

Illinois State Appellate Court Reverses Judgment in Favor of Unregistered Collection Agency. On March 16, the Illinois Appellate Court reversed a judgment in favor of a debt collector based on the allegation that the collector was not registered as a collection agency with the state. *LVNV Funding, LLC v. Trice*, Appeal No. 1-09-2773 (Ill. App. Ct. March 16, 2011). In *LVNV*, the trial court granted judgment to a debt collector on an unpaid credit card debt. The defendant filed a motion to vacate the judgment alleging that, at the time that the plaintiff purchased and sued on the debt, it had not registered with the state as a collection agency. The trial court denied the motion without a hearing because defendant failed to raise the registration issue before the trial. The appellate court, however, reversed and remanded, holding that the defendant had alleged adequate grounds for vacating the judgment in favor of the plaintiff, and directing the trial court to hold an evidentiary hearing on the issue if the plaintiff disputes the accuracy of the defendant's factual allegations. According to the appellate court, the defendant's allegation, if true, would mean that the debt collector had acted criminally - it is a Class A misdemeanor to act as a collection agency without proper registration - both when it purchased the debt and when it sued on it. Consequently, the crimes, if proven, make void the judgment in the plaintiff's favor. According to the appellate court, "[t]he trial court should not enforce a judgment in [plaintiff's] favor on a complaint [plaintiff] filed in violation of

criminal law, because to do so would abet [plaintiff] in the commission of the crime of debt collection by an unregistered collection agency." For a copy of the opinion, please see <http://bit.ly/rb5Fck>.

Michigan Jury Finds Mortgage Loan Officer Overtime Back-Pay Not Required. On March 17, a jury in the U.S. District Court for the Eastern District of Michigan found that a mortgage company did not violate the Fair Labor Standards Act (FLSA) by classifying certain mortgage loan officers in a manner that exempted them from receiving overtime pay for hours worked in excess of forty (40) per week. *Henry v. Quicken Loans, Inc.*, No. 04-71860 (E.D. Mich. March 17, 2011). In reaching its decision, the jury found that the plaintiffs' primary job duty was the performance of non-manual work directly related to management or general business operations of its company and that the plaintiffs' primary job duty included the exercise of discretion and independent judgment with respect to matters of significance. It should be noted that the U.S. Department of Labor issued an opinion in March, 2010 - overturning a 2006 opinion - that certain mortgage loan officers should receive overtime pay. [Click here for the complaint and jury verdict.](#)

Firm News

BuckleySandler LLP will host its West Coast Mortgage Lending and Servicing Today Conference on Monday, April 11 at the Balboa Bay Club and Resort in Newport Beach, CA. The conference will focus on compliance, regulatory and litigation issues in today's changing mortgage lending and servicing environment. For more information, please visit

<http://fairlendingtoday.com/>. To register for the conference, please email Anne McKenzie at amckenzie@buckleysandler.com.

Join Us! 2011 Fair Lending Today Conference on Compliance, Regulatory & Litigation Issues in Today's Changing Enforcement Environment, hosted by BuckleySandler LLP.

2011 Panel Topics Include:

- Fair and Responsible Lending Enforcement and Litigation Overview
- Fair Mortgage Servicing: The Foreclosure Affidavit Crisis and More Challenges for Services
- The New Wave of SCRA Enforcement
- Dodd-Frank and the Consumer Financial Protection Bureau: Implementation, Preemption, State Regulation, and UDAP
- The New Enforcement Environment and Financial Services Regulation
- Privacy, Data Security, and Data Breach Litigation Nationally and Internationally
- Community Reinvestment Act: A Revitalized Statute?
- Key Trends in Fair Lending Risk Management Programs
- Fair Lending Issues Impact on Bank Merger & Acquisition Activity

When: Monday, May 2

Where: The Fairmont Hotel in Washington, DC

Register or Learn More: Visit <http://fairlendingtoday.com> or email fairlending@buckleysandler.com.

[Margo Tank](#) will participate on a panel entitled "eMortgage Implementation - How Do I Get Started?" at the MBA's National Technology in Mortgage Banking Conference & Expo, on March 27 - 30.

[Margo Tank](#) will participate in a webinar entitled "Protecting Your Scientific Intellectual Property Requires More Than Just Digital Signatures" at 2pm on March 31.

[Benjamin Klubes](#) will be speaking at ACI's 6th National Forum on Residential Mortgage Litigation & Regulatory Enforcement on Thursday, April 7 in Washington, D.C. Mr. Klubes' panel is called "Residential Mortgages and the Capital Markets: Bringing and Defending Against Investor Claims Arising From Loan Modifications and Alleged Foreclosure Documentation Errors." On the panel with Mr. Klubes is Denise P. Brennan, Managing Counsel, Wells Fargo Home Mortgage and Talcott J. Franklin, Attorney, Talcott Franklin P.C., Dallas, Texas.

[Margo Tank](#) will be speaking at the E-Signature Summit for Banking Executives in New York on April 8.

[James Parkinson](#) will participate on a panel entitled "The Role of the Lawyer in Preventing Corruption," at the International Bar Association's Bar Leaders Conference in Miami, on May 4.

[Warren Traiger](#) will be speaking about potential changes to the CRA regulations and the current regulatory environment during a webinar hosted by the CRA Qualified Investment Fund, on Thursday, May 19 at 2pm.

[James Parkinson](#) will be speaking at the ACI's "FCPA Compliance in Emerging Markets" program in Washington, D.C., on June 15 -16.

[Andrew Sandler](#) will be participating on a panel at the Florida Bar Annual Convention on Friday, June 24 as part of the "Presidential Showcase". On the panel with Mr. Sandler is Paul Bland, Public Justice. The Moderator is Justice R. Fred Lewis, a Justice of the Florida Supreme Court, a former Chief Justice and founder of Justice Teaching.

Miscellany

FINRA Issues Notice Reminding Member Firms of Need to Comply With FCPA. The Financial Industry Regulatory Authority (FINRA) recently issued Regulatory Notice 11-12, which reminds FINRA member firms that they are subject to the prohibitions of the Foreign Corrupt Practices Act of 1977 (FCPA). Member firms who are "issuers" under the securities laws, and their officers, directors, employees, and agents, are subject to both the FCPA's anti-bribery prohibitions as well as the FCPA's accounting provisions. Other member firms, and their officers, directors, employees, and agents, are subject to the anti-bribery prohibitions as "domestic concerns" or as foreign businesses doing business in the United States. FINRA also advised member firms to review the FCPA and their business practices, and advised that a failure to comply with the FCPA would be considered to be a violation of FINRA Rule 2010 as conduct inconsistent with high standards of commercial honor and just and equitable principles of trade.

For a copy of Regulatory Notice 11-12, please see <http://bit.ly/j6C5u8>.

Two Former Bank Officers Indicted for Bank Fraud. On March 21, the Department of Justice (DOJ) announced that the former bank president and a former senior loan officer had been indicted on a variety of charges including bank fraud, conspiracy to commit bank fraud and conducting a continuing financial crimes enterprise in connection with alleged misconduct at FirstCity Bank, an Atlanta Bank seized by regulators on March 20, 2009. The two bank officers and their co-conspirators allegedly duped the bank into approving multi-million dollar commercial loans to fund the defendants' own personal business activities. The DOJ has alleged that the conspiracy generated over \$5 million. These charges stem from a joint investigation by various agencies that are members of the Financial Fraud Enforcement Task Force, an interagency task force established by President Obama in November 2009 with the mission of coordinating prosecution of financial crimes. For a copy of the press release announcing the indictment, please see <http://www.stopfraud.gov/news/news-03212011-2.html>.

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