

*September 10, 2010*

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## Federal Issues

**HUD Now Providing FHA Short Refinance Option.** On September 7, the U.S. Department of Housing and Urban Development (HUD) began providing an additional refinancing option for "underwater" borrowers, *i.e.*, homeowners who owe more on their mortgage loan than the value of their property. Originally announced in March (as reported in [InfoBytes, March 26, 2010](#)), this enhancement to the Federal Housing Administration (FHA) refinance program will offer certain underwater borrowers the opportunity to qualify for an FHA-insured mortgage. To qualify, (i) the borrower must be underwater, (ii) the borrower must be current on the existing mortgage, (iii) the borrower must qualify under FHA underwriting requirements, (iv) the property must be the borrower's primary residence, (v) the lienholder must consent and agree to write off at least ten percent of the unpaid principal balance of the first mortgage, (vi) the existing lien must not be an FHA-insured loan, and (vii) the refinanced FHA-insured loan must have a loan-to-value ratio of no more than 97.75 percent and a combined loan-to-value ratio no greater than 115 percent. For a copy of the press release, please see <http://1.usa.gov/cvwjKu>.

## State Issues

**Deadlines Approaching Under New Nevada Mortgage Regulations.** The Nevada Division of Mortgage Lending regulations R035-10 and R038-10 have gone into effect, and a compliance deadline of October 1, 2010 is approaching for many of the new requirements on mortgage bankers, brokers and agents. Under the new regulations, licensees arranging more than \$20 million per year in loans are required to deposit a \$75,000 bond, and licensees with annual loan volume of \$20 million or less must post a \$50,000 bond. Entities holding both mortgage banker and broker licenses will be required to post two bonds. If appropriate bonds are not posted by October 1, the licensee must cease conducting business. The deposit of acceptable security in lieu of a bond will no longer be permitted. The regulations require all persons holding a license issued pursuant to Nevada Revised Statutes 645B or 645E to register with the Nationwide Mortgage Licensing System (NMLS). Nevada is going live on NMLS on October 1. Thereafter, except for the submission of license renewals which will begin on December 2011, all new applications, changes of associations, annual financial submissions, etc. must be done through NMLS. In addition, all mortgage agents must comply with all requirements of the SAFE Act, including pre-licensing education and passage of both the federal and

Nevada State test components. The regulations also make various changes to advertising and education requirements. Synopses of the new regulations can be found at <http://bit.ly/nskrjR> and <http://bit.ly/p1ZMtF>. The full text of the regulations is available at <http://bit.ly/o9oSni> and <http://bit.ly/gbR8VI>.

**New York Attorney General Investigates Student Credit Card Marketing.** On September 2, New York Attorney General Cuomo announced an investigation into deceptive credit card marketing practices that target college students through their colleges. As part of the investigation, letters were sent to every college and university in New York - approximately 300 in total - requesting that the schools submit any exclusive contracts they currently have with credit and debit card companies. These contracts will be examined by the Attorney General for problematic marketing practices including schools providing information to credit card marketers without student permission, credit card companies paying schools for exclusive marketing rights without a competitive bidding process, and schools receiving a percentage of finance charges from student accounts. The letters also urge the colleges and universities to ensure that they are in compliance with the 2009 Credit Card Accountability, Responsibility, and Disclosure Act, which provides protections for college students. This investigation builds on the Attorney General's ongoing investigation into the student loan industry, which began in 2007. [For a copy of the letter sent to college and university presidents, please click here.](#) [For a copy of the Attorney General's news release, please click here.](#)

**Florida Authorities Investigating Two Unlicensed Loan Modification Companies.** On September 2, the Florida Office of Financial Regulation (OFR) issued an emergency cease and desist order barring two allegedly unlicensed loan modification companies from doing business, and search warrants were executed at two offices of the companies. The OFR alleges that the two companies - Global Equity Solutions and Hope Financial Services - provided unlawful loan modification services in Florida and nationwide without required licenses. The OFR's preliminary findings found that the companies also required clients to pay an up-front sum before completion of a loan modification. Charges against the owners or employees of the companies are pending further investigation. For a copy of the press release, please see <http://www.flofr.com/PressReleases/ViewMediaRelease.asp?ID=3675>.

**Pennsylvania Department of Banking Announces Enforcement Actions Against Mortgage Companies.** The Pennsylvania Department of Banking (PA DOB) recently announced four final orders against mortgage companies for violating the state's Mortgage Licensing Act (MLA). On September 1, the PA DOB entered into a Consent Agreement and Order with Trident Mortgage Company LP, which stated that Trident originated mortgages from unlicensed branch locations, conducted mortgage loan business through unlicensed mortgage originators, failed to provide consumers with required disclosures on escrow accounts, rates and other terms and conditions, and violated Federal Reserve Board Regulation Z by failing to disclose the APR in advertised loan rates. The PA DOB assessed a \$120,000 fine and ordered that Trident cease and desist its alleged wrongful activity. Please see <http://bit.ly/qZ42DJ>. On August 31, the PA DOB entered into a Consent Agreement and Order with Freedom Mortgage Corporation, stating that Freedom violated the MLA by originating mortgages through unlicensed employees and failing to properly control and supervise its employees. Freedom denied any wrongdoing, but agreed to pay a \$10,000 fine and cease its alleged wrongful activity to avoid litigation. Please see <http://bit.ly/nJ8rrG>.

Also on August 31, the PA DOB entered into a Consent Agreement and Order with Liberty One Financial, Inc., which stated that Liberty One violated the MLA by originating mortgages through unlicensed employees and failing to properly control and supervise its employees. The PA DOB assessed a \$5,000 fine and ordered that Liberty One cease and desist its alleged wrongful activity. For a copy of the orders, please see <http://bit.ly/pa8CSG>. On August 30, the PA DOB entered into a Consent Agreement and Order with American Commercial Lending, Inc. and its president and owner, Jeffrey Bechtold. The Order stated that Bechtold and American Commercial violated the MLA when Bechtold originated mortgages without being licensed as a mortgage originator. The PA DOB assessed a \$4,500 fine and ordered that Bechtold and American Commercial cease and desist from performing the services of a mortgage originator without a license. Please see <http://bit.ly/oWBv7B>.

## Courts

**Colorado Federal Court Holds that an Action to Determine the Effectiveness of a Rescission must be Commenced Within Three Years of the Loan Closing.** On August 31, the U.S. District Court for the District of Colorado dismissed as untimely several claims alleging violations of the Truth-in-Lending Act (TILA) and the Homeowner's Equity Protection Act (HOEPA). In *Rosenfield v. HSBC*, 2010 WL 3489926, No. 10-CV-00058, (D. Colo., Aug. 31, 2010), the plaintiff-borrower alleged that the defendant-bank violated TILA and HOEPA by failing to make required disclosures and inaccurately stating the total finance charges on her mortgage loan. This suit arose after the plaintiff sent a letter purporting to rescind the loan, to which she alleges she received no response. The plaintiff sought, among other things, the following relief: (i) a declaration that she had rescinded her mortgage in accordance with TILA and HOEPA; (ii) injunctive relief to prevent the defendant from foreclosing on the property; and (iii) damages pursuant to TILA and HOEPA due to the defendant's failure to properly disclose the finance charges associated with the loan. The defendant moved to dismiss the complaint, arguing that all of the claims were time-barred. The district court agreed. With regard to the declaratory action, the court held that the plaintiff had not commenced action within the three-year statute of limitation for such claims. Although the court acknowledged that the complaint alleged that the plaintiff had given notice of the rescission within a three-year period for the loan closing, the court held that an action to determine the effectiveness of the rescission must also be commenced within three years of the breach to be timely. The plaintiff's claims for damages were also dismissed as the court held that they were subject to the one-year statute of limitations set forth for damages actions under TILA. Finally, having held that the plaintiff's rescission was untimely, the court also dismissed the plaintiff's claims for injunctive relief, explaining that the injunctive relief requested was "premised on the notion that the Plaintiff could rescind the transaction." [For a copy of the opinion, please click here.](#)

## Firm News

[David Krakoff](#) will be speaking at the ALI-ABA Environmental Crimes Conference on Sept. 23, 2010.

[Jeff Naimon](#) will be speaking on the Servicing Issues panel at the Mortgage Bankers Association's Regulatory Compliance Conference on September 27. [Jonice Gray Tucker](#) will be moderating the Litigation Update Panel.

[Andrew Sandler](#) will be co-chairing the PLI program Financial Crisis Fallout 2010: Emerging Enforcement Trends in New York City on November 4. [David Krakoff](#) and [Sam Buffone](#) will also be presenting at the seminar.

[Andrew Sandler](#) will be speaking at the American Conference Institute's 10th Annual Advanced Forum on Consumer Finance Class Actions & Litigation on January 27, 2011 at 11am. The conference is taking place at The Helmsley Park Lane Hotel, 36 Central Park South, NYC. The topic will be Emerging Federal and State Regulatory and Enforcement Initiatives: FTC, DOJ, SEC, FRB, and State AGs Perspectives. Also on the panel with Andy will be Attorney General William Sorrell, AG, State of Vermont and Attorney General Greg Zoeller, AG, State of Indiana.

## Mortgages

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Email: [infobytes@buckleysandler.com](mailto:infobytes@buckleysandler.com)

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