

InfoBytes

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Federal Issues

FDIC Issues Rules Concerning Resolution Plans Under the Dodd-Frank Act. On September 13, the Federal Deposit Insurance Corporation (FDIC) approved a joint final rule implementing Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which requires bank holding companies with assets of \$50 billion or more and companies designated as systemic by the Financial Stability Oversight Council to report periodically to the FDIC and the Federal Reserve Board (FRB) the company's plan for its rapid and orderly resolution in the event of material financial distress or failure. The final rule also sets specific standards for the resolution plans, including requiring a strategic analysis of the plan's components; a description of the range of specific actions to be taken in the resolution; and analyses of the company's organization, material entities, interconnections, interdependencies, and management information systems, among other elements.

Submission of resolution plans will be staggered based on the asset size of a covered company's U.S. operations. Companies with \$250 billion or more in non-bank assets must submit plans on or before July 1, 2012; companies with \$100 billion or more in total non-bank assets must submit plans on or before July 1, 2013; and companies that predominately operate through one or more insured depository institutions must submit plans on or before December 31, 2013. Plans are required to be updated annually. A company that experiences a material event after a plan is submitted has 45 days to notify regulators of the event.

Separately, the FDIC approved a complementary interim final rule under the Federal Deposit Insurance Act to require insured depository institutions with \$50 billion or more in total assets to submit periodic contingency plans to the FDIC for resolution in the event of failure. The interim rule has a 60-day comment period. For a copy of the press releases announcing the rules, please see <http://www.fdic.gov/news/news/press/2011/pr11150.html> and <http://www.fdic.gov/news/news/press/2011/pr11151.html>.

Courts

Alabama Supreme Court Affirms Judgment for MERS in Wrongful Foreclosure Action. On September 9, the Supreme Court of Alabama affirmed without opinion an order granting summary judgment to the Mortgage Electronic Registration System, Inc. (MERS) and its corporate parent in an action alleging that MERS lacked standing to foreclose. *Henderson v. Mercorp., Inc. et al.*, No. 1091716 (Ala. Sept. 9, 2011), aff'g No. 08-CV-900805 (Ala. Cir. Ct. May 6, 2010).

Following her default and the initiation of foreclosure proceedings by MERS, the borrower sued, alleging that MERS lacked the "present legal right to enforce" the mortgage. Plaintiff's complaint included claims for wrongful foreclosure, negligence, wantonness, and unjust enrichment. MERS moved for summary judgment, arguing that it had standing to foreclose because MERS is the mortgagee as nominee for the Lender and MERS holds the legal title to the note and mortgage. MERS' attorney held physical possession of the note for MERS, and the note endorsed in blank. MERS also moved to dismiss plaintiff's claims for negligence, wantonness, and unjust enrichment because MERS was not the servicer of the loan and was not responsible for collection, distribution, or application of plaintiff's mortgage payments. Additionally, MERS argued that plaintiff's wrongful foreclosure claim should be dismissed because no foreclosure sale had occurred or was scheduled, even though plaintiff had defaulted. The trial court granted MERS' motion for summary judgment and dismissed the case. On plaintiff's appeal, the Alabama Supreme Court affirmed the trial court without opinion. [Click here for a copy of the trial court's order.](#)

Miscellany

FTC Files Suit Against Defendant Who Allegedly Impersonated Federal Agencies. On September 22, the Federal Trade Commission (FTC) announced that it had filed a complaint against Christopher Mallett, alleging that he violated the FTC Act by creating websites that impersonated federal agencies and deceived consumers. In its complaint-filed in the D.C. District Court-the FTC stated that Mallett created several websites claiming to be connected to fictitious government agencies that would reduce consumers' debts. Consumers who submitted their information on these websites were contacted by third party companies selling debt relief services. The FTC alleged that Mallett's false representation of government affiliation violated the FTC Act, the FTC's Telemarketing Sales Rule, and the FTC's Mortgage Assistance Relief Services Rule. The complaint sought preliminary and permanent injunctions, as well as monetary relief for aggrieved consumers. [Click here for a copy of the press release announcing the suit.](#) [Click here for a copy of the complaint.](#)

Xerox Study Finds Online Collaboration Is Key to Paperless Mortgage Adoption. A recent Xerox Mortgage Services study found that mortgage professionals think online collaboration across the multiple players in the loan process is a key component of a paperless process. Ninety-six percent of respondents to the seventh Path to Paperless survey, up from 45 percent in 2010, indicated that working together through an electronic loan folder is critical to achieving a paperless mortgage environment. The survey showed an increase in the number of respondents who have implemented components of an eMortgage: 61 percent are using paperless origination and underwriting; 61 percent are electronically delivering closed loan folders to investors; and 39 percent are leveraging electronic acknowledgement and electronic signatures on disclosure documents. The survey also found that the uncertainty around MERS and GSEs will not impact the eMortgage initiatives of a majority of respondents. [The press release can be found here.](#) [The complete survey results can be requested here.](#)

Agencies Introduce Improved Internet Safety and Security Website. Recently, a group of 16 federal agencies, led by the Federal Trade Commission and including the banking and securities regulatory agencies, announced the launch of a revised information website to promote safe, secure, and responsible online practices. The website, OnGuardOnline.gov, includes a blog on cybersecurity, allows users to receive e-mail messages to notify of site updates, and includes information on protecting children online, avoidance of scams, good practices for online shopping, and computer security tips. [Click here for a copy of the announcement.](#)

Firm News

[Andrew Sandler](#), [Benjamin Klubes](#), and [Jonice Gray Tucker](#) will be speaking at the Mortgage Bankers Association's Regulatory Compliance Conference which will be held in Washington, D.C. from September 25-27. Mr. Sandler will be addressing enforcement priorities. Mr. Klubes will address litigation and enforcement trends relating to loan originations, and Ms. Tucker will speak on developments in mortgage servicing.

[Benjamin Klubes](#) will be moderating a panel titled, "The Path Ahead for Housing Finance: Just Changing Lanes or Time for a New Road?" at George Washington University Law School's "Dodd-Frank's Future Direction: On Course or Off Track" symposium on October 21. BuckleySandler is a sponsor for this symposium.

[Andrew Sandler](#) and [Benjamin Klubes](#) will be speaking at the 15th Annual CRA & Fair Lending Colloquium which will be held in Baltimore, Maryland from November 6-8, 2011. Mr. Sandler will be addressing "Hot, Hot, Hot Compliance Topics: Reform Impact, Oversight Trends, Enforcement Actions and More!" on November 7. Mr. Klubes will be moderating a panel on "Non-Mortgage Lending: The Fair Lending Dragon is Breathing Fire" on November 8. For further details on the colloquium please see www.cracolloquium.com.

[Margo Tank](#) and [John Richards](#) will participate in the ESRA Fall Conference in Washington, D.C. on November 9 and 10. For details on registration, accommodations, and agenda, please see <http://esignrecords.org/events/>.

[David Krakoff](#) will be participating in a panel at the International Association of Defense Counsel program on worldwide anti-corruption laws in Palm Springs in February 2012.

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