

August 5, 2011

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## Federal Issues

**HUD Issues Mortgagee Letter 2011-25 on Reporting Requirements.** On July 28, the Department of Housing and Urban Development (HUD) issued Mortgagee Letter 2011-25, advising Federal Housing Administration (FHA) supervised lenders that they are not required to submit audited financial statements to FHA if they are (i) small supervised lenders, (ii) regulated by the Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), or National Credit Union Administration (NCUA), and (iii) have consolidated assets that do not meet the threshold requirements mandated by those agencies for submitting audited financial statements. (The threshold requirements are set forth at 12 C.F.R. §§ 363.1(a) (FDIC), 562.4(b)(2) (OTS), and 715.4(c) (NCUA). The Mortgagee Letter notes that under current regulations, these exemptions apply to supervised institutions with less than \$500 million in assets in 2010.) These new directions apply at the time of approval and at recertification, but expire on April 7, 2012. Supervised lenders who are not required to submit audited financial statements to FHA must submit (i) a copy of their unaudited regulatory report (also known as a Report of Condition and Income, or a Call Report) as of their fiscal year end, (ii) an independent auditor's report on internal control relating to the administration of HUD-assisted programs, and (iii) an independent auditor's report on compliance with specific requirements applicable to major and non-major HUD programs as set forth at chapters 1, 2 and 7 of HUD OIG Handbook 2000.04. In addition, FHA-approved supervised lenders who are in parent-subsidiary relationships, and who choose to submit the audited consolidated financial statements of a parent company in accordance with Mortgagee Letter 2011-05, are no longer required to submit internally prepared consolidating schedules. These lenders must instead submit a copy of the subsidiary's unaudited regulatory report (*i.e.*, the Report of Condition and Income or Call Report) as of the lender's fiscal year end. All FHA approval requirements, including net worth and liquidity requirements, remain in effect for FHA-approved entities submitting the audited consolidated financial statements of a parent company. Finally, Mortgagee Letter 2011-25 provides that until the Lender Assessment Subsystem (LASS) is updated to permit the submission of unaudited regulatory reports through a separate attachment, supervised lenders must submit these reports by uploading them with the auditor's footnote in LASS. Note that as of July 21, 2011, the functions of the OTS have been transferred to the Office of the Comptroller of the Currency (OCC), FDIC, Federal Reserve Board and Consumer Financial Protection Bureau, and the OTS became part of the OCC. [Click here for a copy of the mortgagee letter.](#)

**FinCEN Issues Final Prepaid Access Rule.** The Financial Crimes Enforcement Network (FinCEN) has issued a final rule that amends several Bank Secrecy Act (BSA) provisions governing money services businesses (MSBs). Under the final rule, "stored value" is renamed "prepaid access" without changing the definition of the term, and the obligations of parties involved in the distribution of "prepaid access" have been expanded by replacing the terms "issuer" and "redeemer" of "stored value" with a new, broader category of participant: "providers of prepaid access." The final rule imposes suspicious activity reporting and customer and transaction information recordkeeping requirements on both "providers" and "sellers" of "prepaid access," while exempting from coverage (i) prepaid access products of \$1,000 or less and payroll products that cannot be used internationally, (ii) closed loop prepaid access products of \$2,000 or less, and (iii) government funded and pre-tax flexible spending for health and dependent care funded prepaid access programs, deemed to pose lower risks of money laundering and terrorist financing. The final rule also requires "providers of prepaid access" to register with FinCEN. The rule is effective September 27, 2011, and compliance is mandatory beginning January 29, 2012. [Click here for the new FinCEN final rule regulating "prepaid access."](#) [Click here for the press release announcing the final rule.](#)

## State Issues

**CSBS Announces the Addition of Federally Registered Mortgage Loan Originator Information to NMLS Consumer AccessSM.** On August 2, the Conference of State Bank Supervisors (CSBS) issued a press release announcing that information about federally registered insured depository institutions and mortgage loan originators employed by those entities is now available through the Nationwide Mortgage Licensing System & Registry (NMLS) Consumer AccessSM website. This addition allows consumers to obtain the same level of detail about federally registered institutions and mortgage loan originators as they have been able to access regarding state-licensed companies, branches and mortgage loan originators, including their identification number, employment history, registration status, and current employer. According to CSBS, this addition to the Consumer AccessSM website achieves three critical goals: (i) providing consumers with a single place to obtain standardized information about mortgage loan providers, (ii) offering a transparent resource to consumers researching mortgage providers, and (iii) meeting the mandates outlined in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the SAFE Act) to provide consumers with easily accessible information, at no charge, regarding the background of state-licensed and federally registered mortgage loan originators. [Click here for a copy of the CSBS' press release.](#)

## Courts

**Third Circuit Bars FCRA Suit Against Credit Information Furnisher.** On July 28, the U.S. Third Circuit Court of Appeals upheld the dismissal of a consumer claim against a furnisher of credit information, holding that consumers have no direct cause of action against a under the Fair Credit Reporting Act (FCRA) if the consumer does not first provide notice of a dispute to the credit reporting agency. *SimmsParris v. Countrywide Financial Corp.*, No. 09-4542 (3d. Cir., Jul. 28, 2011). Plaintiff alleged that Countrywide Financial Corp. and Countrywide Home Loans (collectively Countrywide) reported her account as delinquent for two months. The plaintiff disputed this report with Countrywide directly, but did not dispute it with the credit reporting agency. When Countrywide continued to report the disputed late payments to the credit reporting agencies, the plaintiff filed suit alleging violations of FCRA and various state tort laws. As a result of the district court's granting summary judgment on behalf of Countrywide on all counts, plaintiff appealed the ruling with respect to the

FCRA claim only. The Third Circuit affirmed the granting of summary judgment, holding a private right of action against a furnisher may not proceed unless the consumer first files a dispute with the credit reporting agency that reported the allegedly erroneous information, triggering the credit reporting agency's obligation to inform the furnisher of the dispute and the furnisher's subsequent obligation to undertake a reasonable investigation. [Click here for a copy of the opinion.](#)

## Miscellany

**New York Federal Court Sentences Former Manager of Mortgage Brokerage to 60 Months in Prison For Fraud.** On August 1, Micah Meyers (Meyers), a former manager of Bridgewater Funding LLC (Bridgewater), was sentenced to 60 months in prison, three years of supervised release, and forfeiture of \$1 million. Meyers had previously pled guilty to one count of conspiracy to commit bank and wire fraud in connection with a scheme to fraudulently obtain over \$10 million in home loans on behalf of straw buyers. Meyers admitted to recruiting straw buyers to purchase homes in New York and Long Island from sellers, including homeowners facing foreclosure. Meyers then submitted false loan applications, through Bridgewater, on behalf of the straw buyers that included misrepresentations about the straw buyers' assets and other financial information, as well as the nature of the transactions with the sellers. Meyers admitted to (i) failing to make mortgage payments on some of the subsequently obtained loans, causing the straw buyers to default on the mortgages and the properties to go into foreclosure, (ii) renting the properties to tenants, using the rent to pay the mortgage for a period of time before defaulting on the mortgage and allowing the property to be foreclosed upon and the tenants evicted, and (iii) flipping other properties to another set of straw buyers who would then obtain additional fraudulent mortgages through Meyers. The case was brought in coordination with the federal Financial Fraud Enforcement Task Force. [Click here for a copy of the press release.](#)

**Department of Justice Sues Mortgage Lending Business President.** On July 29, the Department of Justice (DOJ) announced that it had filed a civil lawsuit against Robert S. Luce (Luce), founder and president of MDR Mortgage Corp. (MDR), located in Palatine, Illinois, alleging violations of the False Claims Act and the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). The complaint alleges that MDR had participated in mortgage insurance programs administered by the Department of Housing and Urban Development (HUD) Federal Housing Administration (FHA) and, through Luce, misrepresented to HUD that Luce was not under criminal investigation or indictment between April 2005 and October 2008. In fact, the complaint alleges, Luce had been indicted on multiple counts of fraud and obstruction of justice in 2005, and as a result MDR was ineligible to originate FHA loans. During that time, MDR allegedly continued to originate FHA insured loans, more than 90 of which later defaulted, resulting in \$1.6 million in insurance claims paid by HUD. [Click here for a copy of the complaint.](#) [Click here for a copy of the DOJ press release.](#)

## Firm News

[Jeremiah Buckley](#), [Jonathan Cannon](#), and [Jon Langlois](#) will be speaking at the Lender's One Summer Conference August 8-10, 2011. Mr. Buckley and Mr. Cannon will be presenting "CFPB Future and RESPA/TILA Update," and Mr. Langlois "QM/QRM Updates/FHA Updates/Fannie and Freddie Updates" as well as "Secondary Market and MERS Updates." Mr. Buckley will also present "Fair Lending for Community Mortgage Lenders" and Mr. Cannon "Regulatory and Attorney General Enforcement Environment" and "State Law Update."

[James Parkinson](#) will speak on the Foreign Corrupt Practices Act as a Visiting Lecturer at Universidad Panamericana, Mexico on August 25.

[Jonice Gray Tucker](#) will be moderating a panel focusing on Regulatory and Litigation Developments in Servicing at the California Mortgage Bankers' Servicing Conference on August 29 in Las Vegas.

[Benjamin Klubes](#) will be moderating a panel focusing on Preparing for and Responding to New and Emerging Federal and State Enforcement Actions at the ACI's Residential Mortgage Litigation and Regulatory Enforcement Conference on Tuesday, September 20.

[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 through September 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.

[James Parkinson](#) will be speaking at two International Bar Association training sessions as part of the IBA's Anti-Corruption Strategy for the Legal Profession (<http://www.anticorruptionstrategy.org/>) on September 27 (Sao Paulo, Brazil), and on September 29 (Caracas, Venezuela).

[David Krakoff](#) will be speaking at the International Association of Defense Counsel's program on Anti-Corruption laws in February 2012.

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