

January 28, 2011

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Federal Issues

HUD Provides Additional Guidance Regarding Claims Process under FHA Refinance Program.

Recently, the U.S. Department of Housing and Urban Development (HUD) provided additional guidance on claim filing requirements for FHA's refinance program for underwater borrowers. The program taps funds from the Emergency Economic Stabilization Act (EESA), administered by the Department of the Treasury, for partial payment of a mortgagee's unpaid principal balance. The EESA funding is one enhancement of the FHA's refinance program announced in August 2010, which was created to support borrowers who owe more than the current value of their home (as reported in [InfoBytes, August 13, 2010](#)). Mortgagees must first contact the government's designated claims processor, Wells Fargo, at ctsclaimsprocessor@wellsfargo.com to register and receive directions on how to submit claims. In the event of a default, a mortgagee may file a type01/Conveyance Claim for Insurance Benefits either in paper form or electronically. FHA will review claims and authorize payment for its portion of the unpaid principal balance for claims found to be eligible for payment and will direct the mortgagee to request the remainder from Treasury's claims processor. In addition, FHA is responsible for full payment of expenses related to the conveyance. In the event the property is reconveyed to the mortgagee, the mortgagee will be required to repay all claim funds to FHA, including the claim funds paid under EESA. [Click here for a copy of the Mortgagee Letter.](#)

Marketers Settle FTC Charges of Deceptive Advertising of Debt Relief Services. On January 20, the Federal Trade Commission (FTC) announced a settlement with Hermosa Group LLC, Media Innovations LLC, Financial Future Network LLC, and their owner, Jonathan Greenberg, over allegations of falsely advertised debt relief services. According to the FTC's complaint, the defendants made false or unsubstantiated claims that they could reduce debts substantially, settle debts quickly, and stop debt collector calls. The FTC also alleged that the defendants falsely claimed that they provided the debt relief services they advertised when in fact they only sold leads to debt relief providers and other sales lead generators. The settlement order bans the defendants from the debt relief business and imposes an \$8.5 million judgment that will be suspended when the defendants

pay \$500,000. For a copy of the settlement announcement, please see <http://www.ftc.gov/opa/2011/01/hermosa.shtm>.

State Issues

CSBS Announces Vermont Regulator's Receipt of Certificate of Accreditation. On January 20, the Conference of State Bank Supervisors (CSBS) announced that the Vermont Department of Banking, Insurance, Securities & Health Care Administration (BISHCA) received a Certificate of Accreditation for both its banking and mortgage regulatory programs. This is a renewal of the accreditation of BISHCA's bank regulatory program, and the first accreditation for the mortgage regulatory program, representing the first time a single regulatory department has received simultaneous banking and mortgage certificates of accreditation. [For a copy of the press release, please click here.](#)

Courts

U.S. Supreme Court Reverses Ninth Circuit in TILA Dispute. On January 24, the U.S. Supreme Court unanimously reversed a decision of the U.S. Court of Appeals for the Ninth Circuit that a since-amended provision of the Truth in Lending Act (TILA) required a creditor to provide contemporaneous notice of discretionary interest rate increases triggered by a default pursuant to previously disclosed terms of a credit card agreement. *Chase Bank USA, N.A. v. McCoy*, No. 09-329 (S. Ct. Jan. 24, 2011). The Ninth Circuit's opinion was reported in [InfoBytes, Mar. 27, 2009](#), and the Supreme Court's grant of certiorari was reported in [InfoBytes, June 25, 2010](#). The Court held that the applicable version of Federal Reserve Board Regulation Z, which implements TILA, is unclear regarding whether a change to the interest rate made pursuant to an issuer's authority under terms already disclosed constitutes a change to a term required to be contemporaneously disclosed. In light of this ambiguity, the Court deferred to the Board's interpretation of its own regulation. The Board had indicated in an amicus brief requested by the Court that Chase was not required to provide a change-in-terms notice in advance of implementing the change in interest rate. This issue is now largely moot, because the Credit Card Accountability Responsibility and Disclosure Act of 2009 amended TILA to require a 45-day advance notice for any rate increase due to account delinquency or default. For a copy of the decision, please see <http://www.supremecourt.gov/opinions/10pdf/09-329.pdf>.

Seventh Circuit Holds That Loan Modification Offers Are Subject To ECOA. The United States Court of Appeals for the Seventh Circuit affirmed a lower court's ruling in favor of a mortgage loan investor and loan servicer, but disagreed with the lower court's finding that the plaintiff's race discrimination claim under the Equal Credit Opportunity Act (ECOA) should have been dismissed at the pleading stage. *Estate of Davis v. Wells Fargo Bank et. al.*, No. 10-1549 (7th Cir. Jan. 12, 2011). In dismissing the plaintiff's ECOA claim, the lower court explained that the plaintiff was not an "applicant" under ECOA because she failed to allege that she had applied for an extension, renewal, or a continuation of credit. The Seventh Circuit disagreed, holding that the loan servicer's loan modification offer brought the plaintiff within the broad definition of applicant because she had "received an extension of credit." The Seventh Circuit concluded, however, that the error was harmless as the defendants were entitled to summary judgment on the ECOA claim because the

plaintiff had failed to present sufficient evidence of race discrimination. [Click here for a copy of the opinion.](#)

California Federal Court Sentences Loan Modification Fraud Defendant to 63 Months in Prison. On January 24, Glenn Rosofsky was sentenced to 63 months in prison and ordered to pay restitution of \$456,749 after pleading guilty to money laundering, conspiracy to commit money laundering and wire fraud, and filing a false tax return, in connection with a fraudulent telemarketing scheme related to mortgage loan modifications. Rosofsky admitted that he and several partners set up a company that fraudulently induced delinquent homeowners to purchase services by claiming that the company's lawyers and forensic accountants would deal with banks' loss mitigation departments to procure loan modification agreements for the homeowners. Rosofsky admitted that the company actually had no lawyers or forensic accountants, and did not successfully modify customers' loans, or have any connection, as claimed, to the Treasury Department's Making Home Affordable program. Over 300 homeowners paid over \$900,000 in total funds to the company. One other defendant has pleaded guilty in the scheme. The case was brought in coordination with the federal Financial Fraud Enforcement Task Force. For a copy of the press release, please see <http://www.stopfraud.gov/news/news-01242011.html>.

Firm News

[Andrew Sandler](#) and [Jonice Gray Tucker](#) will be presenting at the ABA's web conference "The Foreclosure Crisis Tsunami" on Tuesday, February 8. The 90-minute webinar will cover emerging litigation and enforcement trends as well as strategies for practicing in the current environment. Also on the panel will be Eric I. Halperin, Special Counsel for Fair Lending, Civil Rights Division, DOJ.

[Benjamin Klubes](#) will be speaking as a panelist on the litigation update panel of the American Securitization Forum in Orlando, Florida on Tuesday, February 8.

[Andrew Sandler](#) will be speaking at the 2011 ABA National Conference for Community Bankers on Tuesday, February 22 in San Diego. Mr. Sandler's session is: The Federal Bank Regulatory and Enforcement Environment Post-Dodd-Frank. Speaking with Mr. Sandler is Mark W. Olson, Co-Chairman, Treliant Risk Advisors LLC.

[James Parkinson](#) will speak on the Foreign Corrupt Practices Act as a Visiting Lecturer at Universidad Panamericana, Mexico, on March 16.

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

[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.

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

Miscellany

NMLS To Conduct Third Annual NMLS User Conference & Training. The Nationwide Mortgage Licensing System & Registry (NMLS) will conduct its third annual User Conference & Training February 7-10. The conference will be held at the Hyatt Regency Grand Cypress in Orlando, Florida. The conference is intended to bring together federal and state mortgage regulators, industry professionals, compliance companies, law firms, and education providers to discuss current issues within the industry. The conference is also intended to teach participants about the latest developments in mortgage supervision. For more information about the conference, please see <http://www.nmlsconference.org/>.

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