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To: Clients and Friends

From: David F. Dulock

Subject: Regulation Z Mortgage Loan Sale Disclosure Requirements – Revised §226.39

On September 24, 2010, the Federal Reserve Board (FRB) published in the Federal Register (75 FR 58489) a final rule amending Regulation Z by revising §226.39. The final rule implements Section 131(g) of the Truth in Lending Act (TILA), which was enacted on May 20, 2009, as Section 404(a) of the “Helping Families Save Their Homes Act.” (See our July 30, 2009 memorandum discussing Section 131(g) of TILA.) Section 131(g) of TILA became effective immediately (i.e., - May 20, 2009) and established a new requirement for notifying consumers of the sale or transfer of their mortgage loans. Consistent with Section 131(g), the final rule requires a person who acquires a mortgage loan to provide disclosures in writing notifying the consumer of the sale or transfer of the consumer’s mortgage loan no later than 30 days after the date on which the loan was sold, transferred or assigned. The final rule’s revision of §226.39 is substantially similar to the interim rule published by the FRB on November 20, 2009, which initially implemented Section 131(g) of TILA by adding §226.39. The final rule’s revision of §226.39 is effective as of January 1, 2011.

The mortgage loan sale notice implemented by §226.39 of Regulation Z is separate and distinct from the notice of transfer of servicing required by the Real Estate Settlement Procedures Act (RESPA). It may, however, be combined with the notice of transfer of servicing required by RESPA so long as the combined notices satisfy the timing and other requirements of §226.39 of Regulation Z.

The following explanation of the final rule is taken from the FRB’s preamble published with the final rule in the above issue of the *Federal Register*:

Disclosure Requirements

Section 131(g) of TILA applies to any consumer credit transaction secured by the consumer’s principal dwelling (i.e., closed-end mortgage loans and open-end home equity lines of credit). Thus, the final rule applies to a closed-end mortgage loan and an open-end home equity line of credit secured by the consumer’s principal dwelling (both called herein a “mortgage loan”). It requires an acquiring party to provide the disclosures in writing (either by mail, physical delivery, or in electronic form in compliance with the Federal E-Sign Act) to the consumer no later than 30 days after the date on which the mortgage loan was sold, transferred or assigned according to the records of the acquiring party or the transferring party, at the acquiring party’s option (herein “transfer date”). If there is more than one consumer, the disclosures may be provided to any consumer primarily liable on the mortgage loan.

Under the final rule, the disclosures must state (1) the identity of the mortgage loan (e.g., loan number, if previously provided to the consumer; or loan date and original loan or credit line amount); (2) the name, address, and telephone number of the new owner; (3) the transfer date; (4) the name, address, and telephone number of an agent or other party

authorized to receive the consumer's rescission notice and resolve issues concerning the consumer's payments on the mortgage loan (if other than the covered person); and (5) where the transfer of ownership is recorded in public records (*e.g.*, real property records of Harris County, Texas) or that it has not been recorded at the time of the disclosure, if that is the case.

The final rule applies the new disclosure requirements of §226.39 to any person or organization, including but not limited to a corporation, partnership, or proprietorship, that becomes the owner of an existing mortgage loan, whether through purchase, assignment or other transfer, by acquiring legal title to the debt obligation (herein "covered person"). Although TILA and Regulation Z generally apply only to a person to whom the consumer credit obligation is initially made payable and that regularly engages in extending consumer credit, the final rule applies to a covered person that acquires a mortgage loan without regard to whether that person also extends consumer credit by originating mortgage loans. However, the final rule provides that to be a covered person, the person also must acquire more than one mortgage loan in any 12-month period. A servicer of the mortgage loan is not treated as the owner of the debt obligation, and thus is not a covered person, if the mortgage loan was assigned to the servicer solely for the administrative convenience of the servicer in servicing the debt obligation.

Exceptions

The final rule provides the following three exceptions:

(1) Although under the final rule, a covered person must mail or otherwise deliver the required disclosures on or before the 30th day following the transfer date, the covered person need not give the disclosures if the covered person transfers, sells or assigns all of the covered person's interest in the mortgage loan to another party on or before that date. For example, a covered person that acquires a mortgage loan on March 15 must mail or deliver the disclosures on or before April 14 (the final rule deems March 15, the acquisition date, to be the transfer date for purposes of this exception); but, if the covered person transfers, sells or assigns all of the covered person's interest in the mortgage loan to another covered person on or before April 14, the transferring covered person need not provide the disclosures. The acquiring covered person, however, would have to comply with the final rule and provide the required disclosures unless one of the other exceptions applies to the acquiring covered person. If, however, a covered person transfers a partial interest in the mortgage loan on or before the 30th day following the person's acquisition date and retains a partial interest in the mortgage loan, the covered person must comply with the final rule unless one of the other exceptions applies.

(2) When the mortgage loan is transferred to the covered person in connection with a repurchase agreement that obligates the transferor to repurchase the mortgage loan, the covered person is not required to give the disclosures. This exception also applies when the covered person acquires the mortgage loan through an intermediary party instead of the transferor that is obligated to repurchase the mortgage loan. If the transferor does not repurchase the mortgage loan, the covered person must make the disclosures within 30 days after the date that the transaction is recognized as an acquisition on the covered person's books and records unless one of the other exceptions applies.

(3) When the covered person acquires only a partial interest in the mortgage loan and the

party authorized to resolve issues concerning the consumer's payments on the loan or receive the consumer's rescission notice does not change as a result of the transfer of the partial interest, the covered person is not required to give the disclosures.

This memorandum is for informational purposes and is only a summary of the final rule. We advise you to read the final rule and the FRB's preamble published with the final rule, which may be found at: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-24/pdf/2010-20664.pdf>.

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