

# Mortgage Banking Update

PATTON BOGGS LLP | NOVEMBER 16, 2009

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## DID YOU KNOW?

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**If you have any questions or if you require additional information, please contact:**

**Richard J. Andreano, Jr.**  
202-457-7517 (Direct)  
202-457-6315 (Fax)  
[randreano@pattonboggs.com](mailto:randreano@pattonboggs.com)

**John D. Socknat**  
202-457-7513 (Direct)  
202-457-6315 (Fax)  
[jsocknat@pattonboggs.com](mailto:jsocknat@pattonboggs.com)

**Michael S. Waldron**  
214-758-3436 (Direct)  
214-758-1550 (Fax)  
[mwaldron@pattonboggs.com](mailto:mwaldron@pattonboggs.com)

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## HUD ANNOUNCES RESPA ENFORCEMENT RESTRAINT

After weeks of speculation on whether the Department of Housing and Urban Development (HUD) would delay or provide other regulatory relief in connection with the new Real Estate Settlement Procedures Act (RESPA) rule to be implemented on January 1, 2010, HUD announced on November 13 that restraint will be exercised in connection with enforcement of the new rule.

HUD advised that through the end of April 2010, the staff of the Mortgagee Review Board (MRB) will exercise restraint in enforcing compliance with the new rule for Federal Housing Administration (FHA) lenders who have demonstrated that they are making a good faith effort to comply with the new RESPA rule. With regard to whether an FHA lender has exercised good faith, the MRB will consider whether the lender has relied on the new RESPA rule and the written guidance issued by HUD, and the extent to which the lender has made sufficient investment and commitment in technology, training and quality control designed to comply with the new rule. HUD Secretary Shaun Donovan stated that “[w]hile we will not delay implementation of RESPA’s new requirements, we are sensitive to the concerns of the industry as it integrates these new rules into their day-to-day business practices.”

HUD also is asking other federal and state enforcement agencies to exercise the same restraint during the four-month period for non-FHA originators and other settlement service providers who demonstrate the same good faith effort to comply with the new RESPA rule. This request is not binding on any other agency, nor does it limit the ability of a private party to bring or maintain a claim in an appropriate court. Oddly, the HUD announcement does not address the HUD staff who are not part of the MRB and enforce RESPA against both FHA and non-FHA lenders and other settlement service providers.

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## FED ISSUES GUIDANCE ON MORTGAGE TRANSFER NOTICE

On November 16, 2009, the Federal Reserve Board published an interim final rule providing additional guidance on how residential mortgage loan purchasers can comply with section 131(g) of the Truth in Lending Act. Section 131(g) was enacted as part of the Helping Families Save Their Homes Act, which became effective on May 20, 2009. Although effective upon issuance, compliance with the interim final rule is optional for 60 days from the date of publication in the Federal Register.

## LOOKING AHEAD:

### Mortgage Lending Practices Under Fire Webinar

December 2

**Topic:** Compliance, enforcement and litigation risks resulting from the changing regulatory regime in mortgage lending

**Time:** 1:00 – 2:30 p.m. EST

**Patton Boggs participants:**

**Patrick McManemin**

**Michael Waldron**

50% Off the Webinar when you use the promo code ZDFCT

### AllRegs Webinar

December 14

**Topic:** Understanding RESPA Reform

**Time:** 2:00 – 4:00 p.m. EST

**Patton Boggs participant:**

**Richard Andreano**

The interim final rule, which will be codified as section 226.39 of Regulation Z, requires any person who acquires legal title to two or more loans secured by a borrower's principal dwelling in any 12-month period to provide a notice to the borrower within 30 days of acquiring the loan. Servicers are not considered acquirers if they hold legal title solely for the administrative convenience of the servicer in servicing the loan. For purposes of section 226.39, the acquisition date is defined as the date it is recognized in the books and records of the acquirer.

The mortgage transfer notice must include the following:

- 1) the identity, address and telephone number of the acquirer;
- 2) the date of the acquisition;
- 3) information the borrower may use to contact an agent or party who has authority to act on behalf of the acquirer (e.g., the servicer); and
- 4) the location of the place where the transfer of ownership of the loan is recorded.

In apparent recognition of the regulatory burden upon short term holders and the potential borrower confusion that could result from the receipt of numerous notices in a short amount of time, the interim final rule provides an exception from the notice requirement to the extent an acquirer will hold legal title for no more than 30 days. Accordingly, aggregators, securitization vehicles and other short term holders will not be required to comply with the notice requirement, provided they sell or otherwise transfer legal title to the loan on or before the 30th calendar day following the date of acquisition.

The Federal Reserve Board is also seeking comment on the interim final rule. The deadline for submission is 60 days from the date of publication in the Federal Register.

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## FEDERAL AGENCIES FINALIZE MODEL PRIVACY NOTICE

On November 17, 2009 eight federal regulatory agencies released a final model privacy notice and joint rule under the Gramm-Leach-Bliley Act. The agencies are the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Federal Reserve Board, Office of Thrift Supervision, National Credit Union Administration, Federal Trade Commission, Commodity Futures Trading Commission and Securities and Exchange Commission. Please see the November 2 edition of Mortgage Banking Update for an article addressing the model privacy notice and rule. Publication of the notice and rule in the Federal Register will occur in the near future.

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## **DID YOU KNOW**

- Many state regulatory agencies require licensing for entities that engage in loss mitigation or mortgage loan modification activities. Mortgage servicers conducting such activities in connection with loans they service may be required to license personnel that actively modify loans as Mortgage Originators, depending on the jurisdictions in which the individuals conduct business.
- The SAFE Act imposes Mortgage Loan Originator licensing requirements on certain loan processors and underwriters, such as those who are compensated as independent contractors.
- The SAFE Act is resulting in significantly increased licensing costs for state-licensed mortgage companies and their personnel, mostly due to an increase in the number of jurisdictions regulating origination activities. As an example, Alaska, which historically has not licensed Mortgage Loan Originators, now imposes a \$960 fee in order to apply for and obtain a license as a Mortgage Loan Originator.

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