

NCLC REPORTS

Bankruptcy and Foreclosures Edition

Volume 29
January/February 2011

Developments and Ideas For the Practice of Consumer Law

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FRB Issues Final Rule on Mortgage Transfer of Ownership Notices

Borrowers must be notified whenever ownership of their mortgage loan has been transferred. This requirement was imposed by the Helping Families Save Their Homes Act of 2009 as a TILA amendment to TILA, codified at 15 U.S.C. § 1641(g)(1)(A)–(E). The FRB initially issued an interim final rule to implement the statutory requirements, and has now issued a final rule.¹ This article focuses on changes made by the final rule. Provisions unchanged by the final rule are reviewed in an earlier issue² and in NCLC's *Foreclosures*.³

Scope of Rule's Coverage

Covered Person. TILA applies to persons to whom an obligation is initially made payable and that regularly engage in extending credit. However, § 1641(g)'s new transfer notice requirement is not limited to loan originators and applies to persons that acquire ownership of an existing debt. Thus, the rule uses the term "covered person" rather than "creditor" to describe persons subject to its requirements.

A "covered person" is an owner of a mortgage loan who has acquired legal title to the debt obligation,⁴ or a partial interest in a mortgage loan.⁵ Persons jointly acquiring a mortgage loan are subject to the disclosure requirement.⁶ An acquiring party that is a separate legal entity from the seller or transferor of the mortgage must provide disclosures even if the parties are affiliates.⁷

Single Transaction Exemption. The *interim rule* provided that a covered person must acquire more than one mortgage loan in any twelve-month period. Comments from industry urged the Board to expand the exemption by making the rule applicable only to persons that acquire more than five mortgage loans in the preceding or current year. The Board rejected this proposal and retained the single transaction exemption in the *final rule*.⁸

Transfer by Merger. Industry groups also urged the Board to reverse its position taken in the *interim rule* that ac-

quisitions through merger were subject to the rule. The Board concluded that an exemption for acquisition transfers was inconsistent with the purpose of the statute. The *final rule* therefore applies even if ownership is transferred to a different legal entity based on a merger, acquisition, or reorganization.⁹ The Board also rejected an industry proposal for a longer compliance period for transfer by mergers.

Servicer Exemption. The *interim rule* provided an exemption for mortgage servicers in certain situations, consistent with the TILA assignee liability provision in § 1641(f)(2). If the servicer holds legal title to the loan or the obligation is assigned to the servicer "solely for the administrative convenience of the servicer in servicing the obligation," the servicer is not a "covered person."¹⁰ NCLC, NACA, and CFA submitted comments urging the Board to delete this exemption, or if retained, to clarify that sending a TILA rescission notice to the servicer is effective as to the actual note holder.¹¹ No change was made to the servicer exemption in the *final rule*. The Board deferred on the request for clarification, noting that the rescission notice matter would be considered in another rulemaking docket (Docket No. R-1390).¹²

Disclosure Requirements

Timing of Disclosure. The disclosures required by § 1641(g) must be provided "not later than 30 days after the date on which the mortgage loan is sold or otherwise transferred or assigned to a third party."¹³ The *interim rule* used the "acquisition date" as the date of transfer, which was deemed to be the date recognized in the books and records of the acquiring person. Due to Board concerns about compliance based on the different accounting methods used for recognizing acquisitions, the *final rule* clarifies that the disclosures must be provided on or before the 30th day following the "date of transfer" which may be either the acquisition date recognized by the transferee, or the date recognized by the transferor.¹⁴ Similarly, either date may be stated on the disclosure as the date of transfer.

Form of Disclosure. The *final rule* clarifies that the transfer notice must be provided clearly and conspicuously in writing, in a form that the consumer may keep.¹⁵ The disclo-

¹ See 75 Fed. Reg. 58,489 (Sept. 24, 2010) (effective Jan. 1, 2011).

² See NCLC REPORTS, 28 *Bankruptcy and Foreclosures Ed.* 9 (Nov./Dec. 2009).

³ § 10.2.5 (3d ed. 2010).

⁴ Reg. Z § 226.39(a)(1).

⁵ Official Staff Commentary § 226.39(a)(1)–(2)(i).

⁶ Official Staff Commentary § 226.39(a)(1)–(2)(ii).

⁷ Official Staff Commentary § 226.39(a)(1)–(2)(iii).

⁸ Reg. Z § 226.39(a)(1).

⁹ Official Staff Commentary § 226.39(a)(1)–4.

¹⁰ Reg. Z § 226.39(a)(1). Servicers remain obligated to respond to borrower requests under 15 U.S.C. § 1641(f)(2) for the servicer to identify the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

¹¹ The comments are available at: www.nclc.org/issues/predatory-mortgage-lending.html.

¹² However, the Board withdrew consideration of the proposed rescission rules in Docket No. R-1390, in response to opposition by consumer groups.

¹³ 15 U.S.C. § 1641(g)(1).

¹⁴ Reg. Z § 226.39(b)(2).

¹⁵ Reg. Z § 226.39(b)(1).