



## Pentagon Federal Credit Union

Stephen A.J. Eisenberg  
General Counsel

November 20, 2009

BY E-MAIL

Ms. Jennifer J. Johnson  
Secretary of the Board  
Board of Governors of the Federal  
Reserve System  
20<sup>th</sup> Street & Constitution Ave., N.W.  
Washington, D.C. 20551

SUBJECT: Interim Final Rule 12 C.F.R §226.39  
Docket No. R-\*\*\*\*\*

Dear Ms. Johnson:

In connection with the subject regulation (hereinafter the "Rule"), submitted for your consideration is a request for clarification concerning whether the Rule's notice requirement applies to loan participation arrangements, situations in which a fraction of a given property interest is acquired by a "covered person" as that term is defined in the Rule.

The foregoing question arises because the term "covered person" as defined by 12 C.F.R §226.39(a)(1), relates to "an existing mortgage" (emphasis supplied), which reasonably could be interpreted as a 'whole' loan, not a portion of one.

In the case of loan participations, which may be either with or without recourse, the Rule's notice provision is unclear as the nature of the loan interest conveyed typically involves the transfer of the legal and equitable ownership in every element associated with the property related debt obligation albeit not the 'whole' loan, but only a portion thereof.

Recognizably, loan participations may involve two or more transferee "owners" of a property interest.

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If loan participations are contemplated by the Rule, consider in connection with the notice requirements established by Section 131(g) of the Truth in Lending Act, evaluating who has responsibility for servicing ownership interests and revising the Rule in deference to this factor.

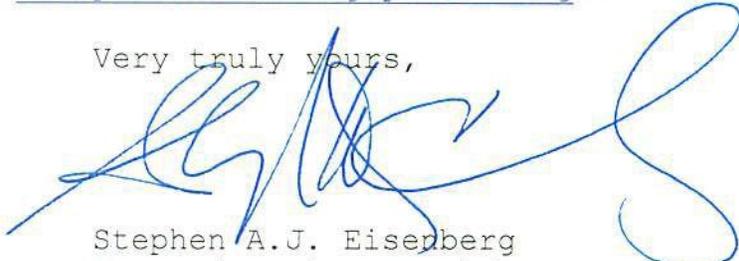
Transactional agreements supporting loan participations may contemplate that the originating owner of an interest in a covered mortgage loan also will be the servicer of the transferred participation interests.

Thus, you may find it germane to the notice obligation that information, which the mortgagor is on notice of concerning this 'partial', yet fiduciarly responsible owner/servicing party, is sufficient to obviate the notification requirements contemplated by Section 131(g) and the Rule.

Specifically, you may wish to evaluate whether, in circumstances with multiple owners, the continuing existence of an originating 'owner/servicer' should obviate the need for the communication of a transfer notice by way of a Rule exception.\*

Should you or members of the Federal Reserve System staff have questions concerning this observation, I would be pleased to address them. I can be reached by telephone at 703.838.1024 or e-mail at [stephen.eisenberg@penfed.org](mailto:stephen.eisenberg@penfed.org).

Very truly yours,



Stephen A.J. Eisenberg  
Executive Vice President &  
General Counsel

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\* If an originating owner-transferor is not the servicer this factor should be carefully considered in applying the notice requirement as that party may not have a contractual or fiduciary duty to notify all other loan participants of any rescission notice.