
January 19, 2010

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. R-1378; Truth in Lending Act Regulations

Dear Ms. Johnson:

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the Federal Reserve Board's (the Board's) interim final rule and request for comment implementing Section 404 of the Helping Families Save their Homes Act of 2009 (the Act).[2]

Section 404 amends Section 131 of the Truth in Lending Act (TILA) (15 USC 1641) to require that certain purchasers or assignees that acquire mortgage loans notify borrowers no later than 30 days after the loan is acquired, transferred or assigned. Overall the Board's interim rule addresses several concerns our membership had regarding application of the Act.

We would like to state our support for the following provisions of the interim rule that include:

- Excepting a covered person from the disclosure requirements if it assigns or transfers the loan to another party within 30 days of acquiring the loan;
- Indicating that Section 226.39 does not apply to loan servicers who hold title solely for administrative purposes;

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

[2] Public Law 111-22.

- Excepting most repurchase agreements from Section 226.39;
- Providing that covered persons may mail or deliver the disclosure to any one of multiple consumers who are primarily liable on the obligation; and
- Permitting covered persons to consolidate their disclosures into one.

There are, however, several areas that we believe deserve some additional clarification or revision. We address these concerns below:

**Treatment of Ginnie Mae MBS Issuances**

The interim rule indicates that Ginnie Mae as guarantor of the mortgage-backed securities (MBS) and equitable title holder is not considered a "covered person" for purposes of the Act, unless it takes legal title to the mortgages upon the issuer's default.[3] A "covered person" means:

> "any person, as defined in Section 226.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment or other transfer…"[4]

The Board's conclusion raises compliance questions for our members as issuers and servicers. Must the issuer/servicer comply with the notice requirements upon issuance of a Ginnie Mae mortgage-backed security (MBS)? Given the conclusion in the interim rule's preamble that Ginnie Mae is not a covered person, we conclude that for purposes of this rule, no transfer of loans has occurred. Therefore, the issuance of the Ginnie Mae security – in itself – would not trigger a Section 404 disclosure for Ginnie Mae, the servicer, issuer, security holder or any other party.[5] Likewise, we conclude that if a loan is repurchased from a Ginnie Mae pool by the MBS issuer, such an event does not trigger a notice requirement under this rule since the loan was never transferred to Ginnie Mae. We would appreciate confirmation that the buy-out of a loan from a Ginnie Mae pool by the MBS issuer does not trigger the Section 404 notice.

**Agent/Authorized Party**

Section 404(a) of the law requires the creditor to "notify the borrower in writing of such transfer, including…(C) how to reach an agent or party having authority to act on behalf of the new creditor;"[6] Our members believe the statute is clear that compliance with this

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[3] While we agree that Ginnie Mae requires the issuer/servicer to retain legal title in order to ensure proper administration of the loans (as do other private label securitizations) and, therefore, the Board concludes there is not a transfer for purposes of Section 404, we believe there is a sale and/or transfer of loans for accounting purposes.

[4] 12 C.F.R. §226.39(a)(1). 74 Fed. Reg. 60151 (November 20, 2009).

[5] We realize, however, that if the issuer purchases the whole loans from another entity, the act of purchasing the notes may trigger the disclosure requirement.

[6] 12 C.F.R. §226.39(d)(3).

provision can be achieved by simply identifying the mortgage servicer (when the owner appoints such a party) as the agent or authorized party. MBA is, therefore, concerned that the Board's interim rule may be regarded as establishing more expansive requirements in this area. Specifically, section 226.39(d)(3) requires that the disclosure identify "how to reach an agent or party having authority to act on behalf of the covered person (or persons), which shall identify a person (or persons) authorized to receive legal notices on behalf of the covered person and resolve issues concerning the consumer's payments on the loans." This provision goes on to state, "If multiple persons are indentified under the paragraph, the disclosure shall provide contact information for each and indicate the extent to which the authority of each agent differs." The Board appears to interpret the statutory language as necessitating a listing of persons who can receive legal notices, including but not limited to legal service of process and rescission claims, despite the fact that there is no reference to legal notices in Section 404.

The plain language of the statute does not require the listing of all agents or parties who may receive legal notice. A broad requirement for such listing would be overwhelming, not applicable to the consumer, and detract from meaningful information. For example, it would be counter-productive to include contact information for "persons authorized to received legal notices" on behalf of the covered person from property code enforcement personnel, courts, or taxing authorities (e.g., property tax lien sale etc). Simply put, this information is not relevant to the borrower.

In determining the purpose and scope of TILA Section 131(g), it is valuable to look to the legislative history, which highlights the sponsor's intent to address specific borrower concerns and to narrowly tailor the provision's application.[7] In her floor statement, Senator Boxer discussed two reasons for offering this amendment to the Act. One reason involved the case of a borrower and co-borrower who were unable to identify the owner of their mortgage due to misleading statements of the servicer and as a result missed the deadline to exert their extended right to rescind the loan.[8] The other reason was to identify the party that has authority to renegotiate a borrower's mortgage terms to avoid foreclosure.[9]

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[7] "This is a very narrowly targeted amendment with little cost to the industry." 155 Cong. Rec. S5099 (daily ed. May 5, 2009).

[8] As Senator Boxer stated: "I want to give you the example of James and Mary Meyers, who took out a high-rate home loan with Argent Mortgage in 2004. Because the loan violated the truth-in-lending laws, they later attempted to exercise their Federal rights to cancel the loan. But the servicer, who happened to be Countrywide at the time, refused to identify who owned the loan. So by the time the Meyers discovered that the current noteholder was Deutsche Bank, the deadline for canceling the loan had passed. The court dismissed the Meyers' claim, even though it found that there were grounds, legitimately, for the Meyers to cancel the loan." Id at S5098 (referring to In re Meyer, 379 B.R. 529 (E.D. Pa. 2007).

[9] "This amendment only provides transparency and gives borrowers an additional tool to fight illegitimate foreclosures or to negotiate loan modification that would keep them in their homes" Id. at S5099

Both objectives can be achieved by identifying the owner and servicer (when one is delegated authority to administer the loans). Moreover, the most helpful information would be a general toll free number for both parties, as applicable, rather than a listing of actual individuals, departments or third party agents for each possible inquiry or legal notice. Servicers are able to route calls to the right person(s) from their call centers.

We are particularly concerned with the Board's preamble statement that the notice must identify the party to receive claims of right of rescission. The establishment of a new provision on rescission in this section of Regulation Z, outside of Section 226.23 is a dangerous precedent that may imply the creation of new rescission rights and present additional liability for originators and servicers. Section 226.23 and the related commentary are relied on by the industry today to navigate the very complex set of legal requirements respecting rescission. We are concerned that the identification of an agent for rescission claims in a notice provision with separate timing than that required in Section 226.23 could create unintended consequences that could be severe. As a result, we request elimination of the requirement to listing all agents, especially those for rescission claims, from the final rule. If the Board feels it necessary to address how borrowers can exercise extended rights of rescission, we believe it is far more prudent and appropriate to do so in a separate rulemaking addressing that issue.

In addition to these legal concerns, we believe that identifying the party authorized to accept rescission claims also presents practical concerns that will cause more confusion in the long run. Agent information will become stale as servicing is bought and sold. For example, assume a servicer is delegated the authority to accept rescission claims by the owner. A factually correct notice identifying the servicer as the party to which rescission requests must be made will be good at the time of notice of loan transfer, but will be void when the servicing is sold separate from the loan. The borrower will not be specifically notified in the transfer of servicing notice required by RESPA that the agent to receive rescission claims has changed, and, in our example, now rests with the transferee servicer. The borrower will likely lose valuable time trying to exercise his or her rights with the old servicer. The borrower could be sent on a proverbial "wild goose chase." As a result, we do not believe the transfer of loan notice should make any statement or identify any party regarding rescission. Despite, the In Re Meyers case cited by Senator Boxer, there does not appear to be a widespread problem with borrowers exercising their rescission rights or knowing who to notify. Introducing new information that we know will change in the future will only create errors.

If the Board decides to proceed with rescission information in the transfer of loan notice, we suggest a general statement alerting borrowers to call either the owner in the notice or the entity that receives his/her mortgage payment (which may change over time) to get information on how to exercise extended rights of rescission. Moreover, such statement should be clear that the transfer of loan notice does not create new rights of rescission and does not conclude that any party identified therein is the party to accept

rescission claims. Any more specific information will cause confusion in the long-run and will create the very confusion Senator Boxer was trying to avoid.

We support the Board's view that as an alternative, covered persons can provide a nationwide toll free telephone number for borrowers to use to get additional contact information about agents or authorized parties. However, we believe this alternative should be expanded to allow a single toll-free phone number not only to obtain the address of the agents/authorizing parties, but to obtain the *identity and phone number* of a particular agent or authorized party specific to the borrower's inquiry. This would allow the owner to route the borrower to the appropriate agent or party depending on the borrower's purpose rather than disclose every agent.

**Covered Person**

Section 226.39 (a)(1) defines a "covered person" as:

> "a person….that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment, or other transfer, and who acquires more than one mortgage loan in any twelve-month period. For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan or it is assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation."[10]

**Servicers:** As stated previously, MBA fully supports the Board's exemption from the definition of a "covered person" servicers who only take assignment of the mortgage in order to perform daily administrative functions such as executing pay-offs, foreclosures, modifications and other administrative actions. Failure to exclude servicers from this rule would duplicate existing Real Estate Settlement Procedures Act (RESPA) requirements for notices upon the transfer of mortgage servicing rights[11] and cause confusion for the borrower.

Despite the Board's conclusion that a transfer to Ginnie Mae does not occur upon issuance or guarantee of the security, we believe that subsequent tranferees of Ginnie Mae servicing, also known as "issuers," should still qualify for the servicer exemption found at Section 226.39(a)(1). Such coverage would preclude confusion on this point. We, therefore, request that the Board confirm that servicers who purchase Ginnie Mae mortgage servicing rights fall within the servicer exemption and are not required to execute a Section 404 disclosure at the time of servicing transfer.[12] We also urge the

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[10] 12 C.F.R. §226.39(a)(1). 74 Fed. Reg. 60151 (November 20, 2009).

[11] 24 C.F.R. §3500.21.

[12] Transferor and transferee servicers would still need to comply with RESPA's transfer of servicing requirements and, therefore, borrowers would be informed where to send payments or direct questions regarding their mortgage and will be provided additional protections for inadvertent misdirection of payments. In sum, the objective of Section 404 is met through existing RESPA requirements.

Board to indicate that if a servicer chooses to provide the 404 disclosures at the time of servicing transfer, for whatever reason, the rule would not prohibit such actions and the transferee servicer would not need to send a Section 404 notice if it later repurchased a loan from a Ginnie Mae pool. In either case, the borrower is receiving the critical information it needs through the Real Estate Settlement Procedures Act (RESPA) transfer of servicing disclosure.

As a final matter, we request that the Board also allow, if permitted by law, Section 404 notices to be combined with RESPA transfer of servicing notices.

**Nominees:** MBA seeks confirmation that the definition of "covered person" does not include "nominees" who take assignment of a mortgage on behalf of the party with legal title. Specifically, we seek confirmation that the Mortgage Electronic Registration System (MERS) as "nominee" for the owner or assignee of the mortgage would not be a "covered person" because it does not own the mortgages.

**Recording Location**

The Board correctly states that transfers of ownership of the debt are almost never recorded because ownership of the debt is perfected through possession. In light of this fact, the interim rule provides that it is sufficient for a covered person to disclose that the transaction "is or may be recorded in the office of public land records or the recorder of deeds office 'for the county or local jurisdiction where the property is located.'" The covered person is given the option to provide information as to where the security interest is recorded, but it is not required. The Board solicits comment on whether a covered person should be required to disclose where the security interest is recorded. Since most transfers of the debt are not recorded, advising borrowers of the location where the security interest is recorded would not provide new or useful information to the borrower. Moreover, most borrowers are aware of this location already. Finally, requiring specific recordation information about the mortgage, would place considerable burden on the industry. Most servicers do not have access to this information in a reportable format and, therefore, it would cost servicers significant sums to extract this information and rekey it into the servicing system. In light of these facts, MBA urges the Board not to require disclosure of the location where the security interest is recorded.

**Mergers and Acquisitions**

Section 226.39(a)(1) states that the transfer of loan disclosures are required when, as a result of a merger, corporate acquisition and or reorganization, the ownership of a mortgage loan is transfered to a different legal entity. We believe this provision appropriately excludes corporate acquisition performed through stock purchases whereby the ownership of the company or corporation may change, but ownership of the loans would not.

**Optional Disclosures**

MBA supports the Board's position in 226.39(e) and commentary 226.39(e)-1, which provides that the transfer notice may contain other information about the mortgage transaction that the covered person considers relevant or helpful to consumers. We request that the Board acknowledge that such additional information may state that the borrower must only contact the agent or authorized party (e.g. the servicer), rather than the covered party. As the Board is aware, the "owner" of many securitized loans may be a trust with no authority to act (for both REMIC and historical GAAP accounting reasons). These entities have no call centers or means to discuss specific loan details with borrowers. Rather they contract with the servicer to perform day-to-day administrative functions. Failure to provide for this option would result in many borrowers contacting trusts with no legal or business capacity to take calls or address their questions. Such a result would be in conflict with the intent of the law.

MBA appreciates the opportunity to comment and the Board's consideration of our recommendations. If you have additional questions, feel free to contact Vicki Vidal, Associate Vice President of Loan Administration, at (202) 557-2861.

Sincerely,

John A. Courson

John A. Courson
President and Chief Executive Officer