

Legal analysis to guide the mortgage industry and protect its interests.

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Fed Issues Amendment to Reg Z re: Notice when Mortgage Assigned by Andrew W. Saag

On Nov. 16, 2009, the Federal Reserve Board issued an interim final rule to implement Section 131(g) of the Truth in Lending Act (TILA), which was created as Section 404(a) of the Helping Families Save Their Homes Act of 2009. The TILA amendment requires a "creditor to send the borrower a notice whenever a mortgage loan is sold, transferred, or assigned." The notice must be delivered to the consumer on or before the 30th calendar day following acquisition of the loan, and must provide the consumer with all required disclosures; however, if the loan is transferred or assigned before this date, disclosures need not be sent. There has been confusion among those in the mortgage servicing industry regarding when a creditor is supposed to send the notice; specifically, whether notice should be sent when the loan is purchased or when the mortgage assignment is executed for the purpose of placing the assignment of the mortgage of record in the local real estate records.

In an attempt to clarify this confusion, the interim rule states that a "covered person" must give notice within 30 days following the acquisition date of the mortgage loan. A covered person is defined as one that "becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligations whether through purchase, assignment, or other transfer, and who acquires more than one mortgage loan in any 12-month period." The acquisition date "shall be the date of acquisition recognized in the books and records of the acquiring party." Thus, it would appear that notice must be given at the time in which a lender *acquires* the mortgage loan irrespective of when an individual mortgage assignment is executed.