

CFPB FINALIZES SWEEPING NEW MORTGAGE SERVICING RULES

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On January 17, 2013, the Consumer Financial Protection Bureau (CFPB) finalized rules to implement broad mortgage servicing reforms pursuant to provisions in the Dodd-Frank Act, covering topics such as enhanced periodic disclosures, force-placed insurance, payment posting, and loss mitigation. The new rules amend Regulation Z, which implements the Truth in Lending Act (TILA),¹ and Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA).² The rules become effective on January 10, 2014, but the CFPB will be taking a number of steps between now and then to encourage servicer compliance.

The new rules are the latest in a series of efforts by regulators to enhance consumer protections in mortgage servicing that started shortly after the “robosigning” controversy arose in late 2010. Since that time, regulators have taken steps toward formalizing mortgage servicing standards through settlements with many of the top bank mortgage servicers, the promulga-

tion of mortgage servicing examination guidelines by the CFPB, and a national mortgage settlement with state attorneys general and federal enforcement agencies. The new rules issued by the CFPB, however, are the first major servicing standards that will be mandatory for servicers throughout the industry (although some smaller servicers are exempt from many of the provisions in the new rules).

The new rules address a variety of topics and impose substantive requirements relating to the following topics:³

- **Billing statements.** The rules establish timing, form and content requirements for periodic statements provided to borrowers. The statements must contain information relating to payments due and made, fees, transaction activity, payment application, contact information for the servicer and housing counselors, and delinquencies.
- **Rate change disclosures.** For customers with adjustable rate mortgages, servicers must provide a notice between 210 and 240 days prior to the first payment due after any interest rate adjustment. Servicers must also provide a notice between 60 and 120 days before any new payment amount following a rate adjustment.

- **Payment crediting and payoff statements.** Payments must be credited on the day of receipt. Partial payments may be held in a suspense account, and then credited to the account when sufficient to cover a full payment. Accurate payoff statements must be provided within seven business days after receiving a written request.
- **Force-placed insurance.** Servicers cannot charge borrowers for force-placed insurance coverage unless the servicer has a reasonable basis to believe the borrower has failed to maintain hazard insurance and has provided two notices required by the rule. When borrowers provide proof of coverage, the servicer must cancel a force-placed insurance policy and refund overlapping premiums. Certain charges for force-placed insurance must be for services actually performed and bear a reasonable relationship to the servicer’s cost.
- **Error resolution and customers inquiries.** The rules require servicers to follow new procedural requirements for processing and responding to written information requests or complaints. Generally,

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servicers must acknowledge borrower inquiries and asserted errors within five days and investigate and respond or make corrections within 30 to 45 days.

- **Intervention with delinquent borrowers.** Servicers must make good faith efforts to establish live contact with borrowers by the 36th day of their delinquency and inform them that loss mitigation options may be available. By the time borrowers are 45 days delinquent, a notice must be provided about available loss mitigation options.
- **Restrictions on Dual Tracking.** Servicers may not make the first notice or filing required for a foreclosure process until an account is more than 120 days delinquent. Even if the borrower is 120 days delinquent, if he or she submits a complete application for loss mitigation, a servicer may not start the foreclosure process, except under certain circumstances.

The new rules also require servicers to establish policies and procedures covering a number of different servicing issues. First, servicers are required to establish general policies and procedures that are reasonably designed to achieve the objectives specified in the final rules. The policies should include provisions for maintaining accurate and up-to-date customer information, investigating and correcting errors, properly evaluating loss mitigation applications based on eligibility rules, and performing third-party oversight.

Servicers are also required to maintain policies and procedures to ensure that they can provide timely and accurate information to borrowers, investors and the courts in foreclosure proceedings. Moreover, servicers must have poli-

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cies and procedures in place to establish contact with delinquent customers early in the process and present them with loss mitigation options.

The new rules provide further proof that mortgage servicing compliance will continue to be one of the CFPB's highest priorities. Moreover, the CFPB is likely to closely monitor servicer preparations for compliance in the coming year. For example, the CFPB recently announced that it will be providing "readiness guides" this summer with check-lists and suggested implementation plans relating to the new mortgage rules, as well as "plain-language" guides for smaller institutions. Also, the CFPB has stated that it will revise the "official interpretations" of the mortgage servicing rules in the coming year, and that interagency examination guidance for the new rules will be issued.⁴

In sum, it appears that the CFPB is poised to closely supervise—and aggressively enforce—compliance with the new mortgage servicing rules at an early stage. Accordingly, mortgage servicers are well-advised to get an early jump on preparing for implementation of the new servicing standards. This includes ensuring that appropriate systems, staffing, policies and procedures, monitoring, and documentation are in place well before the January 2014 effective date.



1 Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 10,902 (Feb. 14, 2013) (to be codified at 12 C.F.R. pt. 1026).
2 Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 Fed. Reg. 10,696 (Feb. 14, 2013) (to be codified at 12 C.F.R. pt. 1024).
3 The new rules are complex and lengthy, and are summarized here at a high level.
4 Press Release, CFPB, Consumer Financial Protection Bureau Lays Out Implementation Plan for New Mortgage Rules (Feb. 13, 2013).

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