

CFPB National Servicing Standards, Are Servicers Ready?

On January 13th of this year the US Consumer Financial Protection Bureau (CFPB) published comprehensive rules establishing national servicing standards applicable to servicers of residential mortgage loans. These rules amend Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA), and Regulation Z, which implements the Truth in Lending Act (TILA).

The rules essentially implement the mortgage servicing standards initially set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and other proposed servicing requirements placed on five of the United States' largest banks as part of the National Mortgage Settlement, as well as other corrective guidance from the federal banking regulators.

The new standards impose new notice requirements, servicing procedures, loss mitigation obligations and foreclosure practices. The amendments to TILA include (i) changes to periodic billing statement requirements, (ii) notices about adjustable rate mortgage interest rate adjustments, and (iii) rules on payment crediting and payoffs. The amendments to RESPA relate to (i) force-placed insurance requirements, (ii) error resolution and information request procedures, (iii) information management policies and procedures, (iv) standards for early intervention with delinquent borrowers, (v) rules for contact with delinquent borrowers, and (vi) enhanced loss mitigation procedures. In addition, these rules set forth some origination, servicing transfer and escrow requirements.

These rules have dramatic implications and will require substantial changes in policies and procedures, workflow and technology. In addition, extensive employee training will be required to ensure the rules are consistently followed.

The major provisions of the rules are summarized below:

Periodic Billing Statements

These statements must meet timing, form, and content requirements. Specifically, a periodic billing statement is required for each billing cycle and must be sent within a reasonably prompt time after the close of the grace period of the previous billing cycle. As far as content and layout, required groupings of information, include the following: Amount Due and Explanation of Amount Due, Past Payment Breakdown, Transaction Activity, Messages, Servicer's Contact Information, Account Information, Delinquency Information (if a consumer is more than 45 days delinquent), and Housing Counselors (which refers to a list of HUD's or CFPB's housing counseling websites and telephone numbers). The rules also direct *where* each such grouping of information should be placed on the periodic billing statement.

As part of the provisions under the Account Information grouping, the rules define

a prepayment penalty as a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due.

The periodic billing statement must be "transmitted" to the borrower either in writing or electronically. A mailed paper statement meets the "transmit" requirement, as would electronic distributions, such as an email indicating that the statement is available. The statement must be provided in a form the consumer may keep. If an electronic statement is provided, it must be in a form that can be downloaded or printed.

Finally, the rules provide exemptions to the periodic billing statement requirement for reverse mortgages and timeshares. Additionally, the periodic statement requirement does not apply for fixed-rate loans if the servicer provides a coupon book, so long as each coupon contains the payment due date, the amount due, and the amount and date that any late fee would incur. Other information specified in the Proposed Rules must be made available to the consumer anywhere in the coupon book (including, among others, the beginning principal loan balance and the interest rate in effect for the loan).

Adjustable-rate Mortgage Interest-rate Adjustment Notices

Servicers will have to provide consumers with an adjustable rate mortgage (ARM) notice 60 to 120 days before an adjustment that results in a payment change. Mortgages originated before July 21, 2013 with look-back periods of 45 days or less can continue to provide these ARM disclosures 25-120 days before an adjustment that results in a payment change. This provision applies to closed-end ARMs secured by principal dwellings. Accordingly, open-end ARMs, such as home equity mortgages, are exempt from this provision (but are subject to other existing TILA disclosure requirements). However, plans that convert to a fixed rate will be subject to the rule when a payment adjustment occurs. Also exempt from these notices are construction loans with terms of one year or less; "fixed rate" loans that have certain payment or rate adjustment features, such as shared equity mortgages; price-level adjusted mortgages and similar products; graduated payment mortgages; renewable balloon payment instruments and preferred rate loans. In a departure from current practice, servicers will no longer be required to provide an annual notice if a rate adjustment does not result in an increase in payment.

Additionally, servicers will have to provide an initial, one-time ARM adjustment notice 210 to 240 days prior to the first rate adjustment. This provision applies to closed-end ARMs secured by principal dwellings. Open-end ARMs and home equity plans are exempt from the initial notice (but are subject to other existing TILA disclosure requirements). Also exempt are construction loans with terms of one year or less; fixed rate loans that have certain payment and rate adjustment features such as shared-equity mortgages; price-level adjusted mortgages and similar products; graduated payment mortgages; renewable balloon payment

instruments; and preferred rate loans.

Prompt Payment Crediting and Payoff Statements

Servicers must promptly credit periodic payments from borrowers as of the day of receipt. A periodic payment consists of principal, interest and escrow (if applicable). If a payment is received in an amount less than the amount due for a periodic payment, the payment may be held in a suspense account. When the amount in the suspense account covers a periodic payment, the servicer must apply the funds to the borrowers account. In addition creditors, assignees, and servicers must provide an accurate payoff balance to a consumer no later than seven business days after receipt of a written request from the borrower of such information.

Error Resolution and Information Requests

Servicers are required to meet certain procedural requirements for responding to information requests or complaints of errors. The rules provide examples of the types of claims that constitute error, and clarify that a borrower may assert an error either orally or in writing.

Servicers generally must acknowledge a complaint within five days, but no acknowledgment is required if the error alleged is corrected within five days of receiving the notice and the borrower is notified of the correction in writing. Within 30 to 45 days servicers are required to correct an error or respond to the borrower with the results of an investigation.

Force-placed Insurance

The rules prohibit the servicer from obtaining force-placed insurance unless the servicer has a "reasonable basis" to believe that the borrower has failed to maintain contractually required hazard insurance and has provided certain required written notices. The servicer is required to provide a first notice at least 45 days before charging for force-placed insurance and a second reminder notice no earlier than 30 days after the first. The rules delineate the content of the notices and specify in an appendix the format of the disclosure.

Moreover, in connection with escrowed loans, the rules require the servicer to make payments from a borrower's escrow account to pay the premium charge on an existing hazard insurance policy if the servicer pays for such policy from the borrower's escrow account, unless the servicer has a reasonable basis to believe that the borrower's hazard insurance has been canceled or has not been renewed for reasons other than nonpayment of premium charges. If the borrower's escrow account does not contain sufficient funds to pay the premium charge, the servicer is required to advance funds to make the payment.

In addition, the servicer is required to cancel any force-placed insurance and refund (and remove from the borrower's account) all premium charges and related fees within 15 days of receiving verification that the borrower has hazard insurance in place.

All charges by or through the servicer related to force-placed insurance must be "bona fide and reasonable," meaning that the charge is for a service actually performed that bears a "reasonable relationship" to the servicer's cost of providing the service and is not otherwise prohibited by applicable law.

General Servicing Policies, Procedures, and Requirements

Servicers are required to establish "reasonable" information management policies and procedures. The reasonableness of a servicer's policies and procedures take into account the servicer's size, scope, and the nature of its operations. The rules mitigate this nebulous requirement by establishing a safe harbor: a servicer satisfies the requirement if it does not engage in a pattern or practice of failing (i) to achieve certain enumerated objectives or (ii) to comply with certain enumerated standards.

The objectives are:

- assessing and providing accurate information;
- evaluating loss mitigation objections available to borrowers;
- facilitating oversight of, and compliance by, service providers; and
- facilitating service transfers.

The standards are:

- retention of records that document servicer actions for a period of one year after discharge of the mortgage loan or a servicing transfer; and
- provide the borrower with a servicing file that includes a schedule of all payments credited or debited to the mortgage loan account, the mortgage note and the mortgage, the servicing notes, certain electronically created records, and information or documents provided in connection with a notice of error or an information request.

Early Intervention with Delinquent Borrowers

Servicers are required to make good faith efforts to notify delinquent borrowers of loss mitigation options by the 36th day of delinquency. In addition servicers must provide the borrower with written notice about loss mitigation options within 45 days of the borrower's delinquency.

Continuity of Contact with Delinquent Borrowers

The rules require the servicer to provide delinquent borrowers with access to

personnel with applicable loss mitigation options. Not later than five days after the early intervention notice described above, the servicer is required to assign dedicated personnel to respond to borrower inquiries and assist with loss mitigation options, who must be accessible by telephone to the borrower.

Personnel must be assigned and available to the borrower until refinancing, loan payoff, a reasonable time has passed since the loan became current or a permanent loss mitigation agreement in which the borrower keeps the property, title is transferred to a new owner (e.g., deed-in-lieu, short sale, foreclosure sale), or a reasonable time has passed since a servicing transfer.

The servicer must establish policies and procedures "reasonably designed" to ensure that such servicing personnel can perform certain functions:

- provide the borrower with accurate information about loss mitigation options, required borrower actions, the status of any loss mitigation application, the circumstances under which the servicer may make a foreclosure referral, and any loss mitigation deadlines;
- access to borrower records, including the complete payment history, all loss mitigation documents that the borrower has submitted, and any similar documents submitted to prior servicers that the current servicer possesses;
- provide such documents to personnel authorized to evaluate a borrower for loss mitigation options; and
- provide the borrower with the telephone number and address for information requests and notices of error within a reasonable time after a borrower request.

Loss Mitigation Procedures

Servicers are required to follow specified loss mitigation procedures for a mortgage loan secured by a borrower's principal residence. If a borrower submits an application for a loss mitigation option, the servicer is generally required to acknowledge the receipt of the application in writing within five days and inform the borrower whether the application is complete and, if not, what information is needed to complete the application. The servicer is required to exercise reasonable diligence in obtaining documents and information to complete the application.

For a complete loss mitigation application received more than 37 days before a foreclosure sale, the servicer is required to evaluate the borrower, within 30 days, for all loss mitigation options for which the borrower may be eligible in accordance with the investor's eligibility rules, including both options that enable the borrower to retain the home (such as a loan modification) and non-retention options (such as a short sale). Servicers are free to follow "waterfalls" established by an investor to determine eligibility for particular loss mitigation options. The servicer must provide the borrower with a written decision, including an explanation of the reasons for denying the borrower for any loan modification option offered by an owner or assignee of a mortgage loan with any inputs used to make a net present value calculation to the extent such inputs were the basis

for the denial. A borrower may appeal a denial of a loan modification program so long as the borrower's complete loss mitigation application is received 90 days or more before a scheduled foreclosure sale.

The rule restricts "dual tracking," where a servicer is simultaneously evaluating a consumer for loan modifications or other alternatives at the same time that it prepares to foreclose on the property. Specifically, the rule prohibits a servicer from making the first notice or filing required for a foreclosure process until a mortgage loan account is more than 120 days delinquent. Even if a borrower is more than 120 days delinquent, if a borrower submits a complete application for a loss mitigation option before a servicer has made the first notice or filing required for a foreclosure process, a servicer may not start the foreclosure process unless (1) the servicer informs the borrower that the borrower is not eligible for any loss mitigation option (and any appeal has been exhausted), (2) a borrower rejects all loss mitigation offers, or (3) a borrower fails to comply with the terms of a loss mitigation option such as a trial modification.

If a borrower submits a complete application for a loss mitigation option after the foreclosure process has commenced but more than 37 days before a foreclosure sale, a servicer may not move for a foreclosure judgment or order of sale, or conduct a foreclosure sale, until one of the same three conditions has been satisfied. In all of these situations, the servicer is responsible for promptly instructing foreclosure counsel retained by the servicer not to proceed with filing for foreclosure judgment or order of sale, or to conduct a foreclosure sale, as applicable.

Servicers must comply with these new rules on or before January 10, 2014. This will be a daunting task that will require detailed planning, effective project management, substantial changes in policies and procedures, in-depth training as well as improved technology integration. Virtually all servicers are impacted. Compliance is not optional.

OpExNow can perform a detailed risk assessment and GAP analysis to measure your current state of readiness. We can also partner with your organization to implement proper adoption and adherence to these standards in advance of the prescribed deadlines. We can ensure that you are ready for a CFPB audit.

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