

FINANCIAL SERVICES LITIGATION

ALERT

AUGUST
2012CONSUMER FINANCIAL PROTECTION BUREAU UPDATE:
THE PROPOSED MORTGAGE SERVICING RULES

By Anne E. Kane

On August 10, 2012, the Consumer Financial Protection Bureau ("CFPB") issued two notices containing rules intended to protect homeowners from errors and abuses by their mortgage servicers.

The proposed rules would amend Regulation Z of the Truth in Lending Act ("TILA") and Regulation X of the Real Estate Settlement Procedures Act ("RESPA"). The text of the proposed amendments can be found at: http://files.consumerfinance.gov/f/201208_cfpb_tila_proposed_rules.pdf and http://files.consumerfinance.gov/f/201208_cfpb_respa_proposed_rules.pdf.

The CFPB first outlined its proposal in April 2012. It then convened a Small Business Review Panel to assess the proposal's impact on small servicers such as commercial banks and credit unions (with less than \$175 million in assets) and non-depository servicers (with less than \$7 million in revenue). During the review process, panel participants commented that small servicers did not engage in the type of servicing practices that contributed to the mortgage crisis and that the costs to small servicers associated with the proposed rules could impact their ability to service mortgage loans for their customers. The Panel issued its final report on June 11, 2012. The rules noticed by the CFPB last week incorporate a number of the Panel's recommendations designed to reduce the impact on certain small servicers.

Proposed Amendments to Regulation Z (TILA)

- **Periodic Billing Statement Requirements.** The Dodd-Frank Act generally mandates that servicers of closed-end residential mortgages (other than reverse mortgages) must send a periodic statement for each billing cycle. Servicers would be required to provide regular monthly statements which would include a breakdown of payments by principal, interest, fees and escrow, the amount of and due date of the next payment, recent transaction activity and warnings about fees. This requirement would not apply to fixed-rate loans if the ser-

vice provides a coupon book and certain information to the borrower. There is also an exemption for small servicers that service 1,000 or fewer loans and only service loans that they originated or own.

- **Required Interest Rate Adjustment Notices.** Servicers would be required to provide a borrower with an adjustable rate mortgage between 60 and 120 days notice of an interest-rate adjustment which causes the payment to change. Even earlier notice, between 210 and 240 days, is required prior to the first rate adjustment.
- **Rules on Payment Crediting and Payoffs.** Servicers generally would have to credit a borrower's account as of the date the payment is received. If a servicer receives a partial payment, the payment may be held in a suspense account. When the amount in the suspense account covers a full contractual payment (including principal, interest and any escrow payments), the servicer must apply the funds to the oldest outstanding payment owed. Servicers are also required to send an accurate payoff balance to a borrower within seven business days after a written request.

Proposed Amendments to Regulation X (RESPA)

- **Force-Placed Insurance Requirements.** As provided under the Dodd-Frank Act, servicers would not be able to charge a borrower for force-placed insurance coverage unless the servicer has a reasonable basis to believe that the borrower has failed to maintain property insurance and the servicer has provided the borrower with advance notice. If the borrower provides proof of insurance coverage, the servicer would have to terminate the force-placed insurance within 15 days and refund any premiums paid for the period in which the borrower's policy was in effect. Charges related to force-placed insurance, not otherwise regulated, also must relate to a service that was actually performed and bear a reasonable relationship to the servicer's cost of providing the service.

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- **Error Resolution and Information Request Procedures.** Servicers would be required to set up mechanisms for borrowers to report account errors both orally and in writing. Servicers would be required to acknowledge a complaint or request for information within five days, conduct a reasonable investigation, and inform the borrower of the resolution in a timely manner.
- **Information Management Policies and Procedures.** Servicers would be required to establish reasonable policies and procedures to provide accurate and current information to borrowers. Servicers would also be required to retain records relating to each mortgage for one year after the mortgage is discharged or servicing is transferred and create a mortgage servicing file for each loan containing specified documents and information. The size, scope and nature of the servicer's operations will determine the reasonableness of a servicer's policies and procedures. The proposed rule establishes a safe-harbor if the servicer regularly satisfies the document retention and servicing file requirements and achieves specified objectives (such as providing accurate and timely information to borrowers and giving service personnel prompt access to loss mitigation documents and information).
- **Rules for Contact with Delinquent Borrowers.** Servicers would be required to make early, good faith efforts to advise delinquent borrowers of loss mitigation options. If a borrower is 30 days late, a servicer would be required to make a good faith effort to inform the borrower of loss mitigation options. If the borrower is 40 days late, the servicer would be required to provide the borrower with a written notice containing specific information regarding loss mitigation options. Servicers would also be required to provide delinquent borrowers with ongoing access to trained loss mitigation personnel.
- **Enhanced Loss Mitigation Procedures.** Servicers that offer loss mitigation options to borrowers (such as loan modifications or other payment plans), would be required to promptly review applications for such options and provide the borrower with at least a 14-day period

to appeal a denial. Servicers would also be required to exercise reasonable diligence to secure information or documents needed to complete a loss mitigation application. Servicers would be prohibited from proceeding with a foreclosure sale until the review of the borrower's application is complete.

The CFPB is accepting comments on the proposed rules through October 9, 2012 and intends to issue the final rules in January 2013. In addition to substantive comments, the CFPB has requested input from the mortgage servicing industry regarding the appropriate timeline for implementation given that the proposed rules will require software modifications, staff training and other changes. ♦

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