



### *CFPB Issues New Guidance on Mortgage Servicing Rules*

By Anna DeSimone

In June 2013, the CFPB issued a ***Small Entity Compliance Guide for Mortgage Servicing Final Rules***. The guide was published with the notice that the CFPB proposes to amend the final rules issued January 17, 2013, which are set to take effect on January 10, 2014.

The CFPB is amending Regulation X, which implements the Real Estate Settlement Procedures Act of 1974, and implementing a commentary that sets forth an official interpretation to the regulation. The CFPB is also amending Regulation Z, which implements the Truth in Lending Act and the official interpretation to the regulation, which interprets the requirements of Regulation Z. These final rules implement provisions of the Dodd-Frank Act regarding mortgage loan servicing.

The Regulation X final rule implements Dodd-Frank Act sections addressing servicers' obligations to correct errors asserted by mortgage loan borrowers; to provide certain information requested by such borrowers; and to provide protections to such borrowers in connection with force-placed insurance. Additionally, this final rule addresses servicers' obligations to establish reasonable policies and procedures to achieve certain delineated objectives; to provide information about mortgage loss mitigation options to delinquent borrowers; to establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of performing certain functions; and to evaluate borrowers' applications for available loss mitigation options. Further, this final rule modifies and streamlines certain existing servicing-related provisions of Regulation X.

The Regulation Z final rule implements Dodd-Frank Act sections addressing initial rate adjustment notices for adjustable-rate mortgages, periodic statements for residential mortgage loans, prompt crediting of mortgage payments, and responses to requests for payoff amounts. The final rule also amends current rules governing the scope, timing, content, and format of disclosures to consumers regarding the interest rate adjustments of their variable-rate transactions.

Small servicers, defined as those who service 5,000 mortgage loans or less, and servicers who only service mortgage loans that they or an affiliate own or originated are exempt from several of the new rules.

Below is a summary of the final rules:

#### **1-Clear Monthly Statements:**

Servicers must provide clear monthly statements to borrowers including the amount due, next payment date, summary of mortgage terms, breakdown of payments, and recent transaction activity.

#### **2-Payments Promptly Credited:**

Servicers must credit a borrower's account the date the payment is received. If servicers place partial payments in a suspense account, then the payment must be credited to the borrower's account once the suspense account equals one full payment.

### **3-Early Notice of Delinquency:**

In addition to the basic information required in the monthly statements for the mortgage loan, servicers must include information about any delinquencies in the statement after the borrower misses two consecutive payments. This information must include the date the borrower became delinquent, the amount required to bring the loan current, and the risks of failing to do so.

### **4-Notification of Foreclosure Alternatives:**

Servicers must attempt to contact borrowers who have missed two consecutive payments via written notice to the borrower at least 15 days after the second missed payment. The notice must include examples of loss mitigation options available to avoid foreclosure and information regarding housing counseling.

### **5-Direct and Ongoing Access to Servicer Personnel:**

Also known as continuity of contact, mortgage loan servicers must implement policies and procedures to ensure borrowers who are at least two months delinquent have direct, easy, and ongoing access to the employees responsible to assist in the foreclosure avoidance process. The continuity of contact personnel must be able to readily access a borrower's mortgage loan information (e.g. amount delinquent and loan modification application status) and adequately communicate such information to the borrower.

### **6-Application for Modification:**

The final rules require that a borrower submit only one application for all available loss mitigation and foreclosure avoidance options. Servicers must consider such applications for all available options at the time of receipt. Additionally, servicers must acknowledge in writing their receipt of the application within 5 days and typically have 30 days to consider and respond to the application. Servicers are required to respond to denied applications in a meaningful manner; specifically, citing "investor requirements" as a reason for denial is no longer an acceptable response. Servicers need to include the options for appeal of a denial in the notification.

### **7-Fair Review Process:**

Servicers are required to implement policies and procedures to ensure borrowers receive an evaluation for all loss mitigation options permitted by the investor for which the borrower may be eligible. Servicers are prohibited from pushing or steering borrowers towards options that are more favorable to the servicer or investor.

### **8-Restricted Dual Tracking:**

The process of "dual-tracking" is when a mortgage loan servicer initiates a foreclosure while simultaneously working with the borrower to avoid the same foreclosure. This practice is restricted under the new rules. Servicers are prohibited from filing for foreclosure until the mortgage loan is at least 120 days delinquent, thereby providing sufficient time to the borrower to submit a modification application. Additionally, servicers must not initiate a foreclosure if a borrower's modification application is pending. The CFPB prohibits a servicer from initiating a foreclosure at all so long as a modification agreement or other loss mitigation agreement is in place and the borrower fulfills their new obligations.

### **9-No Foreclosure Sale until All Alternatives Considered:**

As indicated above, servicers must follow strict guidelines in initiating the foreclosure process.

In addition to the above rules, servicers must not move for foreclosure judgment, order of sale, or conduct a foreclosure sale, if a borrower submits a complete application for a loss mitigation option at least 37 days prior to the sale. Servicers are then required to review the application and at least one of the following occurs: (1) servicer responds that the borrower is not eligible for any loss mitigation options; (2) borrower rejects all loss mitigation options offered by servicer; or (3) borrower fails to comply with the terms of a loss mitigation agreement.

**10-Interest Rate Adjustments for ARMs:**

Servicers must provide a disclosure before the first interest rate adjustment which includes: an estimate of the new interest rate and payments; a comparison to the previous rate and payment; an explanation of how the new payment is determined and when it will take effect; a list of alternatives the borrower may pursue if the new payment is unaffordable; and information on how to access housing counselors.

**11-Options to Avoid Force-Placed Insurance:**

When a servicer has the right to purchase property insurance and pass the cost on to the borrower, known as force-placed insurance. Borrowers are afforded the option to avoid this cost by the new rules. Servicers must notify the borrower twice of the insurance cost; the first notice must be at least 45 days before the first charge to the borrower and the second at least 15 days before the charge. The second notice must include a good faith estimate of the costs. If a borrower elects to purchase property insurance on their own to avoid the force-placed insurance, then the servicer must terminate its insurance policy within 15 days of receipt of notice from the borrowers. Such notice by borrower must include sufficient proof of insurance.

**12-Promptly Correct Errors and Provide Information:**

Servicers must acknowledge and respond to written notices from the borrower with respect to errors or requests for information. The servicer acknowledgement must be in writing and within 5 days. Information requests and errors should generally be resolved within 30-45 days and a written response should be sent to the borrower.

**13-Record Retention:**

Servicers must retain borrower records until one year after a loan is paid or transferred. Servicers must implement policies and procedures to ensure records are accurate and readily available.



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