



Bankers Advisory

COMPLIANCE MONITOR

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Mortgage Servicing and Regulatory Compliance

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Mortgage servicing is becoming solidified as an area of major regulatory importance. The Consumer Financial Protection Bureau's more recent entry into the mortgage servicing rulemaking arena has resulted in updated and new servicing regulatory requirements. Additionally, the current servicing market has shown that although delinquencies are down overall, servicing income and employment are increasing.

Bankers Advisory, A CliftonLarsonAllen LLP Division, attended the recent MBA National Mortgage Servicing Conference in Dallas, TX. The MBA conference's diverse servicing seminars were run by panels of a variety of industry professionals including representatives from the CFPB, FHFA, HUD, Ginnie Mae and Fannie Mae.

Of all the regulatory changes impacting the mortgage servicing industry the areas of servicing transfer, consumer communication and loss mitigation emerged as the conference's most frequently discussed topics.

Servicing Transfers

The servicing transfer process is an area of particular regulatory scrutiny. Not only must disclosures be provided to the consumer, there are also stringent requirements concerning the transfer of loan documentation from the transferor to the new servicer.

A mortgage lender must maintain policies and procedures to insure a timely transfer of documents and information to the new servicer. The new servicer also has a responsibility to engage in quality control to validate the data integrity of the documentation provided from the transferor, including procedures to identify and request any missing documents. Identification of missing documentation is particularly important concerning required loss mitigation notices.

Noted areas of servicing transfer concern include:

- Servicing transfer notices not correct or not timely provided to the consumer
- Incorrect loan information provided to the new servicer, especially loan terms such as the APR
- Unfair and Deceptive Acts concerning loan modifications not being honored by the new servicer
- Servicing transfer information omitting detailed descriptions of the data fields utilized
- PMI administration and cancellation notices

Consumer Communication

A mortgage servicer must develop protocol to ensure consumer communication consistency across all channels, including vendors with consumer contact.

Effective consumer communication includes consistent procedures in place to receive, resolve and respond to complaints. The ability to track and analyze overall complaint trends is instrumental in developing an effective compliant management system. Detailed documentation of consumer communication is vital when a conversation log indicates a consumer was told a late fee would be waived, but the payment history does not reflect any waiver.

Noted areas of consumer communication concern include:

- Consistency in debt validation letters
- Timely provision of payoff information
- Notices of servicing transfer
- Single point of contact for loss mitigation requests
- Force placed insurance notification
- Immediate and accurate crediting of payments received
- Rate adjustment notifications
- Misrepresentation of electronic payment options

Emerging in the area of consumer communication are complaints received through social media, the CFPB consumer complaint database and privacy concerns therewith. The CFPB is considering the addition of an optional narrative section to the complaint database where consumers may explain further their experience. There would also be an option for the lender or servicer to reply to the consumer's narrative in the same free-form format. The CFPB has recognized that personal information may be included in the narratives provided from the consumers and plan to take reasonable steps to remove it before the information is available to the public in database.

Loss Mitigation

The most servicing regulatory enforcement actions have resulted from loss mitigation or other default related charges. A servicer must document when an application for loss mitigation was received as well as when the application was completed. When an application for loss mitigation is received a servicer must reply to the consumer in a reasonable amount of time with the decision or a notice that the application is incomplete. Common errors in the loss mitigation application process include improper denials, reasons for denial omitted from the response and the exclusion of the notice of the right to appeal.

Noted areas of loss mitigation concern include:

- Requiring consumers to waive rights in order to obtain a loan modification

- Delay of permanent modification through unreasonably long trial period payment plans
- Improper indication that consumer will receive surplus escrow funds, when will not receive surplus escrow when in default

The FHA servicing audit largely focuses on loss mitigation in the areas of outreach and proper evaluation of requests. If the servicing file does not document loss mitigation, FHA will assume that the servicer did not engage in loss mitigation. The most appropriate FHA loss mitigation option as based on the borrower's circumstances must be supported by file documentation. The FHA has proposed their new Servicing Handbook which is set to be finalized in June of 2015.

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