

Summary of the final mortgage servicing rules

January 17, 2013

The Consumer Financial Protection Bureau (Bureau) is releasing final rules to implement laws to protect consumers from detrimental actions by mortgage servicers and to provide consumers with better tools and information when dealing with mortgage servicers. The rules will take effect on January 10, 2014. The servicing rules are set forth in two notices, one to amend Regulation Z, which implements the Truth in Lending Act, and one to amend Regulation X, which implements the Real Estate Settlement Procedures Act. The rules cover nine major topics and implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that relate to mortgage servicing.

BACKGROUND

The mortgage servicing industry was built to handle large volumes of loans for which only limited service was required. In the wake of the financial crisis, the number of distressed borrowers skyrocketed and the servicing industry was unable to keep up. As a result, an increased number of borrowers suffered substantial harm. The Dodd-Frank Act imposed new requirements on servicers and gave the Bureau the authority to both implement the new requirements and also to adopt additional rules to protect consumers. The Bureau is exercising that authority to improve the information consumers receive from their servicers, enhance the protections available to consumers to address servicer errors, and to establish some baseline servicing requirements that will provide additional protections for consumers who have fallen behind on their mortgage payments.

The final rules include a number of exemptions and other adjustments for small servicers, defined as servicers that service 5,000 or fewer mortgage loans and service only mortgage loans that they or an affiliate originated or own. This definition covers substantially all of the community banks and credit unions that are involved in servicing mortgages. These exceptions and adjustments should help reduce burdens for these institutions that have strong consumer service safeguards already built into their business models.

SUMMARY OF THE FINAL RULES

The final rules cover nine major topics, which are summarized below.

- 1. Periodic billing statements.** Creditors, assignees, and servicers must provide a periodic statement for each billing cycle containing, among other things, information on payments currently due and previously made, fees imposed, transaction activity, application of past payments, contact information for the servicer and housing counselors, and, where applicable, information regarding delinquencies. These statements must meet the timing, form, and content requirements provided in the rule. The rule contains sample forms that may be used. The periodic statement requirement generally does not apply to fixed-rate loans if the servicer provides a coupon book, so long as the coupon book contains certain information specified in the rule and certain other information specified in the rule is made available to the consumer. The rule also includes an exemption for small servicers as defined above.
- 2. Interest-rate adjustment notices for ARMs.** Creditors, assignees, and servicers must provide a consumer whose mortgage has an adjustable rate with a notice between 210 and 240 days prior to the first payment due after the rate first adjusts. This notice may contain an estimate of the new rate and new payment. Creditors, assignees, and servicers also must provide a notice between 60 and 120 days before payment at a new level is due when a rate adjustment causes the payment to change. The current annual notice that must be provided for ARMs for which the interest rate, but not the payment, has changed over the course of the year is no longer required. The rule contains model and sample forms that servicers may use.
- 3. 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 servicer receives a payment that is 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 consumer's 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 for such information.
- 4. Force-placed insurance.** Servicers are prohibited from charging a borrower 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 required notices. An initial notice must be sent to the borrower at least 45 days before charging the borrower for force-placed insurance coverage, and a second reminder notice must be sent no earlier than 30 days after the first notice and at least 15 days before charging the borrower for force-placed insurance coverage. The rule contains model forms that servicers may use. If a borrower provides proof of hazard insurance coverage, the servicer must cancel any force-placed insurance policy and refund any premiums paid for overlapping periods in which the borrower's coverage was in place. The rule also provides that charges related to force-placed insurance (other than those subject to State regulation as the business of insurance or authorized by Federal law for flood insurance) must be for a service that was actually performed and must bear a reasonable relationship to the servicer's cost of providing the service. Where the borrower has an escrow account for the payment of hazard insurance premiums, the servicer is prohibited from obtaining force-place insurance where the servicer can continue the borrower's homeowner insurance, even if the servicer needs to advance funds to the borrower's escrow account to do so. The rule against obtaining force-placed insurance in cases in which hazard insurance may be maintained through an escrow account exempts small servicers as defined above so long as any force-placed insurance purchased by the small servicer is less expensive to a borrower than the amount of any disbursement the servicer would have made to maintain hazard insurance coverage.

5. **Error resolution and information requests.** Servicers are required to meet certain procedural requirements for responding to written information requests or complaints of errors. The rule requires servicers to comply with the error resolution procedures for certain listed errors as well as any error relating to the servicing of a mortgage loan. Servicers may designate a specific address for borrowers to use. Servicers generally are required to acknowledge the request or notice of error within five days. Servicers also generally are required to correct the error asserted by the borrower and provide the borrower written notification of the correction, or to conduct an investigation and provide the borrower written notification that no error occurred, within 30 to 45 days. Further, within a similar amount of time, servicers generally are required to acknowledge borrower written requests for information and either provide the information or explain why the information is not available.
6. **General servicing policies, procedures, and requirements.** Servicers are required to establish policies and procedures reasonably designed to achieve objectives specified in the rule. The reasonableness of a servicer's policies and procedures takes

into account the size, scope, and nature of the servicer's operations. Examples of the specified objectives include accessing and providing accurate and timely information to borrowers, investors, and courts; properly evaluating loss mitigation applications in accordance with the eligibility rules established by investors; facilitating oversight of, and compliance by, service providers; facilitating transfer of information during servicing transfers; and informing borrowers of the availability of written error resolution and information request procedures. In addition, servicers are required to maintain certain documents and information for each mortgage loan in a manner that enables the services to compile it into a servicing file within five days. This section includes an exemption for small servicers as defined above. The Bureau and the prudential regulators will be able to supervise servicers within their jurisdiction to assure compliance with these requirements but there will not be a private right of action to enforce these provisions.

7. **Early intervention with delinquent borrowers.** Servicers must establish or make good faith efforts to establish live contact with borrowers by the 36th day of their delinquency and promptly inform such borrowers, where appropriate, that loss mitigation options may be available. In addition, a servicer must provide a borrower a written notice with information about loss mitigation options by the 45th day of a borrower's delinquency. The rule contains model language servicers may use for the written notice. This section includes an exemption for small servicers as defined above.
8. **Continuity of contact with delinquent borrowers.** Servicers are required to maintain reasonable policies and procedures with respect to providing delinquent borrowers with access to personnel to assist them with loss mitigation options where applicable. The policies and procedures must be reasonably designed to ensure that a servicer assigns personnel to a delinquent borrower by the time a servicer provides such borrower with the written notice required by the early intervention requirements, but in any event, by the 45th day of a borrower's delinquency. These personnel should be accessible to the borrower by phone to assist the borrower in pursuing loss mitigation options, including advising the borrower on the status of any loss mitigation application and applicable timelines. The personnel should be able to access all of the information provided by the borrower to the servicer and provide that information, when appropriate, to those responsible for evaluating the borrower for loss mitigation options. This section includes an exemption for small servicers as defined above. The Bureau and the prudential regulators will be able to supervise servicers within their jurisdiction to

assure compliance with these requirements but there will not be a private right of action to enforce these provisions.

9. **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.

This section includes an exemption for small servicers as defined above. However, a small servicer is required to comply with two requirements: (1) a small servicer may not make the first notice or filing required for a foreclosure process unless a borrower is more than 120 days delinquent, and (2) a small servicer may not proceed to foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a loss mitigation agreement.

All of the provisions in the section relating to loss mitigation can be enforced by individuals. Additionally, the Bureau and the prudential regulators can also supervise servicers within their jurisdiction to assure compliance with these requirements.

IMPLEMENTATION

The effective date for both of these rules is January 10, 2014. The Bureau generally believes that the final rules should be made effective as soon as possible, and the Dodd-Frank Act in some cases provides no more than 12 months for implementation. However, the Bureau understands that the final rules will require revisions to software, staff training, and other changes. Some companies may also need to implement other new requirements under other parts of the Dodd-Frank Act. The Bureau will be working to help industry to achieve the implementation of these rules by the effective date.