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CFPB RULES ESTABLISH STRONG PROTECTIONS FOR HOMEOWNERS FACING FORECLOSURE

The Consumer Financial Protection Bureau (CFPB) is issuing new mortgage servicing rules to establish strong protections for struggling homeowners facing foreclosure. The rules will also protect all homeowners from being hit by costly surprises or getting the runaround from their servicers.

BACKGROUND

- **Mortgage servicers are responsible for collecting payments from the mortgage borrower on behalf of the owner of the loan.** They also typically handle customer service, escrow accounts, collections, loan modifications, and foreclosures.
- **Generally, consumers do not choose their mortgage servicer.** Because the lender employs the servicer, not the consumer, most servicers have had little incentive to meet consumer needs. This lack of customer care can be disastrous for the homeowner.
- **Problems in mortgage servicing were exacerbated by the crisis.** As millions of borrowers fell behind on their loans, many servicers were unable to provide the level of service necessary to meet people's needs. Many simply had not made the investments in resources and infrastructure to service large numbers of delinquent loans. This made it harder to sort out borrower problems. Many borrowers have complained about getting the runaround and being hit with costly surprises. Many have also complained that they have had problems seeking loan modifications or other alternatives to avoid foreclosure.
- **The Dodd-Frank Wall Street Reform and Consumer Protection Act recognized the need to mandate that mortgage servicers do a better job.** Under the law, Congress gave the responsibility of implementing the Dodd-Frank Act provisions to the CFPB. The law also gave the CFPB authority to adopt additional rules as needed to protect borrowers. After conducting extensive research and analysis, in August 2012 the CFPB sought public comment on its proposed mortgage servicing rules. Through meetings with stakeholders on all sides, feedback from the public, and extensive market research, the CFPB has carefully crafted today's rules.
- **The CFPB's rules will bring greater consumer protections to the mortgage servicing market.** The rules are aimed at providing consumers with better tools and information when dealing with mortgage servicers. The rules will better inform consumers of, and assist consumers with, options that may be available if they are having difficulty with their mortgage loan obligations. For homeowners facing foreclosure, the rules provide strong protections in the foreclosure process. The rules will take effect in January 2014.

STRONG PROTECTIONS FOR STRUGGLING BORROWERS

CFPB's mortgage servicing rules ensure borrowers in trouble get a fair process to avoid foreclosure. Borrowers shouldn't have to worry about mortgage servicers cutting corners or losing applications for relief. They should be told about their options and given time to apply and be considered for loan modifications and other alternatives. Most of all, they shouldn't be surprised by the start of a foreclosure proceeding until they have had time to explore all available options. If they act diligently to seek alternatives, they should not face a foreclosure sale before their applications have been evaluated. The new protections for struggling borrowers include:

Restricted Dual-Tracking: Dual-tracking – when the servicer moves forward with foreclosure while simultaneously working with the borrower to avoid foreclosure – is restricted. The practice has hurt many consumers who thought they were working out a resolution with their banks and were shocked to learn of a scheduled foreclosure sale. Under the new rules:

- Servicers must not make the first notice or filing required for the foreclosure process until a mortgage loan account is more than 120 days delinquent. This will give borrowers reasonable time to submit modification applications.
- Servicers must not start a foreclosure proceeding if an application is pending for a loan modification or other alternative to foreclosure.

Early Notice When in Trouble: Servicers must include information about delinquency in a borrower's monthly 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.

Notification of Foreclosure Alternatives: Servicers must reach out to borrowers who have missed two consecutive payments. Specifically:

- Servicers must send a written notice to a borrower within 15 days of the borrower's second missed payment.
- Servicers must provide in the written notice examples of "loss mitigation" options, which may be available to avoid foreclosure. These options could include changing the interest rate, extending the terms of the loan, deferring or forgiving principal, or coming up with some other alternative payment plan.
- Servicers must include information about housing counseling in the written notice.

Direct and Ongoing Access to Servicer Personnel: Servicers must maintain policies and procedures to provide borrowers who are two months delinquent with direct, easy, ongoing access to employees responsible for helping them avoid foreclosure. This is often called "continuity of contact." These personnel are responsible for making sure documents get to the right servicing personnel for processing. And, they must have timely access to the borrower's records and be responsible for providing the borrower with accurate information about:

- The foreclosure process and loss mitigation options;
- Actions the borrower must take to be evaluated for loss mitigation options; and
- The status of any loss mitigation application the borrower has submitted.

One Application: Servicers will not be allowed to require multiple applications for multiple modifications. They must offer a single application for all available options and a borrower who submits a complete and timely application must be considered for all options at once.

Confirm Application and Prompt Review: Servicers must inform the borrower, within five days of receipt, whether a loss mitigation application is complete (as long as the application is received 45 days or more before a foreclosure sale). Servicers must review and respond within 30 days to complete loss mitigation applications that are received more than 37 days before a foreclosure sale.

Fair Review Process: Servicers must provide a fair process to a borrower seeking alternatives to foreclosure. Specifically:

- Because investors – like Fannie Mae, Freddie Mac, the Federal Housing Authority, or the private owner of the mortgage – decide loan modification options, servicers must have policies and procedures to ensure that they know which options the investor, or investors, will allow;
- Servicers must evaluate a borrower for all loss mitigation options permitted by the investor for which the borrower may be eligible (so long as complete applications are received by specified deadlines); and
- Servicers cannot steer borrowers to apply for particular options that are most favorable to the servicers or investors.

No Foreclosure Sale Until All Other Alternatives Considered: 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 more than 37 days before a foreclosure sale. The servicer must first evaluate the borrower's application and one of the following must occur before the servicer can move forward with foreclosure:

- The servicer has informed the borrower that the borrower is not eligible for any loss mitigation option (and any appeal is not applicable or has been exhausted);
- The borrower has rejected all loss mitigation options offered by the servicer; or
- The borrower has failed to comply with the terms of an agreement on a loss mitigation option.

No Foreclosure Sale With A Loss Mitigation Agreement: Servicers must not start foreclosure if they have come to a loss mitigation agreement with the borrower, unless the borrower fails to perform under that agreement.

Borrower Recourse: Servicers must explain why they have rejected a borrower's application for a loan modification if the application is received more than 37 days before a foreclosure sale. Specifically:

- The servicer cannot merely cite "investor requirements" as the justification – the servicer must provide specifics; and
- When an appeal is an option, the servicer must inform the borrower that they can appeal the decision to servicer personnel not involved in the original decision.

NO SURPRISES

Mortgage borrowers should not be surprised about where their money is going, when interest rates adjust, or when they get charged sudden fees. The CFPB's rules will help every borrower, whether they struggle or not, by bringing greater transparency to the market with clear and timely information about mortgages. These rules include:

Clear Monthly Mortgage Statements: Generally, servicers must provide clear monthly statements. The statements have to include:

- The amount and due date of the next payment;
- A summary of the mortgage terms like interest rate and principal obligation;
- A breakdown of payments by principal, interest, fees, and escrow;
- Recent transaction activity, including itemization of payments, fees, and charges; and
- If the consumer has missed two consecutive payments, the date the borrower became delinquent, the amount required to bring the loan current, and the risks of failing to do so.

Early Warning Before Interest Rate Adjusts: Servicers must provide a disclosure before the first time the interest rate adjusts for most adjustable-rate mortgages. This disclosure must include:

- An estimate of the new interest rate and payment, and a comparison to the current interest rate and payment;
- An explanation of how the new payment is determined, when the adjustment will take effect, and when future adjustments are scheduled to occur;
- The existence of any pre-payment penalty;
- A list of alternatives the borrower may pursue if the new mortgage payment is unaffordable; and
- Information on how to access housing counselors.

Servicers also must provide disclosures before interest rate adjustments that result in a different payment amount.

Options for Avoiding Costly “Force-Placed” Insurance: Servicers typically must make sure borrowers maintain property insurance. If the borrower does not, the servicer generally has the right to purchase insurance to protect the lender’s interest in the property and require the borrower to reimburse the servicer for that cost. This is called “force-placed” insurance, and it is typically more expensive and provides less protection to borrowers than insurance borrowers can privately purchase. To ensure that servicers do not unnecessarily charge borrowers for force-placed insurance, the rule requires that:

- The servicer notify a borrower twice before charging the borrower for force-placed insurance – first at least 45 days before the servicer imposes a charge on the borrower, and at least 15 days before the servicer imposes a charge on the borrower;
- The second of these notices has to provide the borrower with a good-faith estimate of how much the force-placed insurance would cost;
- The servicer must terminate the insurance within 15 days of receiving evidence that the borrower has the necessary insurance and refund the force-placed insurance premiums to the borrower for any periods of overlapping coverage; and
- Where the borrower has an escrow account for the payment of the homeowner’s insurance premiums, the servicer is prohibited from obtaining force-place insurance where the servicer can continue the borrower’s insurance, even if the servicer needs to advance funds to the borrower’s escrow account to do so.

NO RUNAROUNDS

When mortgage servicers make mistakes, records get lost, payments are processed too slowly, or servicer personnel do not have the latest information about a consumer’s account, the consumer suffers the consequences. CFPB’s rules require common-sense policies and procedures for handling consumer accounts and preventing runarounds. These rules include:

Payments Promptly Credited: Servicers must credit a borrower's account the date the payment is received. Specifically:

- If the servicer receives a payment covering principal, interest, and any required escrow amount, the payment must be credited the date received, even if the payment does not cover any outstanding fees;
- If the servicer places partial payments in a "suspense account," once the amount in such an account equals a full payment, the servicer must credit it to the borrower's account.

Prompt Response to Requests for Balances: Servicers must generally provide a response to consumer requests for the balance of their mortgage loans within seven business days of receiving a written request.

Errors Corrected and Information Provided Quickly: Servicers must acknowledge and respond to written notices from consumers with respect to certain errors or requesting information regarding their mortgage loan accounts. Specifically:

- Servicers must respond to notification of errors or information requests submitted in writing;
- Servicers must generally acknowledge the notification of an error or a request for information within five days; and
- Generally, within 30-45 days of receiving a notice of error or information request, servicers must:
 - Correct the error and notify the borrower of the correction or provide the information requested;
 - Conduct an investigation and notify the borrower that no error has occurred; or
 - Notify the borrower that the information requested is not available.
- Many errors fall under the error resolution requirements, including:
 - Incorrect calculations of credits or payments;
 - Incorrect payments (or non-payments) of taxes and insurance from escrow accounts;
 - Inaccurate information about how a borrower can avoid foreclosure; and
 - Any other error relating to the servicing of the borrower's mortgage loan.

Maintain Accurate and Accessible Documents and Information: Servicers must hold on to borrower records until one year after the loan is paid off or transferred. These records must be maintained in a manner that allows them to be compiled quickly. In addition, servicers must maintain policies and procedures to ensure that they can access and provide timely and accurate information to borrowers, investors, and, if there is a foreclosure proceeding, courts.

SMALL SERVICER EXEMPTIONS

Recognizing that small servicers approach servicing quite differently, the CFPB has made certain exemptions to today's mortgage servicing rules. Servicers that service 5,000 mortgage loans or less and only service mortgage loans that they or an affiliate own or originated are exempt from some of the new rules. These exemptions include many of the procedural rules, including most of the requirements regarding the handling of loss mitigation applications.