

Financial Institution Compliance Update



April 9, 2013

This communication is designed to provide you with quick snapshots and timely perspective on recent regulatory developments.

Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X)

New mortgage servicing rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) become effective on January 10, 2014. The Bureau of Consumer Financial Protection (Bureau) is amending Regulation X and Regulation Z in order to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) regarding mortgage loan servicing.

The goals of the final rules are to provide disclosures to consumers of their mortgage loan obligations and of the options that may be available for those having difficulties meeting their mortgage loan obligations. The final rules also address important practices related to correcting errors, imposing charges for forced-placed insurance, crediting mortgage loan payments, and providing payoff statements, among other topics.

The major topics included in the final rules are as follows:

1. **Periodic Billing Statements:** Periodic statements must be provided for each billing cycle and they must contain 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 information regarding delinquencies if applicable. The rule also has requirements for the timing, form, and content that the statements must meet. The Bureau has provided sample forms.
2. **Interest Rate Adjustment Notices:** A consumer that has a mortgage with an adjustable rate must be provided with a notice between 210 and 240 days prior to the first payment due after that rate first adjusts. This notice must contain an estimate of the new rate and the new payment amount. A notice must also be provided between 60 and 120 days before payment when a rate adjustment has caused the payment amount to change. The

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rule also contains model and sample forms that servicers may use. The annual notice that must be currently provided to adjustable rate mortgages holders (ARMs) is no longer required when the interest rate, but not the payment, has changed over the course of the year.

3. **Prompt Payment Crediting and Payoff Statements:** Periodic payments received from borrowers must be credited promptly, as of the day of receipt. 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. Once the amount in the suspense account is sufficient to cover the periodic payment, then the funds must be applied to the consumer's account. Additionally, an accurate payoff balance must be provided to a consumer no later than seven business days after receipt of a written request from the borrower for such information.
4. **Forced-Placed Insurance:** A borrower may not be charged for forced-placed insurance unless the servicer has a reasonable basis to believe that the borrower has failed to maintain hazard insurance, as required by the loan agreement, and the servicer has provided the required notices. An initial notice must be sent 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. There are model forms in the final rule that may be used. If a borrower provides proof of hazard insurance coverage, the servicer has to cancel any force-placed insurance policy and refund any premiums paid for overlapping periods that the borrower's coverage was in place. Any charges related to force-placed insurance must be for a service that was actually performed and must "bear a reasonable relationship to the servicers' cost of providing the service."
5. **Error Resolution and Information Requests:** There are certain procedural requirements that servicers must meet when responding to written requests for information or complaints of errors. Servicers must comply with the error resolution procedures provided for certain listed errors as well as any error relating to the servicing of a mortgage loan. Servicers must designate a specific address for borrowers to use. They are also required to acknowledge the request or notice within five days. The servicer must correct the error asserted by the borrower and provide the borrower with written notification of the correction or conduct an investigation and provide the borrower written notification that no error occurred within 30 to 45 days. Servicers are also required to respond to borrowers written requests for information and either provide the information or explain why the information is not available within a similar amount of time.
6. **General Servicing Policies, Procedures, and Requirements:** Servicers are required to establish policies and procedures to achieve the objectives specified in the rule. The reasonableness of the policies and procedures takes into account the size, scope and nature of the servicer's operations. Servicers must also retain records relating to each mortgage loan until one year after the mortgage loan is discharged or servicing is transferred. They must also retain certain documents and information for each mortgage loan in a manner that will allow the servicer to compile it into a servicing file within five days.
7. **Early Intervention with Delinquent Borrowers:** Servicers are required to establish or make good faith efforts to establish live contact with borrowers by the 36th day of their delinquency and promptly inform the borrowers, where appropriate, that loss mitigation options may be available to them. Servicers are also required to provide a borrower a written notice with information about loss mitigation options by the 45th day of the borrower's delinquency. Model language is provided within the rule that servicers may use for their written notices.
8. **Continuity of Contact with Delinquent Borrowers:** Another requirement of the rule is that servicers must maintain reasonable policies and procedures with respect to providing

delinquent borrowers with access to personnel to assist them with loss mitigation options. The policies and procedures must be written in a way that they ensure that the servicer assigns personnel to a delinquent borrower by the time a servicer provides the borrower with the written notice required by the early intervention requirements, and no later than the 45th day of the borrower's delinquency. There are also specific requirements with regards to the accessibility of the personnel assigned to delinquent borrowers.

9. **Loss Mitigation Procedures:** The rule sets forth specific loss mitigation procedures that servicers are required to follow for mortgage loans secured by a borrower's principal residence. Additionally, the rule prohibits "dual tracking" where a servicer is evaluating a consumer for loan modification or other alternatives at the same time that it prepares to foreclose on the property. Finally, the rule prohibits a servicer from making the first notice or filing required for a foreclosure process until a mortgage loan is more than 120 days delinquent.

There are exemptions which apply to small servicers, defined as, servicers that service 5,000 mortgage loans or less and only service mortgage loans the servicer or an affiliate owns or originated (small servicers). "The exemptions from the discretionary rulemakings include those relating to general servicing policies, procedures, and requirements; early intervention with delinquent borrowers, continuity of contact; and most of the requirements for evaluating and responding to loss mitigation applications." Small servicers are not restricted from purchasing forced-placed insurance for borrowers with escrow accounts, so long as the cost to the borrower of the insurance obtained by a small servicer is less than the amount the small servicer would be required to disburse from the borrower's escrow account. Small servicers are required to comply with the limited loss mitigation procedure requirements.

The final servicing rules have different scopes with respect to the types of mortgage loan transactions covered and the loans that are exempted. There are more than 700 pages for the Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X). The information provided above just begins to scratch the surface of all the requirements set forth in the Final Rule.

Given the scope of these changes, you should be evaluating the rule impacts and preparing to implement them. Here are a few items that you should be working on now:

- Evaluate the impact of the new requirements on your business operations.
- Meet with your Compliance Officer and assign impact assessments and program changes to specific lines of business and functions.
- Determine whether or not you may be exempt from some of the requirement (e.g., are you a small servicer?).
- Update impacted policies and procedures.
- Meet with your software vendors and other providers to see what assistance they can provide with regard to notices and disclosures.
- Develop the new notices, disclosures and periodic statements that will be required
- Train your staff on the new Servicing Rules.

These are just a few of the things that you should be working on now to prepare for the implementation of these new requirements on January 10, 2014.

