



CFPB Issues Final Rules Amending Mortgage Loan Servicing Requirements, As Required by Dodd-Frank

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On Thursday, February 14, the Consumer Financial Protection Bureau (the "Bureau") published final rules (with official interpretations) in the *Federal Register* to amend its Regulation Z (Truth in Lending) and Regulation X (Real Estate Settlement Procedures). These rules were issued to implement changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act").

The Bureau's final rules amend Regulations Z and X to add requirements with respect to nine major areas of mortgage loan servicing, as well as to make certain technical and "streamlining" changes to the regulations.

Major changes to the mortgage loan servicing requirements of Regulation Z are as follows:

1. **Periodic Billing Statements.** Unless the servicer issues a coupon book for a fixed-rate loan (as to which there are separate disclosure requirements), creditors, servicers and assignees must provide the borrower with a periodic statement for each billing cycle. The timing, form and content requirements of these statements are set forth in the rules, but include, as to content, information on payments due and previously made, fees imposed, transaction activity, application of past payments, contact information for the servicer and housing counselors and information on late payments. The final rules contain model clauses and forms for this purpose.

These requirements do not apply to open-end loans, timeshares and reverse mortgages. These requirements also do not apply to “Small Servicers,” defined generally as those that service 5,000 or fewer mortgage loans and only service mortgage loans originated by the servicer or an affiliate. “Small Servicers” also includes the Housing Finance Agencies (regardless of the number of loans serviced).

2. **Interest Rate Adjustment Notices.** Creditors, servicers and assignees must now provide a borrower whose loan has an adjustable rate feature with a notice of a rate change between 210 and 240 days prior to the first payment due date under the new rate (or between 60 and 120 days, if the rate change will result in a payment increase). Form and content requirements are set forth in the final rules. The final rules contain model clauses and forms for this purpose.

These requirements do not apply to open-end loans and adjustable rate loans having a term of one year or less.

3. **Prompt Crediting of Payments; Payoff Notices.** Payments of principal, interest and escrow (if applicable) must be credited to the loan promptly upon receipt by the servicer. Partial payments may be held in a suspense account, but must be applied once the account balance reaches the amount of a periodic payment. Also, creditors, servicers and assignees must provide a consumer with an accurate payoff amount within seven business days after receipt of a written request for such information.

Major changes to the mortgage loan servicing requirements of Regulation X are as follows:

1. **Force-Placed Insurance.** A servicer may not charge a borrower for force-placed insurance unless (i) the servicer has a reasonable basis to believe that the borrower has failed to maintain hazard insurance as required by the loan documents and (ii) the servicer sends a notice to the borrower at least 45 days before charging the borrower for the coverage, and a second notice no later than 30 days after sending the first notice. The final rules contain model clauses and forms for this purpose. If the borrower provides proof of adequate insurance, the servicer must cancel the force-placed policy and refund any premium for overlapping coverage. Fees for force-placed coverage must be reasonable and be reasonably related to the cost of coverage. Where premiums for hazard insurance are escrowed with the servicer, and the servicer can continue the borrower's insurance, the servicer may not obtain

force-placed insurance, even if the servicer must advance funds into the escrow account to continue the insurance.

Small Servicers can force-place insurance where the borrower escrows for hazard insurance if the cost to the borrower of the force-placed insurance is less than the servicer would have to disburse from escrow to ensure that the borrower's hazard insurance premiums are paid in a timely manner.

2. **Error Resolution; Information Requests.** The final rules provide for a list of "errors" in servicing, notice of which to the servicer triggers certain timing, notice and other requirements of the servicer. The servicer must acknowledge receipt of a notice of an error within five days. The servicer must then conduct an investigation of the alleged error and send the borrower notice of the results of the investigation within 30 to 45 days. If an error occurred, the servicer must take prompt corrective action. Similar timeframes apply to a borrower's request for information, where the servicer must acknowledge receipt of the request and provide either the information or an explanation as to why the information cannot be supplied.

3. **General Policies, Procedures and Requirements.** Servicers must establish written policies and procedures reasonably designed to ensure compliance with the "objectives" of the final rules. Whether the policies and procedures are reasonable will depend on the size, scope and nature of the servicer's operations. The final rules provide a list of these objectives. Servicers are also required to maintain records of each mortgage loan for one year after servicing by that servicer ends, and to maintain certain documents and information on each mortgage loan such that a servicing file on that loan could be constructed within five days.

These requirements do not apply to Small Servicers, to servicers of reverse mortgages, or to loans where the servicer is also a qualified lender under the Farm Credit Act of 1971.

4. **Early Intervention with Delinquent Borrowers.** Within 36 days after a borrower becomes delinquent, the servicer must establish live contact with the borrower and inform the borrower that loss mitigation options may be available, if applicable. The term "loss mitigation options" generally refers to workouts, forbearance arrangements, or any governmental program for the relief of debtors. The servicer must also provide the borrower, by the 45th day of delinquency, with a written notice of information about loss mitigation options. The final rules contain model clauses and forms for this purpose.

These requirements do not apply to Small Servicers, to servicers of reverse mortgages, or to loans where the servicer is also a qualified lender under the Farm Credit Act of 1971.

5. **Continuing Contact with Delinquent Borrowers.** Servicers must establish policies and procedures to provide delinquent borrowers with access to the servicer's personnel to assist the borrowers with loss mitigation options, where applicable. Personnel must be assigned to a delinquent borrower as soon as practicable, but in any event by the 45th day of the borrower's delinquency. Personnel must be available to the borrower by phone and must have access to all information provided by the borrower to the servicer, and must pass along that information to those evaluating the borrower for loss mitigation options.

These requirements do not apply to Small Servicers, to servicers of reverse mortgages, or to loans where the servicer is also a qualified lender under the Farm Credit Act of 1971.

6. **Loss Mitigation Procedures.** The final rules provide for very lengthy and specific rules for servicers to follow when pursuing a loss mitigation strategy on a loan secured by the borrower's principal residence. Generally, these rules are similar in concept to the rules governing the taking of any other credit application, including the requirement of a "complete" application, timing as to acknowledgment of the receipt of the application, reviewing the application and responding to the application. Borrowers may make a timely appeal of a loan modification application denied by the servicer. The final rules also prohibit "dual tracking," where the servicer evaluates a borrower's loss mitigation application at the same time it prepares to foreclose on the property. There are specific timing and notice requirements to ensure compliance with these provisions.

These requirements do not apply to servicers of reverse mortgages or to loans where the servicer is also a qualified lender under the Farm Credit Act of 1971. With certain exceptions set forth in the final rules, these requirements do not apply to Small Servicers.

In addition to the specific exemptions noted above, the Regulation X final rules generally do not apply to open-end loans, loans secured by property of 25 acres or more, business-purpose loans, temporary financing, loans secured by vacant land, and certain assumptions or conversions.

These final rules take effect on January 10, 2014.

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