



CFPB Issues Interim Final Rules on Dodd-Frank Mortgage Loan Servicing Requirements

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On Wednesday, October 23, the Consumer Financial Protection Bureau (the “Bureau”) published interim final rules (and a request for public comment) in the *Federal Register* to amend further its Regulation Z (Truth in Lending) and Regulation X (Real Estate Settlement Procedures). On February 14, 2013, the Bureau published final rules amending the servicing requirements of Regulations Z and X ([see this publication of February 25, 2013](#)) and on January 31, 2013, the Bureau published final rules amending the homeownership counseling requirements of these regulations ([see this publication of February 11, 2013](#)). These rules were issued in order to implement changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”).

On October 15, 2013, the Bureau issued its Bulletin 2013-12 (the “Bulletin”) to address a range of servicing issues that have arisen since the publication of the final rules and the amendments referenced above. The interim final rules and the Bulletin clarify compliance requirements with respect to bankruptcy law and the Fair Debt Collection Practices Act (“FDCPA”). Currently, there is confusion over the proper way to communicate with delinquent borrowers, given the prohibition of certain communications with such borrowers under bankruptcy law and the FDCPA, and the requirement of communications with such borrowers mandated by the Act.

The interim final rule also creates narrow exemptions from certain of the requirements for situations where the Bureau feels that more time is needed for additional analysis and study.

The major changes to the mortgage loan servicing requirements are as follows:

1. Under the FDCPA, borrowers generally have the right to bar debt collectors from communicating with them. Also under the FDCPA, there is no liability under that statute for actions taken or omitted in good faith and in conformity with a Bureau advisory opinion. Accordingly, the Bulletin creates exemptions for the following communications by servicers who are “debt collectors” with borrowers who have instructed the servicer to “cease

communications” under the FDCPA:

- Regulation X, Section 1024.35 (error resolution).
 - Regulation X, Section 1024.36 (requests for information).
 - Regulation X, Section 1024.37 (force-placed insurance).
 - Regulation X, Section 1024.41 (loss mitigation).
 - Regulation Z, Section 1026.20(d) (adjustable-rate mortgage (“ARM”) initial interest rate adjustment)
2. Separately, the interim final rule creates exemptions for the following communications by servicers who are “debt collectors” with borrowers who have instructed the servicer to “cease communications” under the FDCPA:
- Regulation X, Section 1024.39 (early intervention rule).
 - Regulation Z, Section 1026.20(c) (ARM interest rate adjustment with corresponding payment change rule).
3. The interim final rule also exempts servicers from the early intervention requirements (Regulation X, Section 1024.39) and periodic statement requirements (Regulation Z, Section 1026.41) for borrowers while they are in bankruptcy.
4. Finally, the interim final rule makes several clarifying changes to the mortgage regulations. The main change clarifies that, with respect to the requirement for homeowner counseling under Section 1026.34(a)(5) of Regulation Z for a closed-end loan not subject to the Real Estate Settlement Procedures Act (“RESPA”), it is permissible to use the HOEPA disclosures required by Section 1026.32(c) of Regulation Z as the basis of the counseling, and the good faith estimate disclosures required by RESPA are not required to be used.

Note also that the Bulletin addresses servicing compliance issues other than those noted above. The Bulletin provides guidance regarding (i) policies and procedures of servicers with respect to successors in interest to the property of a deceased borrower, and (ii) types of communications that constitute reasonable steps to establish live contact with a borrower under the early intervention rules.

These interim final rules take effect on January 10, 2014. Comments must be received on or before November 22, 2013.

Lenders, debt collectors and servicers may comment, and should do so if they think that these changes, or the specifics of the implementation of these changes as published in the notice, will have an adverse effect on their businesses. Comments must be identified by Docket Number CFPB-2013-0031, or RIN 3170-AA37. The options available for sending the comments are set forth in the notice, which is published in the *Federal Register* of October 23, 2013 (Volume 78, No. 205) at page 62994.

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