

CFPB Adopts Mortgage Servicing Rules

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On January 17, 2013, the Consumer Financial Protection Bureau (CFPB) issued final rules (the “Rules”) establishing national mortgage servicing standards. The Rules cover nine major topics and implement the mortgage servicing provisions set forth in Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank). These changes will go into effect on January 10, 2014.

The Rules amend Regulation Z, which implements the Truth in Lending Act, and Regulation X, which implements the Real Estate Settlement Procedures Act. The Rules apply to all mortgage servicers (except “small servicers” as indicated below) and all segments of the mortgage market.

The implementation of these new servicing standards will be expensive, requiring servicers to, among other things, add additional personnel – which costs will be passed through to borrowers directly or indirectly. Industry participants (servicers, lenders, mortgage brokers) should immediately review the Rules to determine how they will comply with them. As part of this review, servicers should examine, among other things, their operations, technology and controls, to determine how the changes relate to and interact with other applicable requirements – including, for many servicers, the servicing standards required by the national mortgage loan servicing and foreclosure settlement (the National Mortgage Settlement), which placed servicing requirements on five of the largest U.S. banks – as well as other guidance from banking regulators such as the Independent Foreclosure Review and the Servicing Alignment Initiative (SAI). Provisions of the National Mortgage Settlement have been incorporated into the Rules. Industry participants will also need to review the recently adopted CFPB Ability to Repay and Qualified Mortgage Rules. The *Hinshaw Corporate & Financial Institutions Alert* discussing these rules is available at http://www.hinshawlaw.com/files/upload/CorporateFinancial_12413.pdf.

Summary of the Rules

Regulation Z Rule

The Rule amending Regulation Z implements Dodd-Frank sections addressing:

- initial rate adjustment notices for adjustable-rate mortgages;
- periodic statements for residential mortgage loans;

- prompt crediting of mortgage payments; and
- responses to requests for payoff amounts.

Existing rules governing the scope, timing, content and format of disclosures to consumers regarding the interest rate adjustments of their variable-rate transactions have also been revised.

Regulation X Rule

The Rule revising Regulation X implements Dodd-Frank sections by:

- addressing servicers' obligations to correct errors asserted by mortgage loan borrowers; and
- directing servicers to provide: (1) certain information requested by borrowers; and (2) protections to borrowers in connection with force-placed insurance. Servicers must also establish reasonable policies and procedures in managing and maintaining their systems in order to achieve certain delineated objectives. The Rule directs servicers to:
 - provide information about mortgage loss mitigation options, if any, available to delinquent borrowers;
 - establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of assisting such borrowers with loss mitigation efforts and other functions; and
 - evaluate (in a timely manner) a borrower's application for available loss mitigation options.

The Rule contains loss-mitigation provisions that are quite favorable to borrowers, basically requiring servicers to provide borrowers with all available options to avoid foreclosure. For example, a servicer may not start the foreclosure process until the borrower is delinquent at least 120 days. Also, if a delinquent borrower submits a complete loss-mitigation application at least 37 days before the foreclosure sale, the loss-mitigation process must be completed before the foreclosure may proceed. The Rules do not require that a borrower be awarded a loan modification; however, they do set forth procedures that must be followed, such as a loss-mitigation review, before a foreclosure action can be brought.

“Small Servicer” Exemption

The Rules include several exemptions and other adjustments for small servicers. A small servicer is defined as a servicer: (1) that services 5,000 mortgage loans or fewer; and (2) that only services mortgage loans that it, or an affiliate, owns or originated. Thus, a small servicer may not service mortgages for other entities unless the small servicer originated the mortgages. The CFPB anticipates that the new small servicer definition will cover substantially all of the community banks and credit unions involved in servicing mortgages, thereby reducing burdens for those entities.

The exemptions for small servicers include: (1) those relating to general servicing policies, procedures, and requirements; (2) early intervention with delinquent borrowers; and (3) continuity of contact. The Rules do not prohibit small servicers from purchasing force-placed insurance for borrowers with escrow accounts for the payment of hazard insurance. However, the cost to the borrower of the force-placed insurance must be less than

the amount the small servicer would be required to disburse from the borrower's escrow account to ensure that the borrower's hazard insurance premium charges were paid in a timely manner.

Small servicers are required to comply with limited loss-mitigation requirements which provide that they:

- may not make the first notice or filing required for a foreclosure process unless a borrower is more than 120 days delinquent; and
- may not proceed to foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing in accordance with the terms of a loss-mitigation agreement.

The exemptions applicable to small servicers in the Rules are also available to Housing Finance Agencies, without regard to the number of mortgage loans serviced by such an agency.

For more information about these Rules, [please read the full article](#) or contact Tim Sullivan, Michael D. Morehead or your regular Hinshaw attorney.

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