



Mortgage Servicing Standards - CFPB Proposed Rule

Executive Summary

The Bureau of Consumer Financial Protection (“CFBP” or “Bureau”) released two proposed rules on August 10, 2012 that would amend Regulation X, which implements the *Real Estate Settlement Procedures Act* (“RESPA”), and Regulation Z, which implements the *Truth-in-Lending Act*, as well as the official staff commentary to each regulation in order to impose new mortgage servicing rules. The amendments would address handling customer accounts, correcting errors, interacting with customers, and evaluating borrowers’ foreclosure options, which, taken together, the CFPB refers to as the “no runaround” provisions. Additional proposed amendments are intended to provide consumers with clear and timely information about their mortgages, including information about interest rate changes, force-placed insurance and avoiding foreclosure. The CFPB calls these rules the “no surprises” provisions.

The proposed rules under Regulation X and Regulation Z would generally apply to closed-end mortgage loans though certain exceptions would apply to specific provisions.

Comments on the two proposals are due no later than October 9, 2012 and the CFPB indicates that it intends to finalize the rules by January 2013. The CFPB is also seeking comment on an effective date and notes that some of the provisions implement requirements of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the “Dodd-Frank Act”), which in certain cases provides no more than 12 months for implementation.

Background

The Bureau’s proposed rules under Regulation X and Z are part of the effort to establish uniform minimum national mortgage servicing standards. When adopted in final form, the Bureau’s rules will apply to all mortgage servicers, whether depository institutions or nondepository institutions, and to all segments of the mortgage market, regardless of the ownership of the loan. The proposals focus both on implementing the specific mortgage servicing requirements of the Dodd-Frank Act and on addressing broader consumer protection issues that the Bureau indicates are critical to ensure that the mortgage servicing market functions to serve consumer needs. For example, the proposed mortgage servicing rules incorporate elements from the mortgage loan servicing and foreclosure settlement agreement reached in March 2012 (“Settlement Agreement”) between the five largest mortgage servicers and the 49 State Attorneys General, the Department of Justice and the Department of

Housing and Urban Development (please refer to Regulatory Practice Letter 12-06), including: foreclosure and bankruptcy information and documentation; service provider oversight; loss mitigation; servicing fees restrictions; and, force-placed insurance.

This proposal is one of seven the Bureau is currently working with to implement provisions of the Dodd-Frank Act related to mortgage credit, most of which would amend Regulations X and Z and would become effective in January 2013.

Description

An overview of the proposed mortgage servicing amendments affecting Regulations X and Z are described below.

RESPA – Regulation X

The proposed amendments to Regulation X (RESPA) would generally apply to closed-end mortgage loans, though open-end lines of credit and certain other loans, such as construction loans and business-purpose loans, would be excluded. As proposed, the rules would implement mortgage loan servicing provisions of the Dodd-Frank Act that address the following areas and impose the following requirements, among others:

- *Correction of errors asserted by mortgage loan borrowers*
 - Consumers would be permitted to provide notice of an error either orally or in writing.
 - A finite list of nine errors would be covered by the proposed rule.
 - In general, a servicer would be required to provide written acknowledgement of notice within 5 days of receipt of the asserted error and correction of the error, if appropriate, within 30 days, except for errors related to payoff balances and foreclosure sale suspensions.
 - A servicer would be required to correct the error or perform a reasonable investigation to determine if the error occurred. The servicer may request additional information from the consumer but may not condition the investigation upon receipt of these documents. If the servicer determines no error has occurred it must provide a statement to the consumer that identifies the reasons for the determination and notice of the consumer's right to request the documents relied upon.
 - A servicer would not be required to acknowledge or respond to a notice of error if the servicer reasonably determines the notice is:
 - Duplicative of an earlier notice;
 - Overly broad or unduly burdensome; or
 - Untimely (i.e., more than one year after the mortgage is transferred or paid off).

The servicer would be required to provide notice of such a determination.

Note: "reasonable" is not further defined in the proposed rule.

- *Provision of information requested by mortgage loan borrowers*
 - Consumer requests for information would be permitted to be provided orally or in writing. A request submitted on a payment coupon or other payment form would not be treated as a request for information.
 - A servicer would not be required to respond to information requests that meet certain criteria (e.g., duplicative, confidential or proprietary, irrelevant to the mortgage loan, overbroad or unduly burdensome, untimely).

- In general, a servicer would be required to provide written acknowledgement of notice within 5 days and provide the requested information within 30 days or provide notice that the information is not reasonably available and contact information for further assistance.
- A servicer would be required to use the same telephone contact number and address to receive error notices and requests for information.
- *Existing reasonable basis to obtain force-placed insurance;*
 - “Hazard insurance” would be defined to include, but not be limited to, homeowner’s insurance.
 - Force-placed insurance would not include hazard insurance obtained by a borrower but renewed by a servicer or to protect against flood loss.
 - A servicer would be required to advance funds to pay the borrower’s hazard insurance premium charges if the borrower’s escrow account does not contain sufficient funds but the mortgage account is not more than 30 days past due and the servicer does not have a reasonable basis to believe the insurance has been cancelled or not renewed for reasons other than nonpayment.
 - A servicer would not be permitted to charge for force-placed insurance unless:
 - The borrower is provided notice at least 45 days before fees are assessed, and
 - The servicer does not receive notice within the 45 days that the borrower has had insurance in place continuously.
 - A second notice would be required at least 30 days after the first notice if no response is received.
 - All charges for force-placed insurance would be required to be bona fide and reasonable, which is defined as a charge for services actually performed and bearing a reasonable relationship to the servicer’s cost of providing the service and not otherwise prohibited by applicable law.
 - The servicer would be required to cancel any force-placed insurance obtained within 15 days of receiving verification that the borrower has hazard insurance in place and also to refund all force-placed insurance premiums and related fees for the period the two coverages overlapped.
- *Establishment of reasonable information management policies and procedures.* The policies and procedures should be designed to address certain objectives and standards including:
 - Accessing and providing accurate information in a timely manner (e.g., error corrections, information/document requests, submissions of information/documents related to foreclosures).
 - Evaluating loss mitigation options (e.g., identifying eligible options on a loan-by-loan basis, required documentation, access to documentation).
 - Facilitating oversight of, and compliance by, service providers through the sharing of accurate and current information to:
 - Facilitate periodic reviews of service providers to audit compliance with the servicer’s contractual obligations and applicable law; and
 - Facilitate the evaluation of a borrower’s completed loss mitigation application and of any foreclosure proceeding among the assigned servicer personnel and the service provider responsible for handling the foreclosure.
 - Facilitating servicing transfers.

- Maintaining records regarding a mortgage loan account for one year after the loan is discharged or transferred.
 - Maintaining a loan servicing file that would be provided to a borrower upon request and contain: schedule of payment credits and debits, including escrows and suspense accounts, mortgage note, deed of trust, collection notes created by the servicer and information provided by the borrower.
- The “reasonableness” of the servicer’s policies and procedures would take account of the servicer’s size, scope and nature of its operations. A safe harbor would be provided such that a servicer would be deemed to satisfy these requirements if it does not engage in a pattern or practice of failing to achieve any of the objectives or standards contained in the rule (examples are provided).
- *Provision of information about mortgage loss mitigation options to delinquent borrowers.* Mortgage loss mitigation information would be required to be provided to delinquent borrowers if no payment sufficient to cover the principal, interest and escrows is received from the borrower by the due date. Further, the servicer would be required to contact the borrower:
 - Orally not later than 30 days after the payment due date. A good faith effort of three consecutive attempts would be required.
 - In writing not later than 40 days after the payment due date detailing servicer contact information, an outline of loss mitigation options possible, an estimate of how many days since the missed payment the servicer makes the referral for foreclosure and a list of housing counselors.
 - *Provision of access to a single point of contact on the servicer’s staff for delinquent borrowers.* A servicer would have to meet certain obligations:
 - Not later than 5 days after a good faith effort to contact a delinquent borrower, personnel must be assigned to respond to the borrower’s inquiries and assist with loss mitigation options. Telephone access to the assigned personnel would be required.
 - Policies and procedures would be required to ensure the assigned personnel perform certain specific functions as outlined in the rule, and they remain assigned to the borrower until the loan is refinanced, paid off, becomes current, entered into a permanent loss mitigation agreement, transferred to a new owner, or transferred to a transferee servicer.
 - *Evaluation of borrowers’ applications for available loss mitigation options.*
 - A servicer would be required to notify borrowers of an incomplete application within 5 days of receipt and identify the information that is missing and the date by which it must be received.
 - Complete applications would be required to be reviewed within 30 days.
 - A borrower’s acceptance or rejection of a loss mitigation offer could be required no earlier than 14 days after the offer is communicated.
 - A servicer’s denial of an application would be required to include the specific reason for the determination and the deadline to make an appeal.
 - Appeals would be reviewed by personnel independent of those initially reviewing the application.
 - Decisions would be required within 30 days with no additional appeal.
 - The deadline to receive a complete application could not be earlier than 90 days before a scheduled foreclosure sale.

This proposal would also modify and streamline certain existing servicing-related provisions of Regulation X, including provisions relating to a mortgage servicer’s

obligation to provide disclosures to borrowers in connection with a transfer of mortgage servicing, and a mortgage servicer's obligation to manage escrow accounts.

The definition of "mortgage servicing loan" would be modified to "mortgage loan" and would be defined to include subordinate-lien closed end mortgages. This would create new regulatory obligations for servicers with respect to subordinate-lien closed end mortgages.

The proposal would also reorganize Regulation X to include three distinct subparts.

- Subpart A (General) would include general provisions of Regulation X, including provisions that apply to both subpart B and subpart C.
- Subpart B (Mortgage settlement and escrow accounts) would include provisions relating to settlement services and escrow accounts, including disclosures provided to borrowers relating to settlement services.
- Subpart C (Mortgage servicing) would include provisions relating to obligations of mortgage servicers and would include most of the provisions in the Regulation X proposed rule.

The Bureau also proposes to set forth a commentary that includes official Bureau interpretations of Regulation X.

TILA – Regulation Z

The proposed amendments to Regulation Z (TILA) would implement mortgage loan servicing provisions of the Dodd-Frank Act that address the:

- Notices addressing interest rate adjustments for adjustable rate mortgages;
- Periodic statements for residential mortgage loans; and
- Prompt application of payments and response to requests for pay off amounts.

Notices Addressing Interest Rate Adjustments:

- The proposed rule would generally require the creditor, assignee or servicer of an adjustable rate mortgage loan to provide consumers with notice of a rate adjustment that results in a change in payment at least 60 but no more than 120 days prior to the payment change.
- A notice would be required 210 to 240 days before the first rate adjustment.
- Disclosure would be required to include, among other things:
 - Explanation that the interest rate and mortgage payment will change, how the new interest rate and new payment are determined, and any related limitations.
 - The effective date of the interest rate change and dates for future rate changes.
 - Other changes taking effect at the same time.
 - Alternatives to paying at the new rate and any related prepayment penalties.
 - Contact information for housing counselors.
 - Contact information for the creditor, assignee or servicer.
 - The annual disclosure of an interest rate change where no payment change occurs would be eliminated.

Periodic Statements

- A creditor, assignee or servicer would be required to provide a borrower with a periodic billing statement on a monthly basis that meets the timing, form and content requirements outlined in the rule.

- Exemptions from this requirement would be provided for:
 - Reverse mortgages and timeshares.
 - Fixed rate loans for which the borrower receives a coupon book containing specific information detailed in the rule as well as access to certain other information.
 - Small servicers, defined to include servicers of 1,000 or fewer mortgage loans and service only mortgage loans they own or originate.

Prompt Application of Payments and Response to Payoff Requests

- The proposed rule would require servicers to credit a full contractual payment (principal, interest and escrows, even if it does not cover applicable late or other fees) to a borrower's account as of the date of receipt except if delay would not result in any charge to the borrower. Partial payments that are credited to a suspense account would be required to be applied to the oldest delinquent payment when the account reaches the equivalent of a full contractual payment.
- A creditor, assignee or servicer would be required to provide an accurate statement of the outstanding balance to pay off a loan in full as of a specified date within 7 days of receiving a written request from the borrower.

Under the proposed amendments to Regulation Z, the periodic statement and adjustable-rate mortgage disclosure provisions apply only to closed-end mortgage loans, though the prompt crediting and payoff statement provisions apply both to open-end and closed-end mortgage loans. In addition, reverse mortgages and timeshares are excluded from the periodic statement requirement, and certain construction loans are excluded from the adjustable rate mortgage disclosure requirements.

Commentary

The Bureau indicates that its RESPA and TILA mortgage servicing proposals address “fundamental problems that underlie many consumer complaints and recent regulatory and enforcement actions,” adding that the proposed changes should “reduce avoidable foreclosures and improve general customer service.” Some of the proposals are required by the Dodd-Frank Act though many reflect certain of the mortgage servicing standards (“Standards”) imposed on the five largest mortgage servicers named in the March 2012 Settlement Agreement.

When the Settlement Agreement was released, it was considered likely that, even though the Standards applied only to the named servicers, examiners would begin to incorporate them into their expectations for all servicers, both bank and nonbank. Similarly, the Standards, or some portion of them, were expected to be incorporated into regulatory guidance or rulemakings. That is now the case, as various elements of the Standards have been included in the proposed rule in substantially similar form as stated in the Settlement Agreement, particularly in the areas of foreclosure and bankruptcy information and documentation; service provider oversight; loss mitigation; servicing fees restrictions; and, force-placed insurance. However, where the Servicing Agreement was limited to loans held in portfolio and serviced by the five servicers, the proposed rule would apply to serviced mortgage loans (including

subordinate lien closed end mortgages) independent of their ownership or their servicer. In addition, the Bureau's supervisory authority is grounded in consumer protection, which would likely filter concerns surrounding consumer complaints, fair lending and UDAAP (unfair, deceptive and abusive acts or practices) into their examination and review processes for servicers and their service providers. (Please refer to Regulatory Practice Letter 12-13 for an outline of the CFPB's expectations regarding service provider oversight.) The Bureau also notes that it continues to consider whether to incorporate other Standards from the Settlement Agreement or other actions into rules or guidance, "either alone or in conjunction with other Federal regulatory agencies."

Servicers are encouraged to review the proposed rules and provide comment to the CFPB as requested, including any issues associated with determining a manageable implementation date. Additionally, servicers may wish to seek or suggest clarification of potentially ambiguous "reasonable" language contained in multiple sections of the proposal. Servicers should evaluate their operations in light of proposed requirements, giving consideration to actions that may be needed, such as reassessing policies and procedures, enhancing controls or making systems changes to:

- Respond to customer error notices and customer inquiries, including payoff requests, within the proposed timeframes.
- Maintain escrow accounts and make determinations for force placed insurance.
- Process payments and maintain accounts.
- Implement disclosure content and timing requirements for periodic statements and notices of interest rate adjustments.
- Implement information management systems that, among other things, maintain: accessible and accurate mortgage loan information; third-party oversight; a complete loan servicing file as defined by the rule; and appropriate records for the required retention period.
- Enhance default servicing, including: assigning a single point of contact; providing loss mitigation information; and evaluating applications on a timely basis.
- Develop and implement robust monitoring and testing for the new servicing considerations based on associated risk assessments, including those of third party vendors providing service on behalf of the servicer.
- Complete gap assessments, comparing any operating procedures specific to the Settlement Agreement and those contemplated by this CFPB rule change proposal.

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Financial Services Regulatory Practice

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