

# Understanding the New Mortgage Servicing Rules



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- A professional services firm with three distinct business lines
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# Speaker Introductions

- **Adam Bleck**
  - Senior Compliance Consultant
  - Specializes in regulatory compliance consulting for financial institutions

# Learning Objectives

- At the end of this session, you will be able to:
  - Understand the nine new elements and the policies and procedures required by them
  - Recognize the exemptions that may apply to your financial institution
  - Be familiar with the small servicer mortgage rules

# Understanding the New Mortgage Servicing Rules

- Mortgage Servicing Final Rules
- Definition of a Small Servicer
- RESPA Servicing Rules
  - Error Resolution and Information Requests
  - Force Placed Insurance
  - General Servicing Guidelines
  - Early intervention with delinquent borrowers
  - Continuity of contact with delinquent borrowers
  - Loss mitigation procedures
- TILA Servicing Rules
  - Periodic statements
  - Interest rate adjustment notices for Adjustable Rate Mortgages
  - Prompt crediting of payments and payoff statements

# Mortgage Servicing Final Rule

- Compliance required January 10, 2014
- Focus on Consumers
- Exemptions

# 2013 RESPA Servicing Rules

## Scope

- New rule applies only to servicers
- Definition of “servicer” remains unchanged
- Rule covers what are now defined in the rule as “mortgage loans” including subordinate-lien loans, but not HELOCs

## Mortgage Loans

- New term defined to mean a “federally related mortgage loan” subject to RESPA’s standard exemptions, such as business purpose loans and loans for vacant land

## Exempt from some requirements of the 2013 RESPA Servicing Rule

- Servicers qualified under Farm Credit Administration
- Servicers of reverse mortgages
- Small servicers



# The Small Servicer Exemption

## “Small Servicer” Exemption:

- Servicer that services  $\leq 5,000$  mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; or
- Servicer is a Housing Finance Agency as defined by HUD regulations (24 CFR § 266.5)

## Small Servicer Determination

- Made as of January 1 of each year
- A servicer that crosses the  $\leq 5,000$  threshold, has 6 months or until the next January 1 (whichever is later) to comply with any requirements for which the servicer is no longer exempt as a small servicer.

# 5,000 Exemption

- Scope of 5,000 exemption is limited
- All Financial Institution's have to adhere to the same:
  - Error resolution
  - Information request procedures
  - ARM interest rate adjustments

# Error Resolution/Information Requests

## Timing

- Acknowledgment of receipt of notice of error required within 5 days\*
- Response required within 30 days\* with possible 15-day\* extension
  - Similar time frame applies to requests for information

## Types of Errors

- Servicer required to comply with error resolution procedures for ten (10) specific types of errors and any other type of error related to servicing of a borrower's mortgage loan

## Requirements

- May designate a specific address to use for submitting error notices/information requests
- Requirements of error notices/information requests do not apply to a borrower's oral requests
  - Servicer must maintain policies and procedures for responding to oral notices of error or requests for information

**\*“Small servicers” must comply with the error resolution/information request rules**

# Error Resolution/Information Requests

## Requirements – Cont.

- Servicers need not respond to error notices or information requests if:
  - Duplicative;
  - Overbroad; or
  - Untimely
- For information requests, servicers need not respond if:
  - Request involves confidential, proprietary, or general corporate information; or
  - Information is not directly related to the borrower's mortgage loan account
    - ◇ But servicer must notify borrower in writing of its determination

# Continuing CFPB Clarification

- Servicing Responsibilities
  - Error Resolution, Information Requests, and Loss Mitigation Rules
- Impact of Fair Debt Collection Practices Act with this topic

# Force-Placed Insurance

## Requirements

- Servicer must have “reasonable basis” to obtain force-placed hazard insurance (not flood insurance) before charging borrower; and
  - Must have provided written notices to borrower in advance and in compliance with the timeframes provided for in the rule
  - There are four specific models are available for viewing at <http://www.ecfr.gov/cgi-bin/text-idx?SID=88821605cbfb28141fef1c319a15a4fe&node=20130214y1.51>
- Notice requirements
  - First notice
    - ◇ 45 days before charging borrower
    - ◇ Notice must contain specific information including identifying information for servicer and borrower
  - Reminder notice
    - ◇ No earlier than 30 days after first notice and 15 days before charging borrower and by the end of the 15th day not received evidence from the borrower of continuous coverage
    - ◇ Content is different than first notice depending on information received from borrower in connection with first notice
    - ◇ Notice must state, among other things, that it is the “second and final” notice and include cost or reasonably estimated cost
- Cancelling Force-Placed Insurance

## General Servicing Policies, Procedures, and Requirements

*“A servicer shall maintain policies and procedures that are reasonably designed to achieve [certain] objectives”*

- **Requirements**

- **Policies and procedures should ensure that the servicer can:**

- ◇ Access and provide timely and accurate information
- ◇ Properly evaluate loss mitigation applications
- ◇ Facilitate oversight of, and compliance by, service providers
- ◇ Facilitate transfer of information during servicing transfers
- ◇ Inform borrowers of the written error resolution and information request procedures

# General Servicing Policies, Procedures, and Requirements

- **Record retention requirements** -Servicers must retain records for each mortgage loan until one year after loan is discharged or transferred
- **Servicing file**
  - File must be maintained in manner to enable servicer to compile information into a servicing file within five days:
  - Schedule of all transactions credited and debited, including any escrow and suspense accounts;
  - Copy of the security instrument;
  - Communication notes about the mortgage account created by servicer personnel;
  - Report of data fields by name (to the extent applicable); and
  - Copies of any information or documentation provided by borrower (in accordance with error resolution and loss mitigation procedures)
- Borrower may request servicing file subject to information request provisions



# Early Intervention with Delinquent Borrowers

*“A servicer shall establish or make good efforts to establish live contact with a delinquent borrower”*

- **Delinquency**
  - Delinquency begins on day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid
- **Requirements**
  - **Live contact**
    - ◇ Servicer must establish live contact with delinquent borrower by the 36th day of delinquency
    - ◇ Promptly provide information about the availability of loss mitigation options
- **“Good faith effort”**
  - Reasonable steps to reach borrower by telephone more than once or sending written or electronic communication to establish live contact

# Communicating with the Successors of a Deceased Borrower

- Policy Requirements
- CFPB reasoning for the communication requirements
- Employee Training
- Prompt Action

# Requirements with Regard to Borrowers Prohibiting Debt Collectors from Communicating

- Communications allowed under the Fair Debt Collection Practices Act (FDCPA)

# Continuity of Contact with Delinquent Borrowers

- *“A servicer shall maintain policies and procedures that are reasonably designed to achieve [certain] objectives”*
- **Requirements**
  - Assign personnel (single person or team of personnel) to delinquent borrower by the time servicer provides borrower early intervention notice but no later than the 45th day of the borrower’s delinquency
  - Make assigned personnel available by telephone to respond to inquiries and assist borrower with loss mitigation (as applicable) until borrower has made two consecutive mortgage payments under the terms of a permanent loss mitigation agreement
  - If borrower does not receive immediate live response from assigned personnel, ensure servicer can provide live response in a timely manner
- **Assigned Personnel**
  - Must have access to all borrower information and records; and
  - Provide such information to personnel responsible for evaluation of borrower’s loss mitigation options

# Loss Mitigation Procedures

- Requirements
  - **Timing and Procedures**
  - **Appeals**
  - **Dual Tracking Restrictions**
    - ◇ Dual Tracking: evaluating borrower for loan modifications or other loss mitigation options while pursuing foreclosure and sale of the property
  - **120 Day Pause**
  - **Small servicer dual tracking limitations:**
    - ◇ May not make first notice or filing required for foreclosure unless borrower is more than 120 days delinquent; and
    - ◇ May not proceed to foreclosure judgment or order of sale, or conduct a foreclosure sale, if borrower performing under loss mitigation agreement

# First Notice and Filing

- Importance of State Foreclosure Laws
  - Court Action/Proceeding required
  - No Court Proceeding required

# Truth in Lending-Periodic Statements

- Scope of Requirements
- Exemptions
- Periodic Statement Requirements
- Statement Timing
- Statement Format

# Interest rate adjustment notices for Adjustable Rate Mortgages

- Applicable to Closed-End, Principle dwelling secured ARMs
- Exemptions
- Initial Interest Rate Disclosure Requirements
- Timing and Formatting
  - <http://www.ecfr.gov/cgi-bin/text-idx?SID=88821605cbfb28141fef1c319a15a4fe&node=2013-02-14y1.76>



# Change in Payment Notices for Adjustable Rate Mortgages

- Revised Requirements
  - Eliminates annual notice currently required when the interest rate adjusts during the course of a year without a corresponding change in payment; and
  - Revises the current disclosure when an interest adjustment results in a corresponding change in payment

# Prompt Crediting of Payments and Payoff Statements

- New definitions for periodic and partial payments
- Late Fees
- Requirements for payoff statements

# Servicing Rule Impact on HELOCs

## Not exempt from rules

- Prompt Payoff Statements

## Almost exempt from rules

- Period Statement Requirement
- Error Resolution/Information Requests

## Exempt from new rules

- ARM Interest Rate Adjustment Notices
- Prompt Payment Crediting
- Force-placed Insurance
- General Servicing Guidelines (Policies, Procedures, & Requirements)
- Early Intervention Requirements
- Continuity of Contact Requirements
- Loss Mitigation Procedures

# CFPB Contact Verbiage

- “For more information about the implementation of the 2013 RESPA and TILA Servicing Final Rules and other new mortgage rules issued by the CFPB, visit <http://www.consumerfinance.gov/regulatory-implementation>. Guidance inquiries may be directed to [CFPB\\_reginquiries@cfpb.gov](mailto:CFPB_reginquiries@cfpb.gov) or (202) 435-7700.”

# Mortgage Servicing Resources

- Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z) <https://federalregister.gov/a/2013-01241>
- Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) - <https://federalregister.gov/a/2013-01248>
- CFPB Regulation Page - 2013 Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules - <http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/>
- CFPB Bulletin 2013-12, October 15, 2013
- CFPB Mortgage Servicing Presentation [http://www.youtube.com/watch?v=Jh9\\_exDauXE&list=PLrfmdUIWzRF1U52P27LgFOK\\_J-bxemZ4n&index=6](http://www.youtube.com/watch?v=Jh9_exDauXE&list=PLrfmdUIWzRF1U52P27LgFOK_J-bxemZ4n&index=6)

# Questions?



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