

To the Point!

legal, operations, and strategy briefs for financial institutions February 8, 2013



Special Edition: Mortgage Servicing Rules

The Consumer Financial Protection Bureau (“*Bureau*”) issued its final mortgage servicing rules under the Truth in Lending Act and the Real Estate Settlement Procedures Act (*the “Rule”*). The Rule includes new disclosure and servicing requirements in both Regulation Z and Regulation X for loans secured by residential real estate. To aid in your review, we have indicated the applicable regulation that contains the requirement in this summary. The disclosure rules and servicing requirements generally apply to closed-end loans secured by residential real estate except as noted in the chart below. The Rule is effective January 10, 2014.

Creditors and servicers will be required to change their policies and procedures for all borrowers to include new ARM notices and monthly statements to borrowers. In addition, new requirements apply to responses to borrower questions asserting errors, crediting of payments and requests for a payoff balance. Finally significant additional requirements apply to treatment of borrowers who are delinquent including, among other requirements, notice to borrowers in early delinquency containing loss mitigation options, limitations on force-placed insurance, establishment of a single loss mitigation application that is reviewed for all loss mitigation options and limitations on the timing of foreclosure filings. Compliance with the new servicing rule will require review and revision of policies and procedures, development of new disclosures, employee training and establishment of new recordkeeping requirements. To the extent mortgage servicing is handled by a third-party, a creditor will be required to review and revise its servicing agreements and make revisions to include provisions relating to these new requirements.

SUMMARY OF APPLICABILITY OF DISCLOSURE AND SERVICING REQUIREMENTS

TILA REQUIREMENTS	APPLIES TO CREDITORS, ASSIGNEES AND SERVICERS OF
ARM Notices	Closed-end ARMs except ARMs with term <1 year
Crediting Payments and Payoff Balance	Open- and closed-end mortgage loans except reverse mortgages and timeshares
Periodic Statements	Closed-end mortgage loans Exempts small servicers

RESPA REQUIREMENTS	APPLIES TO SERVICERS OF
Error Resolution and Information Requests	Closed-end federally related mortgage loans except loans on property of 25 acres or more; business-purpose loans; temporary financings; loans secured by vacant land and certain loan assumptions or conversions
Force-Placed Insurance	Closed-end federally related mortgage loans except loans on property of 25 acres or more; business-purpose loans; temporary financings; loans secured by vacant land and certain loan assumptions or conversions
General Servicing Policies, Procedures and Requirements	Closed-end federally related mortgage loans except loans on property of 25 acres or more; business-purpose loans; temporary financings; loans secured by vacant land; certain loan assumptions or conversions; reverse mortgage loans; and those servicers who are qualified lenders under the Farm Credit Act of 1971. Exempts small servicers
Early Intervention and Delinquent Borrowers	Closed-end federally related mortgage loans except loans on property of 25 acres or more; business-purpose loans; temporary financings; loans secured by vacant land; certain loan assumptions or conversions; reverse mortgage loans; and those servicers who are qualified lenders under the Farm Credit Act of 1971. Exempts small servicers
Continuity of Contact with Delinquent Borrowers	Closed-end federally related mortgage loans except loans on property of 25 acres or more; business-purpose loans; temporary financings; loans secured by vacant land; certain loan assumptions or conversions; reverse mortgage loans; and those servicers who are qualified lenders under the Farm Credit Act of 1971. Exempts small servicers
Loss Mitigation Procedures	Closed-end federally related mortgage loans except loans on property of 25 acres or more; business-purpose loans; temporary financings; loans secured by vacant land; certain loan assumptions or conversions; reverse mortgage loans; and those servicers who are qualified lenders under the Farm Credit Act of 1971. Generally exempts small servicers, however, a small servicer prohibited from filing a foreclosure until borrower is at least 120 days delinquent and foreclosure process cannot be started if borrower is performing pursuant to the terms of a loss mitigation agreement.

The definition of a “federally related mortgage loan” is contained in Regulation X. “Small servicers” are servicers that service 5,000 mortgage loans or less and only service mortgage loans the servicer or an affiliate owns or originated.

Disclosure Requirements

The Rule revises Regulation Z to include the following new disclosure requirements for creditors, assignees and servicers. Each disclosure must include specified information in the form and format and be provided at the time prescribed by the Bureau. The Bureau has issued model forms and sample forms to aid in compliance. Creditors, assignees and servicers may determine among themselves which party will provide the required disclosure to the borrower. Those disclosures are:

- ARM notices;
- Periodic statements; and
- Payoff balance.

The Rule revises Regulation X to include the following new disclosure requirements for servicers. Each disclosure must include specified information in the form and format and be provided at the time prescribed by the Bureau. The Bureau has issued model forms to aid in compliance. Those disclosures are:

- Error resolution and information request notices;
- Force-placed insurance notices;
- Delinquent borrower notice including loss mitigation options;
- Acknowledgement of receipt of loss mitigation application; and
- Adverse action notice if loss mitigation application is denied.

Servicing Requirements

The Rule revises Regulation Z to include requirements and limitations on servicing activities for creditors, assignees and servicers.

ARM Notices. ARM notices must be provided to a borrower with a closed-end adjustable rate mortgage loan. The initial interest rate adjustment ARM notice must be provided to the borrower between 210 and 240 days prior to the first payment due after the first rate adjustment. Subsequent ARM notices must be provided between 60 and 120 days in advance of when the first payment at the adjusted level is due each time the payment adjusts as the result of a rate adjustment. This notice replaces the current annual notice that is required when there is a rate adjustment without a payment adjustment. The Bureau recognized that the look-back period (the change date on which the index value would be selected that serves as the basis for the new interest rate and payment) would have to be at least 45 days to comply with this required notice and included several exemptions. The Bureau has grandfathered those mortgages originated before January 10, 2015 with look-back periods of less than 45 days. Mortgages where the payment changes every 60 days or less must provide the ARM notice within 25 and 120 days before the first payment at the adjusted level is due. Those loans where the rate adjusts within 60 days of origination can provide the ARM notice as soon as practicable, but not less than 25 days in advance of when the first payment at the adjusted level is due.

Crediting Payments and Payoff Balance. The Rule requires a servicer to promptly credit periodic payments (principal, interest and escrow) on the day received. Partial payments may be (i) credited to the loan account; (ii) returned to the borrower; or (iii) held in a suspense account (if not prohibited by law or the loan agreement). A servicer is prohibited from pyramiding of late fees and must credit a payment even if an applicable late payment is not included. When the funds held in the suspense account are sufficient to make a payment, the funds must be applied to the borrower's account. The servicer is required to provide an accurate payoff balance no later than 7 business days following receipt of a written request.

Periodic Statements. A statement must be provided each billing cycle that includes specified information in a clear and prominent manner. The statement must be delivered or placed in the mail within a reasonably prompt time, no later than 4 days after the payment due date or the close of the "courtesy period", if applicable, of the previous billing cycle. The courtesy period is the informal period after the due date during which the servicer affords the borrower the opportunity to pay without assessing a late payment fee. The Bureau has provided sample forms to aid in compliance. The Bureau exempts fixed-rate loans where the borrower is given a coupon book containing substantially the same information as was required in the statement.

The Rule revises Regulation X to include requirements and limitations on servicing activities for servicers.

Error Resolution and Information Requests. The Rule provides error resolution rights to borrowers and places obligations on servicers similar to error resolution rights under Regulation E and Regulation Z, for credit card accounts. The requirements broadly apply to any error asserted by a borrower related to the "servicing of a borrower's mortgage loan." A borrower asserts an error that triggers the error resolution requirements if the borrower provides a notice to a servicer that includes his/her name, describes the error the borrower believes occurred and includes information that enables the servicer to identify the borrower's mortgage loan account.

A servicer may designate an address for receipt of error notices but may not exclusively require borrowers to use the Internet. The servicer must respond to borrower in writing within 5 days acknowledging receipt of an error notice. In general, the servicer must resolve error no later than 30 days following receipt of error notice (7 days of notice requiring an incorrect payoff balance). No adverse information regarding a payment subject to an error notice can be reported to a consumer reporting agency for 60 days following receipt of an error notice. Error resolution records must be retained by the servicer for no less than one year following transfer of servicing for the mortgage loan or payoff.

Similar to the error resolution requirements, if a borrower requests information from the servicer and includes his/her name and information that enables the servicer to identify the borrower's mortgage loan account, the servicer must respond within the timeframes noted above; provided, however the name of the owner or assignee of a mortgage loan, if requested, must be provided within 10 days of request by the borrower. A servicer may designate an address for receipt of information requests but may not exclusively require borrowers use the Internet and the same address must be used if the servicer also specifies an address for error notices.

Force-Placed Insurance. Force-placed insurance can only be acquired by a servicer if the required notices are provided and the servicer has a reasonable basis to believe that borrower has failed to maintain insurance required by the loan agreement. Servicer must provide (i) the initial notice at least 45 days before charging for force-placed insurance and (ii) reminder notice at least 15 days before charging for force-placed insurance. Charges must be reasonable based on servicer's costs. If the borrower has an escrow account and the servicer can continue coverage with the insurer chosen by the borrower, the servicer must do so. If borrower provides proof of hazard insurance coverage, servicer must cancel its policy and refund premiums paid for any periods of overlapping insurance coverage.

General Servicing Policies, Procedures and Requirements, Including Recordkeeping. The Rule requires a servicer to maintain policies and procedures to enable the servicer to: (i) provide accurate information necessary for disclosures and for response to borrower complaints and requests for information; (ii) evaluate loss mitigation applications in accordance with applicable eligibility rules; (iii) provide information required by service provider personnel to review and audit compliance with the servicer's contractual requirements and applicable law; (iv) facilitate transfer of information during servicing transfer; and (v) inform the borrowers of error resolution and information request process.

The Rule mandates that the servicer retain data regarding the mortgage loan for no less than one year following transfer of servicing or payoff. Data including transactions credited or debited to the mortgage loan account must be included in the servicer's files within 5 days of receipt of the transaction.

Early Intervention with Delinquent Borrowers. A servicer must exercise a good faith effort to contact a borrower no later than the 36th day following the borrower's delinquency. A written notice must be provided no later than the 45th day following the borrower's delinquency, which written notice contains required information, including a description of examples of loss mitigation options.

Continuity of Contact with Delinquent Borrowers. The Rule requires a servicer to maintain policies and procedures to enable the servicer to assign personnel to a delinquent borrower who can respond to questions regarding loss mitigation options no later than 45 days following delinquency. The servicer must make such personnel available to the borrower by telephone to provide a live response in a timely manner. The servicer policies and procedures must provide servicer personnel with specific information to enable such personnel to assist borrower in seeking loss mitigation options and advising on the status of any loss mitigation application filed by the borrower. Information includes but is not limited to a complete record of the borrower's payment history and all written information the borrower has provided the servicer and any prior servicer related to any loss mitigation application.

Loss Mitigation Procedures. The Rule includes specific procedures, including timeframes, that must be followed when a delinquent borrower submits a loss mitigation application. The Rule requires a servicer to provide a single application for all loss mitigation options.

Once a complete application is received by the servicer, the borrower must be considered for all options. The servicer must provide a notice acknowledging receipt of an application to the borrower within 5 days of its receipt of the application, including notification of whether the application is complete. If the application is incomplete, the notice must designate the missing information. Similar to the Regulation B requirements that apply to an application for credit, the servicer is required to exercise "reasonable diligence" to obtain the missing information and must evaluate each application and respond to the borrower in writing within 30 days, notifying the borrower whether the application is denied or approved. If the application is denied, the servicer must provide the reasons for denial (again, similar to the requirement under Regulation B). This notice can be included with notices required under Regulation B and/or the Fair Credit Reporting Act. Borrowers are generally provided a right to appeal a denial.

The Rule limits "dual tracking" where a servicer is both pursuing foreclosure and evaluating an application for a loan modification. The servicers are prohibited from formally filing a foreclosure or providing the first notice unless the borrower is at least 120 days delinquent. The foreclosure process cannot be started unless (i) the servicer notifies the borrower that borrower is not eligible for loss mitigation; (ii) the borrower rejects loss mitigation offered to the borrower; or (iii) the borrower fails to comply with the terms of a loss mitigation agreement.

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