The CFPB Details Recent Supervisory Activities Regarding Mortgage Servicing

The Consumer Financial Protection Bureau recently published the eighth edition of its *Supervisory Highlights*, in which the Bureau "shares recent supervisory observations" touching on several legal topics under its jurisdiction. One of the principal areas covered in this edition is mortgage servicing. Ensuring compliance with the CFPB mortgage servicing rules that went into effect on January 10, 2014 has been a "high priority" for the Bureau. The Supervisory Highlights details mortgage servicer violations in the areas of loss mitigation, foreclosure, periodic statement disclosures, and the Homeowners Protection Act.

Loss Mitigation

Under Regulation X, a borrower in default may submit a loss mitigation application to the mortgage servicer in hopes of avoiding foreclosure. The mortgage servicer is required to notify the borrower within five days that it has received the application, and provide a list of any additional documents or information that may be required. CFPB examiners noted multiple violations of this rule. Mortgage servicers were cited for failing to send borrowers timely notice acknowledging receipt of a loss mitigation application, and requesting unnecessary or duplicative documents from borrowers. Servicers were also cited for misrepresenting the terms of a loan deferment plan, and for failing to honor a trial modification after the loan had been transferred. The Bureau noted that it was paying close attention to "the risks inherent in transferring loans in loss mitigation, including the risk that information is not accurately transferred between servicers."

Foreclosure

Mortgage servicers were cited for sending foreclosure notices to borrowers who were current on their loans, or who had already been approved for a loss mitigation plan.

Periodic Statement Disclosures

Servicers were cited for failing to send periodic mortgage statements, or sending statements with incomplete or inaccurate transaction histories, in violation of Regulation Z. In certain cases, the problems were caused by software limitations or glitches.

Homeowners Protection Act

Servicers were cited for failing to automatically cancel private mortgage insurance after the borrower's mortgage balance reached 78% of the original property value, as required by the Homeowners Protection Act.

The CFPB mortgage servicing rules can be complex, even for experienced servicers. To help ensure compliance, and to limit liability for potential violations, a mortgage servicer should consider the following:

- Written policies, training, audits. As the *Supervisory Highlights* make clear, the CFPB expects mortgage servicers to develop written policies and procedures consistent with the mortgage servicing rules. In addition, the Bureau expects servicers to train their employees to follow the policies and procedures, and to conduct regular audits to help ensure compliance.
- Computer systems. Software limitations or failures will not excuse a mortgage servicer from failing to comply with the mortgage servicing rules. Servicers should thoroughly vet third party vendors and products, and should audit IT systems regularly.
- Corrections and Self-Reporting. If a systemic violation is discovered, fix it immediately. A mortgage servicer may also want to self-report a large-scale violation. The CFPB, as with most regulators, tends to be more lenient on companies that promptly remedy and self-report violations. This is true regardless of whether the violation is handled by the Supervision Office or results in an enforcement action. Of course, counsel should be consulted promptly after a violation is discovered.