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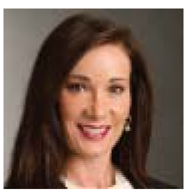
FINANCIAL SERVICES LITIGATION BULLETIN

April 2012



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Consumer Financial Protection Bureau Considering the Proposal of New Mortgage Servicing Rules

By Jennifer H. Dioguardi

The Consumer Financial Protection Bureau (CFPB) has announced that it is considering proposing new mortgage servicing rules. The potential new rules are intended to provide additional protections to consumers. According to the CFPB, the new rules being considered are intended to minimize servicer mistakes and make sure any mistakes are rectified more quickly. The CFPB indicated the proposed new rules are intended to increase transparency and the accuracy of information homeowners receive from mortgage servicers. The new rules will be formally proposed this summer and the CFPB intends to finalize them by January 2013.

The CFPB announced it is considering proposing the following new rules:

Clear Monthly Mortgage Statements

The CFPB is considering a rule under which servicers would be required to provide "clear" monthly statements. According to the CFPB, these statements would be required to include:

- A summary of the mortgage terms such as interest rate and principal obligations;
- A breakdown of payments by principal, interest, fees and escrow;
- The amount of and due date for the next payment;
- Recent transaction activity, including itemization of any fees and charges;
- Late fee warnings; and
- For delinquent borrowers “alerts and information” about “loss mitigation alternatives.”

Warning Before Interest Rate Adjustments

The CFPB is considering a rule requiring servicers to provide earlier disclosures before interest rate changes on most adjustable-rate mortgages. These new disclosures would include:

- An explanation of how the payment utilizing the new rate would be determined and when the change will take effect;
- A good-faith estimate of the amount of the new monthly payment;
- The date of future interest-rate adjustments;
- A list of alternatives that the consumer may pursue if the new monthly payment is unaffordable;
- Contact information for housing counselors; and
- The amount of any pre-payment penalty.

Options for Avoiding the Expense of Force-Placed Insurance

The CFPB indicated the purpose of the proposed rule is to “assure that servicers do not unnecessarily charge consumers for force-placed insurance" and would require that:

- In cases where the servicer thinks the borrower has allowed the property insurance to lapse, the servicer would be required to ask the borrower to provide proof of insurance;
- The foregoing communication would have to occur twice before the servicer charges the borrower for the insurance – once at least 45 days before and again at least 15 days before charging for the insurance;
- These notices would be required to provide the consumer with a good-faith estimate of how much the force-placed insurance would cost;
- Requiring the servicer to accept from the borrower <u>any</u> reasonable form of confirmation that the property is insured;
- Requiring the servicer to terminate the force-placed insurance within 15 days if it receives evidence that the consumer has the necessary insurance and, also, refund the force-placed insurance premiums; and
- In the event the servicer has an escrow account to pay the consumer's insurance premiums, requiring the servicer to continue paying the consumers' homeowners insurance, even if the borrower is delinquent, rather than purchasing the force-placed insurance.

Early Information and Options for Avoiding Foreclosure

The CFPB indicated it is considering a rule requiring servicers to make "good-faith efforts to contact delinquent borrowers and inform them of their options to help avoid foreclosure" including:

- Requiring servicers to provide the borrower with information about the foreclosure process;
- Requiring outreach including informing borrowers about housing counseling; and
- Requiring the servicer to "provide information

about options" if contacted by a borrower who is having difficulty paying.

Payments Immediately Credited

The CFPB is considering a rule requiring servicers to generally credit a consumer's account the same day that the monthly payment is received. If a consumer makes a partial payment, servicers would be permitted to retain the partial payment in a suspense account. Once the amount in the suspense account equals a full monthly payment, the servicer would be required to apply the amount to the earliest delinquent payment.

Up-to-Date and Accessible Records

The CFPB is considering a rule requiring servicers to establish "reasonable information-management policies and procedures designed to minimize errors and help with quick corrections," including:

- Providing accurate and timely disclosures and other information to borrowers;
- Minimizing errors and facilitating prompt error correction;
- Maintaining records of borrower contact, with the possibility of an exception to this requirement for some small servicers;
- Facilitating loss mitigation by accepting, organizing and managing documents and information submitted by or about borrowers in connection with loss mitigation requests;
- Ensuring reasonable and timely access to such documents and information by all appropriate loss mitigation personnel; and
- Identifying additional documents and information a borrower must provide to be considered for loss mitigation options.

Quick Correction of Errors

The CFPB is considering a rule requiring servicers to "address consumer concerns about possible errors." The servicer would be required to acknowledge notification of any error within five days and conclude an investigation within 30 days. Even shorter time frames would potentially be imposed with respect to errors relating to foreclosures or payoffs. The CFPB announced that many types of errors would be encompassed by this proposed rule, including:

- Incorrect calculations of amounts due, credits, or payments;
- Payments (or non-payments) of taxes and insurance out of escrow accounts;
- Inaccurate disclosures;
- Inaccurate information about how a borrower can avoid foreclosure; and
- The servicer starting or continuing foreclosure procedures when the borrower has met his obligations under a trial or permanent loan modification or other plan.

Direct and Ongoing Access to Servicer Foreclosure Prevention Team

The CFPB is considering implementing a rule requiring servicers to provide delinquent borrowers, or borrowers asking for help to avoid delinquency, with direct and ongoing access to a staff of individuals who are dedicated to servicing troubled borrowers, including:

- Requiring servicers to provide these employees with "easy access" to the borrower's records;
- Requiring servicers to provide these employees with access to underwriters to evaluate the borrower to determine eligibility for loan modification or "another option" to avoid foreclosure.

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