

CFPB Proposes Amendments to Mortgage Servicing Rules

December 29, 2014

The Consumer Financial Protection Bureau (“CFPB”) has proposed several amendments to the mortgage servicing rules under the Real Estate Settlement Procedures Act (“RESPA”) and the Truth in Lending Act (“TILA”) (collectively, “Mortgage Servicing Rules”). These proposed amendments would, among other things, add protections for a borrower’s successors in interest, add a definition of “delinquency,” change how a servicer is to respond to certain requests for information, broaden the notice requirements for force-placed insurance, clarify the servicer’s early intervention obligations, change the processing requirements for loss mitigation applications, clarify the requirement for crediting payments on loans subject to modification, modify the disclosure requirements on periodic statements for loans that have been accelerated and in certain other cases, and exclude certain loans from the threshold for applicability of the small servicer exemption. The proposed amendments are summarized below.

Expanded Protection to Successors in Interest

Currently, servicers must promptly confirm the identity and ownership interest of the family members or heirs known as “successors in interest” who gain a legal interest in a property upon borrower’s death. The proposed amendments expand the circumstances where a person could be considered as a successor in interest to include situations when a property is transferred after a divorce or legal separation, through a family trust, from a living spouse or a parent, or when a borrower who is a joint tenant dies. After confirmation of identity and ownership interest, the successor in interest, including those who obtain ownership through a transfer protected from acceleration and foreclosure, will generally have the same protections under the Mortgage Servicing Rules as the original borrower.

Definition of Delinquency

The proposed amendments add a general definition of delinquency which would apply to all of the servicing provisions under Regulation X (the regulation that implements RESPA) and the provisions regarding mortgage loan periodic statements under Regulation Z (the regulation that implements TILA). The proposed definition provides that a borrower and a borrower’s mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow, becomes due and unpaid.

Request for Information

The proposed amendments would change how a servicer must respond to requests for information asking for ownership information for loans in trust for which Fannie Mae or Freddie Mac is the trustee, investor or guarantor. Under the proposal, a servicer may provide the borrower with the name and contact information for Fannie Mae or Freddie Mac without providing the name of the trust if the request does not specifically inquire about the name or number of the trust or pool.

Force-Placed Insurance

Current Mortgage Servicing Rules require servicers to furnish proper notification to borrowers before assessing a charge for hazard insurance purchased on behalf of a borrower when the borrower's insurance has expired or is about to expire. The proposed amendments would broaden the Mortgage Servicing Rules to apply when the insurance coverage is insufficient under the mortgage loan contract requirement.

Early Intervention

Under current rules, servicers must attempt to make live contact with delinquent borrowers regarding available remediation possibilities or foreclosure alternatives no later than 36 days after the delinquency begins. The proposed amendments would clarify that a servicer's early intervention live contact obligation recurs in each billing cycle after each payment due date for the duration of the borrower's delinquency. The proposed amendments would also require servicers to provide early intervention notices to certain borrowers who are either in bankruptcy or have invoked the right to cease communication under the Fair Debt Collection Practices Act.

Loss Mitigation

The amendments propose significant changes in how servicers should process borrowers' loss mitigation applications and prevent wrongful foreclosures. First, borrowers who have been delinquent more than once do not need to file duplicate requests, and servicers must accept the previous loss mitigation applications. Second, servicers must provide a written notification to the borrower upon receiving a complete loss mitigation application so that the borrower is informed about the status of application and related deadlines. A reasonable deadline for completion of the application can be set up by servicers, but servicers cannot deny a borrower's application due to lack of third party information. Third, for any incomplete loss mitigation applications, servicers may choose to offer certain short-term repayment plans. Fourth, servicers may stop collecting application information regarding a loss mitigation option once they confirm that the borrower is ineligible for that option. Fifth, if the borrower's application was complete prior to a servicing rights transfer, the new servicer must complete the evaluation of the application within 30 days of when the application was submitted to the prior servicer. Sixth, servicers are required to take reasonable affirmative steps to delay a foreclosure sale in order to prevent wrongful foreclosures, either by themselves or through foreclosure counsel. The foreclosure must be dismissed if servicers fail to take reasonable steps to delay the foreclosure sale. Seventh, a subordinate-lien

servicer would be allowed to join the foreclosure action of a senior lien servicer notwithstanding the prohibition against foreclosure on loans that are less than 120 days delinquent.

Prompt Payment Crediting

Under the proposed amendments, periodic payments made by consumers who are in a temporary loss mitigation program would continue to be credited based on the original contract, but could be credited as partial payments by servicers if appropriate. Periodic payments made pursuant to a permanent loan modification, however, must be credited according to the permanent loan agreement.

Periodic Statements

The proposed amendments contain several changes regarding periodic statements. First, the amount due in the periodic statements of mortgage loans that have been accelerated, are in a temporary loss mitigation program, or have been permanently modified, would vary depending on whether a servicer agrees to accept a reduced amount. If a servicer would accept a reduced amount to reinstate a loan that had been accelerated, the amount due in the periodic statement must be the lesser amount. In a periodic statement for a loan in a temporary loss mitigation program, the amount due would be either the reduced amount or the amount under the loan contract. If a permanent modification is in place, the amount due in a periodic statement would be the payment due under that modification. Second, servicers must modify periodic statements to certain consumers in bankruptcy according to the particular kind of bankruptcy (e.g., Chapter 7 or 13). Third, periodic statements would not be necessary for charged-off mortgage loans if servicers had provided a final charge-off notice and would not charge any additional fees or interests.

Small Servicer Exemption

The current Mortgage Servicing Rules provide a small servicer exemption to any small servicer who serves no more than 5,000 loans as either a creditor or assignee. The amendments propose to exclude some seller-financed transactions from being counted toward the 5,000 loan limit for small servicers.

The CFPB's proposed amendments to the Mortgage Servicing Rules were published in the Federal Register on December 15, 2014, and may be accessed [here](#). Comments on the proposal must be received by the CFPB on or before March 16, 2015.

Please note that this advisory is a general overview of the proposed amendments and is not intended as a comprehensive explanation of all aspects of the amendments or as formal legal advice. If you have any questions regarding the proposed amendments or the mortgage rules in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, Elizabeth Murphy at 516-296-9154 or via email at emurphy@cullenanddykman.com, or Mandy Xu at 516-357-3850 or via email at mxu@cullenanddykman.com.

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