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Client Alert

Antitrust & Litigation Practice Group

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CFPB Proposes Changes to Regulations Z And X

On August 10, 2012, the Consumer Financial Protection Bureau (CFPB) proposed amendments to the regulations in the Truth in Lending Act (Regulation Z) and in the Real Estate Settlement Procedures Act (Regulation X) in an effort to increase accountability and transparency in the mortgage servicing industry. The basic framework for the proposed changes was originally announced by the CFPB on April 10, 2012. A summary of the proposed changes is available here: http://files.consumerfinance.gov/f/201208_cfpb_summaries_proposed_rules-consumers.pdf.

The CFPB has requested comments by October 9, 2012.

- Comments on the proposed changes to Regulation Z may be submitted here: http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=25;po=0;D=CFPB-2012-0033 (a copy of the full proposed changes to Regulation Z is also available here).

- Comments on the proposed changes to Regulation X may be submitted here: http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=25;po=0;D=CFPB-2012-0034 (a copy of the full proposed changes to Regulation X is also available here).

If implemented, the CFPB's proposed changes will require servicers to provide borrowers with more detailed and frequent information about the borrowers' loans and additional foreclosure mitigation resources.

As demonstrated in the recent joint enforcement action by the CFPB and the Office of the Comptroller of the Currency (OCC) related to the sale of credit card add-on products, the CFPB is working closely with other government agencies to regulate the financial industry. As such, it is no surprise that the CFPB's proposed rules draw heavily on the DOJ Servicing Standards that major servicers committed to follow in order to resolve allegations by the Department of Justice and most State Attorneys General in the National Mortgage Settlement this past April (*see* http://www.nationalmortgagesettlement.com/).

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Some of the major changes proposed by the CFPB with a comparison to the parallel provisions in the DOJ Servicing Standards follow:

- *Monthly mortgage statements*: the CFPB's proposed changes require servicers to provide borrowers with detailed monthly mortgage statements. The detail required largely parallels what is required by the DOJ Servicing Standards. One minor difference is that the CFPB proposal would also require servicers to provide contact information for housing counseling agencies or programs in the monthly statement.

- *Warnings before interest rate adjustments*: with respect to adjustable-rate mortgages, the CFPB's proposed changes require servicers to notify borrowers 6 to 7 months before the first payment at the adjusted level is due, unless the first payment at the adjusted level is due within 7 months after consummation of the loan, in which case the disclosure must be provided at consummation. By comparison, the DOJ Servicing Standards generally require notice of interest rate or escrow account adjustments no later than 21 days before the new amount is due: Regulation Z also contains similar, but not identical requirements.

- *Force-placed insurance*: the CFPB's proposed changes require servicers to advise borrowers about and provide options for avoiding "force-placed" hazard insurance prior to charging borrowers for such insurance. The DOJ Servicing Standards requirements are virtually identical.

- *Early outreach for delinquent borrowers*: the CFPB's proposed changes would require servicers to make good faith efforts to orally notify borrowers within 30 days of a missed payment about available loss mitigation options. The DOJ Servicing Standards require servicers to begin communicating with borrowers about loss mitigation on timelines that are in accord with the Home Affordable Modification Program (HAMP) borrower solicitation guidelines.

- *Prompt crediting of payments*: the CFPB's proposed rules generally require servicers to credit payments as of the date of receipt, while the DOJ Servicing Standards require that payments be posted no more than two business days after receipt.

- *Accurate information management*: like the DOJ Servicing Standards, the CFPB's proposed rules will establish policies and procedures for handling borrower accounts and maintaining accurate account information.

- *Error resolution and information requests*: DOJ Servicing Standards require servicers to establish procedures for prompt billing dispute and error resolution. The CFPB has proposed more specific guidelines including requiring servicers to acknowledge within five days and investigate and resolve within 30 days borrower claims of errors, with a shorter turnaround for errors regarding foreclosures or payoffs. Importantly, this requirement may put mortgage servicers at the biggest risk for noncompliance with the proposed rules given the proposed 30 day time frame for resolving errors.

- *Direct and ongoing access to servicer personnel*: no later than five days after the early outreach for delinquent borrowers discussed above, the CFPB's proposed changes would require servicers to establish a single person or a team of personnel to respond to inquiries by the borrower and assist with loss mitigation options. The DOJ Servicing Standards require servicers to establish a single point of contact ("SPOC") for each potentially-eligible first lien mortgage borrower and identify the SPOC to the borrower after the borrower requests loss mitigation assistance.

- *Evaluation for alternatives to foreclosure*: like the DOJ Servicing Standards, the CFPB has proposed rules for the processing of loan modification applications to which servicers will be held. While both the CFPB and the DOJ Servicing Standards prohibit servicers from conducting foreclosure sales while a complete loss mitigation application is pending, the CFPB's proposed rules make clear that servicers may take other steps in the foreclosure process while a complete loan modification is pending, including referring a case to a foreclosure department.

These proposed rules have significant implications for the mortgage servicing industry given the broad enforcement powers of the CFPB, which include the ability to issue subpoenas, demand documentary and other materials, require sworn testimony, conduct hearings and adjudication proceedings, litigate civil actions, refer criminal matters to the Department of Justice, and impose monetary penalties. Servicers should familiarize themselves with these proposed rule changes and consider providing feedback to the CFPB.

If you have any further questions, please contact the authors.