

# Lenders Compliance Group

Monday, October 1, 2012

## CFPB Proposes New Servicing Rules - TILA

On September 26, 2012, we notified you about the proposed rules promulgated by the Bureau of Consumer Financial Protection (Bureau) to amend Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA) and the official interpretation of the regulation. These proposed rules seek to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) provisions regarding mortgage loan servicing.

Now we would like to provide an outline of the CFPB's proposed companion regulation (Proposal) to amend Regulation Z, which implements the Truth in Lending Act (TILA), such Proposal meant also to implement the Dodd-Frank provisions regarding mortgage loan servicing.

Specifically, the Proposal implements Dodd-Frank sections addressing:

- 1) Initial rate adjustment notices for adjustable-rate mortgages (ARMs).
- 2) Periodic statements for residential mortgage loans.
- 3) Prompt crediting of mortgage payments.
- 4) Response to requests for payoff amounts.

Furthermore, the Proposal would amend current rules governing the scope, timing, content, and format of current disclosures to consumers occasioned by the interest rate adjustments of their variable-rate transactions.

The Proposal is extensive, nuanced, and comprehensive, covering many aspects of the TILA statute. Therefore, I will touch on some of the salient features of it. You can access our Library to download the Proposal in its entirety.

Comments Due: On or before October 9, 2012.

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### Scope

The Proposal generally applies to closed-end mortgage loans, with certain exceptions.

Under the proposed amendments to Regulation X, open-end lines of credit and certain other loans, such as construction loans and business-purpose loans, are excluded. Under this Proposal to Regulation Z, the periodic statement and ARM disclosure provisions apply only to closed-end mortgage loans, but the prompt crediting and payoff statement provisions apply both to open-end and closed-end mortgage loans.

Additionally, reverse mortgages and timeshares are excluded from the periodic statement

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The Bureau is seeking comment on whether to exempt small servicers from certain requirements or modify certain requirements for small servicers.

### Nine Major Topics

As is the case of the aforementioned RESPA proposal, this Proposal regarding TILA also contains nine major topics.

#### 1. Periodic billing statements.

Dodd-Frank generally mandates that servicers of closed-end residential mortgage loans (other than reverse mortgages) must send a periodic statement for each billing cycle. These statements must meet the timing, form, and content requirements provided for in the rule. The Proposal contains sample forms that servicers could use. The periodic statement requirement generally would not apply for fixed-rate loans if the servicer provides a coupon book, so long as the coupon book contains certain information specified in the rule and certain other information is made available to the consumer. The Proposal also includes an exception for small servicers that service 1,000 or fewer mortgage loans and service only mortgage loans that they originated or own.

#### 2. Adjustable-rate mortgage interest-rate adjustment notices.

Servicers would have to provide a consumer whose mortgage has an adjustable rate with a notice 60 to 120 days before an adjustment which causes the payment to change. The servicer would also have to provide an earlier notice 210 to 240 days prior to the first rate adjustment. This first notice may contain an estimate of the rate and payment change. Other than this initial notice, servicers would no longer be required to provide an annual notice if a rate adjustment does not result in an increase in the monthly payment. The Proposal contains model and sample forms that servicers could use.

#### 3. Prompt payment crediting and payoff payments.

As required by Dodd-Frank, servicers must promptly credit payments from borrowers, generally on the day of receipt. If a servicer receives a payment that is less than a full contractual payment, the payment may be held in a suspense account. When the amount in the suspense account covers a full installment of principal, interest, and escrow (if applicable), the Proposal would require the servicer to apply the funds to the oldest outstanding payment owed. A servicer also would be required to send an accurate payoff balance to a consumer no later than seven business days after receipt of a written request from the borrower for such information.

#### 4. Force-placed insurance.

As required by the Dodd-Frank, servicers would not be permitted to charge a borrower for force-placed insurance coverage unless the servicer has a reasonable basis to believe the borrower has failed to maintain hazard insurance and has provided required notices. One notice to the borrower would be required at least 45 days before charging for forced-place insurance coverage, and a second notice would be required no earlier than 30 days after the first notice. The Proposal contains model forms that servicers could use. If a borrower provides proof of hazard insurance coverage, then the servicer would be required to cancel any force-placed insurance policy and refund any premiums paid for periods in which the borrower's policy was in place.

In addition, if a servicer makes payments for hazard insurance from a borrower's escrow account, a servicer would be required to continue those payments rather than force-placing a separate policy, even if there is insufficient money in the escrow account. The Proposal would also provide that charges related to forced place insurance (other than those subject to State regulation as the business of insurance or authorized by federal law for flood insurance) must relate to a service that was actually performed. Additionally, such charges would have to bear a reasonable relationship to the servicer's cost of providing the service.

#### 5. Error resolution and information requests.

Pursuant to the Dodd-Frank, servicers would be required to meet certain procedural requirements for responding to information requests or complaints of errors. The Proposal defines specific types of claims which constitute an error, such as a claim that the servicer misapplied a payment or assessed an improper fee. A borrower could assert an error either orally or in writing. Servicers could designate a specific phone number and address for borrowers to use. Servicers would be required to acknowledge the request or complaint

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within five days. Servicers would have to correct or respond to the borrower with the results of the investigation, generally within 30 to 45 days.

Further, servicers generally would be required to acknowledge borrower requests for information and either provide the information or explain why the information is not available within a similar amount of time. A servicer would not be required to delay a scheduled foreclosure sale to consider a notice of error unless the error relates to the servicer's improperly proceeding with a foreclosure sale during a borrower's evaluation for alternatives to foreclosure.

#### 6. Information management policies and procedures.

Servicers would be required to establish reasonable information management policies and procedures. The reasonableness of a servicer's policies and procedures would take into account the servicer's size, scope, and nature of its operations. A servicer's policies and procedures would satisfy the rule if the servicer regularly achieves the document retention and servicing file requirements, as well as certain objectives specified in the rule. Examples of such objectives include providing accurate and timely information to borrowers and the courts or enabling servicer personnel to have prompt access to documents and information submitted in connection with loss mitigation applications. In addition, a servicer must retain records relating to each mortgage until one year after the mortgage is discharged or servicing is transferred, and must create a mortgage servicing file for each loan containing certain specified documents and information.

#### 7. Early intervention with delinquent borrowers.

Servicers would be required to make good faith efforts to notify delinquent borrowers of loss mitigation options. If a borrower is 30 days late, the Proposal would require servicers to make a good faith effort to notify the borrower orally and to let the borrower know that loss mitigation options may be available. If the borrower is 40 days late, the servicer would be required to provide the borrower with a written notice with certain specific information, including examples of loss mitigation options available, if applicable, and information on how to obtain more information about loss mitigation options. The notice would also provide information to the borrower about the foreclosure process. The rule contains model language servicers could use for these notices.

#### 8. Continuity of contact with delinquent borrowers.

Servicers would be required to provide delinquent borrowers with access to personnel to assist them with loss mitigation options where applicable. The Proposal would require servicers to assign dedicated contact personnel for a borrower no later than five days after providing the early intervention notice.

And servicers would be required to establish reasonable policies and procedures designed to ensure that the servicer personnel perform certain specified functions where applicable, such as access the borrower's records and provide the borrower with information about how and when to apply for a loss mitigation option and about the status of the application.

#### 9. Loss mitigation procedures.

Servicers that offer loss mitigation options to borrowers would be required to implement procedures to ensure that complete loss mitigation applications are reasonably evaluated before proceeding with a scheduled foreclosure sale. The Proposal would require servicers to exercise reasonable diligence to secure information or documents required to make an incomplete loss mitigation application complete. In certain circumstances, this could include notifying the borrower within five days of receiving an incomplete application.

Within 30 days of receiving a borrower's complete application, the servicer would be required to evaluate the borrower for all available options, and, if the denial pertains to a requested loan modification, notify the borrower of the reasons for the servicer's decision, and provide the borrower with at least a 14-day period within which to appeal the decision. The Proposal would require that appeals be decided within 30 days by different personnel than those responsible for the initial decision.

A servicer that receives a complete application for a loss mitigation option could not proceed with a foreclosure sale unless:

- (i) the servicer had denied the borrower's application and the time for any appeal had expired;
- (ii) the servicer had offered a loss mitigation option which the borrower declined or failed to accept within 14 days of the offer; or
- (iii) the borrower failed to comply with the terms of a loss mitigation agreement.

The proposal would require that deadlines for submitting an application for a loss mitigation option be no earlier than 90 days before a scheduled foreclosure sale.

### Small Servicers

The Proposal contains a section, as does the RESPA proposal, regarding the Bureau's convening of a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel to assess the impact of the possible rules on small servicers and to help the Bureau determine to what extent it may be appropriate to consider adjusting these standards for small servicers, to the extent permitted by law.

Informed by this process, the Proposal contains an exemption from the periodic statement requirement for certain small servicers. The Bureau reiterates its request for comments on whether other exemptions might be appropriate for small servicers.

### Library



Bureau of Consumer Financial Protection

#### 2012 Truth in Lending Act (Regulation Z) Mortgage Servicing

Proposed Rule

FR: 77/180 (9/17/12)



Labels: [CFPB](#), [Consumer Financial Protection Bureau](#), [Mortgage Servicing](#), [Mortgage Servicing Practices](#), [Real Estate Settlement Procedures Act](#), [RESPA](#), [TILA](#), [Truth in Lending Act](#)

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