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FINANCIAL SERVICES LITIGATION
ALERT

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Consumer Financial Protection Bureau Proposes New Rules for Mortgage Servicers

By Anne E. Kane

On April 9, 2012, the Consumer Financial Protection Bureau ("CFPB") outlined rules that it is considering to ensure homeowners have accurate information regarding their mortgage and meaningful assistance in avoiding foreclosure.[1]

The proposed rules target mortgage servicers who are hired by mortgage lenders to manage mortgage loan accounts. Servicers collect a borrower's monthly payment, manage escrow accounts and handle customer service. Servicers also handle collections, loan modifications and foreclosures for mortgages that fall into default. In the wake of the mortgage crisis, increased scrutiny of the mortgage servicing industry has revealed systemic problems in the handling of delinquent loans and foreclosures. Worst practices include the processing of foreclosure documents containing unverified information and the "robo-signing" of foreclosure documents.

Recently five of the nation's largest servicers reached a settlement with the federal government and 49 states regarding such servicing practices. *See United States v. Bank of America Corp.*, No. 12-00361 (D.D.C. March 12, 2012). As part of the settlement, these servicers agreed to adhere to detailed servicing standards designed to prevent such abuses.

The rules proposed by the CFPB parallel these servicing standards and will apply to the entire mortgage servicing industry.

1. An outline of the proposals under consideration is available at http://files.consumerfinance.gov/f/201204_cfpb_small-business-review-outline_mortgage-servicing-rulemaking.pdf and a summary factsheet is available at http://files.consumerfinance.gov/f/201204_cfpb_factsheet_putting-service-back-in-mortgage-servicing.pdf.

The Dodd-Frank Mandate — "No Surprises, No Runarounds"

As CFPB Director Richard Cordray explains, the Dodd-Frank Act gives the CFPB the broad authority to regulate the entire mortgage servicing market. "The mortgage servicing rules we are considering reflect two basic, common-sense principles — no surprises and no runarounds. For too long, mortgage servicers have not been held accountable to their customers, and the result has been profoundly punishing to homeowners in distress. It's time to put the 'service' back in mortgage servicing."

Key provisions in the CFPB proposal include:

- ***Clear and detailed monthly statements.*** Required information would include: (1) a breakdown of payments by principal, interest, fees and escrow; (2) the amount of and due date of the next payment; (3) recent transaction activity with itemization of fees and charges; (4) late fee warnings; and (5) alerts and information about loss mitigation alternatives for delinquent borrowers.
- ***Advance warning before imposing interest rate adjustments.*** Required disclosures would include: (1) an explanation of the new rate and when the change will take effect; (2) a good faith estimate of the new monthly payment; (3) the date of future interest-rate adjustments; (4) a list of alternatives the consumer may pursue if the new monthly payments is unaffordable; (5) contact information for housing counselors; and (6) the amount of any prepayment penalty.
- ***Advance warning before charging for "force-placed" property insurance.*** Servicers would be required to communicate with borrowers well in

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advance of such charges and to advise borrowers regarding the cost of force-placed insurance and their options for avoiding such insurance.

- ***Early disclosure of options for avoiding foreclosure and access to a dedicated foreclosure team.*** Servicers would be required to make good faith efforts to contact delinquent borrowers to advise them of their options for avoiding foreclosure and to provide borrowers with direct, ongoing access to staff dedicated to servicing distressed borrowers.
- ***Prompt crediting of payments and correction of errors.*** Servicers would be required to credit payments as of the date of receipt, to acknowledge a reported error within five days and to investigate and resolve any reported errors within 30 days. Shorter correction timeframes would be imposed for reported errors relating to foreclosures or payoffs.
- ***Accessible and up-to-date records.*** Servicers would be required to establish information management policies and procedures designed to maintain accurate information, make accurate and timely disclosures to borrowers, track borrower contacts, and provide reasonable and timely access to borrower information to loss prevention personnel.

The CFPB's Timeline

The CFPB plans to formally propose the rules this summer and, after a comment period, will finalize them in January 2013. The final rules will take effect no later than 12 months after they are issued. ◆

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