

Unofficial Staff Guidance Mortgage Servicing Rule Inquiries

October 16, 2013

Disclaimer

- The Bureau issued the Title XIV mortgage rules in January of 2013 to implement provisions under the Dodd Frank Wall Street Reform and Consumer Protection Act.
- The rules have been further clarified and updated by final rules issued in May, July and September, 2013.
- Most of the rules will take effect in January 2014.
- This presentation is current as of October 16, 2013. This presentation does not represent legal interpretation, guidance or advice of the Bureau. While efforts have been made to ensure accuracy, this presentation is not a substitute for the rule. Only the rule and its Official Interpretations can provide complete and definitive information regarding requirements. This document does not bind the Bureau and does not create any rights, benefits, or defenses, substantive or procedural, that are enforceable by any party in any manner.

Topics/Agenda

1. General section
2. ARMs
3. Prompt crediting
4. Periodic statements
5. Error resolution and information requests
6. Force-placed insurance
7. General servicing policies, procedures, and requirements
8. Early intervention
9. Loss mitigation

General Section

RESPA - Reg X – 12 CFR 1024

TILA - Reg Z – 12 CFR 1026

Effective date

- Effective Date – January 10, 2014
- Reg Z: 78 FR 10901
- Reg X: 78 FR 10695

Effective date - ARMs

- Are servicers required to begin sending ARM notices for initial rate adjustments (or rate adjustments with a corresponding change in payment, if applicable) prior to the January 10th effective date if there will not be sufficient time following the effective date to meet the timing requirements of the rule?
- For example, if the rate change will occur on February 1, 2014 must a servicer have sent a 20(d) notice in the fall of 2013?
- § 1026.20(c), § 1026.20(d)

Effective date— Force-placed insurance

- If a force-placed insurance policy was established prior to the effective date of the rule, is the servicer required to retroactively provide the written information notice and reminder notice described in § 1024.37(c)(1) and (d)?
- What information must be provided if a servicer were to renew such a policy after the effective date, the original notice and reminder notice in § 1024.37(c)(1) and (d), or the renewal notices in § 1024.37(e)?

Effective date – Coupon books

- Prior to January 10, 2014 are servicers required to issue new coupon books that meet the content requirements set forth in the periodic statement rule, or may we replace coupon books as they expire throughout the year?
- § 1026.41(e)(3)

Effective date – Early intervention

- If a mortgage loan is already more than 36 days delinquent prior to the January 10 effective date must servicers make a good faith effort to establish live contact with the borrower as required by §1024.39(a)?
- If the loan is more than 45 days delinquent prior to January 10, must servicers send the written notice required by §1024.39(b)?

Effective date – Loss mitigation

- On January 10, there will be many delinquent loans that have already been scheduled for future foreclosure sales. Which, if any of the loss mitigation procedures in § 1024.41 apply to these loans?

Conflict between investor guidelines and CFPB rules

- What must a servicer do when a provision of the rules conflicts with investor requirements? For example, an investor may require initiation of foreclosure whenever a loan is 90 days due and unpaid, but RESPA prohibits initiation of foreclosure until the loan is 120 days delinquent.

State preemption

- Section 1024.5 provides that state laws that are inconsistent with the requirements of RESPA or Regulation X are preempted by RESPA or Regulation X to the extent of the inconsistency. New comment 5(c)-1 explains that state laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X.
- How do we know when to follow state laws and when to apply RESPA rules?
- § 1024.5 and comment 5(c)-1

Vacant and abandoned

- Are servicers required to offer loss mitigation as set forth in § 1024.41 if the property securing the mortgage lien is vacant or abandoned?
- § 1024.30(c)(2)

ARM Notices

Regulation Z § 1026.20(c) and (d)

ARMs – Step-rate interest rate feature

- Are servicers required to send ARM notices when a HAMP or similar loan modification includes a step-rate interest rate feature?
- § 1026.20(c) and (d) and related comments:
 1. 20(c)-2 Loan Modifications
 2. 20(c)(1)(ii)-3 Non-adjustable rate mortgages
 3. 20(d)-2 Loan Modifications
 4. 20(d)(1)(ii)-2 Non-adjustable rate mortgages

Rate adjustment notice – “estimate”

- Servicers have expressed concern that the estimated new payment disclosed in the 20(d) initial interest rate ARM notice will cause confusion to borrowers. May servicers highlight the word “estimate” on such forms?
- § 1026.20(d)(3)

Prompt Crediting

Regulation Z - § 1026.36(c)

Prompt crediting – Trial period plan/payment forbearance

- Most servicing systems treat trial modification payments like a temporary forbearance and hold the funds in suspense until there is enough to make a full contractual payment. Is that consistent with the rule?
- § 1026.36(c)(1)

Periodic Statements

Regulation Z – § 1026.41

Periodic statements – Trial/payment forbearance plan

- Should the amount reflected in the payment box be the agreed upon payment due that period under a trial or temporary payment plan, or should it be the contractual payment? If the former, where should the difference between the trial and contractual payment be shown? If the latter, won't this confuse the borrower?
- § 1026.41(d)(1) and (2) and related comment 41(d)(2)-1 *Close proximity*

Periodic statements – Bankruptcy

- Are periodic statements required for loans in bankruptcy? Won't this violate the automatic stay? How should information be displayed?
- § 1026.41(e)(5)

Periodic statements – HELOC to closed-end

- HELOC → Closed End: Home equity loans appear to be exempt from the periodic statement rule, but if a HELOC converts to a closed-end loan are periodic statements required?
- § 1026.41(a)

Periodic statements – Charged-off

- Are servicers required to send periodic statements after a loan has been accelerated? Charged off?
- § 1026.41(a)

Error Resolution and Information Request

Reg X – Error Resolution § 1024.35, Information Request § 1024.36

Subject of error/info – Origination documents

- Are servicers required to provide origination information or documents in response to an information request?
- § 1024.36

Duplicative requests

- Do servicers have to respond to duplicate error resolution or information requests on the same loan if they have already responded once?
- § 1024.35(g)(1)(i) and § 1024.36(f)(1)(i)

Notice establishing the designated address

- A servicer may, by written notice provided to a borrower, establish an address that the borrower must use to submit notices of error or requests for information. May such a notice be included in the periodic statement?
- § 1024.35(c) and comment 35(c)-2
- § 1024.36(b) and comment 36(b)-2
- § 1024.38(b)(5)

Force-Placed Insurance

Regulation X – § 1024.37

Force-placed insurance – Refunds

- When a servicer issues a refund of premiums paid by the borrower for force-placed insurance can the refund be deposited in the borrower's escrow account or must it be paid directly to the borrower?
- § 1024.37(g)(2)

Force-placed insurance – Amending the forms

- The model language for force-placed insurance notifications does not address situations when the borrower has some hazard insurance coverage but the coverage is insufficient. Can servicers modify the model language to cover this situation?
- § 1024.37(c)(2)

General Servicing Policies, Procedures, and Requirements

Regulation X - § 1024.38

Servicing file – Providing the file in 5 days

- Does the rule require servicers to produce an entire servicing file within 5 days of a request from an examiner or a borrower?
- § 1024.36 and § 1024.38(c)(2)

Servicing file – Provide to borrower

- What happens when a borrower requests a servicing file? Could the servicer determine such a request to be overbroad?
- § 1024.36 and § 1024.38(c)(2)

Servicing file – Data fields

- One component of the servicing file is “a report of the data fields relating to the borrower’s mortgage loan account created by the servicer’s electronic systems in connection with servicing practices.” What does this mean?
- § 1024.38(c)(2)(iv)

Servicing file – Call tapes

- Are servicing notes (generally in short hand) and call tapes (oral records) considered to be part of the electronic system file? If so, must they be transcribed into English and delivered within 5 days?
- § 1024.36(f)(1)(iv)

Early Intervention

Regulation X – § 1024.39

Early intervention – Ongoing

- How often must Early Intervention be provided?
- § 1024.39(a) and comment 39(a)-1

Early intervention – Bankruptcy/FDCPA

- Must servicers continue to provide early intervention when a borrower is in bankruptcy or a servicer qualifies as a debt collector under the Fair Debt Collection Practices Act and the borrower has requested the servicer / debt collector to cease communications?
- § 1024.39(d)(1) and (d)(2)

Loss Mitigation

Regulation X – § 1024.41

Evaluation for all options

- If the investor has established a waterfall of loss mitigation options does a servicer have to continue to evaluate the borrower for all options if they are eligible for the option at the top of the waterfall? For example, if the investor participates in HAMP does a servicer have to consider other options if the borrower is offered a HAMP modification?
- Does a servicer have to evaluate borrowers for all loss mitigation options if it is clear that they are only interested in a short sale?
- § 1024.41(c) and (d) and related comments

3rd party information

- If a servicer has a complete package from a borrower but has not received necessary information from 3rd parties, such as mortgage insurers or appraisers, can the servicer make a conditional loss mitigation decision, pending receipt of the MI or appraisal information?
- § 1024.41(b)(1) and (c)(1) and comment 41(b)(1)-5

Incomplete application – Offering a loss mitigation option

- May a servicer offer loss mitigation even if they do not have a complete application?
- § 1024.41(c)(2)

Reasonable date – What happens if the borrower does not complete the application?

- The rule released in September requires that the notification of an incomplete loss mitigation application include a reasonable date by which the borrower should complete the application. What happens if the borrower does not complete the application by that date? May the servicer deny the application for being incomplete?
- § 1026.41(b)(2)(i)(B) and (b)(2)(ii)

Questions?

Submit questions to:

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