

PUTTING THE ‘SERVICE’ BACK IN MORTGAGE SERVICING No Surprises, No Runarounds

The Consumer Financial Protection Bureau (CFPB) is proposing new mortgage servicing rules to protect consumers from being hit by costly surprises or getting the runaround from their servicers. The CFPB plans to finalize the rules by January 2013.

BACKGROUND

- **Mortgage servicers are responsible for collecting payments from the mortgage borrower on behalf of the owner of the loan.** They also typically handle customer service, escrow accounts, collections, loan modifications, and foreclosures.
- **In the vast majority of cases, consumers do not choose their mortgage servicer.** Because the lender employs the servicer, not the consumer, servicers have had little incentive to meet consumer needs. This lack of customer care can be disastrous for the consumer – it can lead to financial harm and push consumers toward foreclosure.
- **Problems in the mortgage servicing market are well-known.** Even before the crisis, there were problems with bad practices and systemic sloppy recordkeeping. As the number of homeowners who have run into hardship and who need help or special attention in paying their mortgage has skyrocketed, the industry’s deficiencies have compounded the challenges facing distressed borrowers.
- **The CFPB is working on rules to help fix the mortgage servicing market.** The proposed rules are aimed at tackling two underlying servicing problems: lack of transparency and lack of accountability. In recent years, many consumers have complained that they did not receive the information they needed to help them avoid foreclosure. Other consumers’ troubles worsened because they found it difficult to get answers from their servicers. The proposed rules are designed to reduce servicer mistakes and to get them quickly fixed, and to ensure that struggling homeowners get the information they need to find alternatives that work for them and the lenders.

NO SURPRISES

Mortgage borrowers deserve full transparency in dealing with their servicer. They should not be kept in the dark about how their payments are applied or when their interest rate will change, nor should they experience bill shock over an insurance charge they did not expect. The CFPB is proposing rules that would provide borrowers with clear and timely information about changes to their mortgages so they can avoid costly surprises.

Clear Monthly Mortgage Statements: The proposed rule would generally require servicers to provide clear monthly statements. These statements would have to include:

- A summary of the mortgage terms like interest rate and principal obligation;
- A breakdown of payments by principal, interest, fees, and escrow;
- The amount of and due date for the next payment;
- Recent transaction activity, including itemization of fees and charges; and
- Late fee warnings.

Warning Before Interest Rate Adjusts: Existing disclosures for interest rate adjustments that cause a change in mortgage payments would be amended to include improved information and arrive earlier so that borrowers can anticipate consequences of payment changes. The proposed rule would require servicers to provide earlier disclosures before interest rate adjustment for most adjustable-rate mortgages. This requirement would provide greater clarity to borrowers about the impact of interest rate changes. These new disclosures would include:

- An explanation of how the new rate and payment would be determined and when the adjustment will take effect;
- A good-faith estimate of the amount of the new mortgage payment;
- The date of future interest-rate adjustments;
- A list of alternatives that the borrower may pursue if the new mortgage payment is unaffordable;
- Information on how to access housing counselors; and
- The amount of any pre-payment penalty.

Options for Avoiding Costly “Force-Placed” Insurance: To assure that servicers do not unnecessarily charge borrowers for force-placed insurance, the proposed rule would require that:

- In cases where the servicer thinks the borrower has allowed the property insurance to lapse, the servicer would have to ask the borrower to provide proof of insurance;
- The servicer would have to notify a borrower twice before the servicer charges the borrower for the insurance – first at least 45 days before, and again at least 15 days before;
- These notices would have to provide the borrower with a good-faith estimate of how much the force-placed insurance would cost;
- The servicer must accept from the borrower any reasonable form of confirmation that the property is insured;
- The servicer would terminate the insurance within 15 days if it receives evidence that the borrower has the necessary insurance and the insurer would refund the force-placed insurance premiums; and
- Where the servicer has an escrow account to pay the borrower’s insurance premiums, the servicer would continue the borrower’s homeowner insurance, even if the borrower is delinquent, rather than purchasing force-placed insurance.

Early Information and Options for Avoiding Foreclosure: The proposed rule would require servicers to make good-faith efforts to contact delinquent borrowers and inform them of their options to help avoid foreclosure. Specifically:

- Servicers would be required to get in contact with borrowers early, before problems become more difficult to address;
- Servicers would be required to provide the borrower with information about the foreclosure process and options that may be available to avoid foreclosure; outreach would include informing borrowers about housing counseling and other resources.
- Servicers would be required to appropriately review borrower applications for options to avoid foreclosure.
- Servicers that offer options to borrowers to avoid foreclosure would be required to review complete applications for those options within 30 days.
- Servicers would be prohibited from proceeding with a foreclosure sale until

after a final decision has been reached on a borrower's application for an option to avoid foreclosure or unless a borrower fails to perform on that option.

- Servicers would be required to allow borrowers to appeal denials of applications for loan modification programs. Such appeals must be reviewed by independent employees who played no role in the initial decision.
- The proposal would require a creditor or servicer 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.

NO RUNAROUNDS

When mortgage servicers make mistakes, too often the fallout is harm to the consumer. When records get lost, or servicer staff are not informed about what other departments or service providers are doing on a consumer's account, the consumer can wind up in trouble. The CFPB is proposing rules that would require common-sense policies and procedures for handling consumer accounts and preventing runarounds.

Payments Promptly Credited: The proposed rule would require a payment be credited to a borrower's account as of the day that a payment is received.

- If the borrower makes a partial payment, servicers would be permitted to retain such payment in a suspense account.
- Once the amount in the suspense account equals one full monthly payment of principal, interest, and escrow, the servicer would have to apply the amount to the earliest delinquent payment. Servicer fees would not stop payments from being credited.

Records Kept Up-to-Date and Accessible: Servicers would be required to establish reasonable information-management policies and procedures designed to improve operations, minimize errors and help with quick corrections. These policies and procedures would:

- Provide accurate and timely disclosures and other information for borrowers;
- Minimize errors and facilitate prompt error correction;
- Maintain records of borrower contact;
- Facilitate review of applications for options to avoid foreclosure by accepting, organizing, and managing documents and information submitted by or about borrowers in connection with such applications;
- Ensure reasonable and timely access to such documents and information by all appropriate loss mitigation personnel;
- Facilitate oversight of contractors and foreclosure attorneys hired by the servicers, and
- Identify additional documents and information the borrower must provide to be considered for loss mitigation options. If a borrower is missing documents, for example, the servicer must tell the borrower.

Errors Corrected Quickly: Servicers would be required to address borrower concerns about possible errors. They would have to acknowledge the notification of the error within five days and conclude an investigation within 30 days. Shorter timeframes would be imposed with respect to errors relating to foreclosures or payoffs. Many errors would fall under this rule, including:

- Incorrect calculations of amounts due, credits, or payments;
- Payments (or non-payments) of taxes and insurance out of escrow accounts;

- Inaccurate information about how a borrower can avoid foreclosure; and
- The servicer proceeding with a foreclosure sale when the borrower is in the process of being evaluated for, appealing a decision about, or performing under, a loss mitigation option.

Direct and Ongoing Access to Servicer Personnel To Assist Delinquent Borrowers:

Servicers would be required to provide delinquent borrowers with direct, ongoing access to staff who are dedicated to assisting borrowers with options to avoid foreclosure.

Servicers would be required to:

- Provide these employees with easy access to the borrower's records; and
- Give these employees access to underwriters who could evaluate the borrower to see if he is eligible for a loan modification or another option to avoid foreclosure.