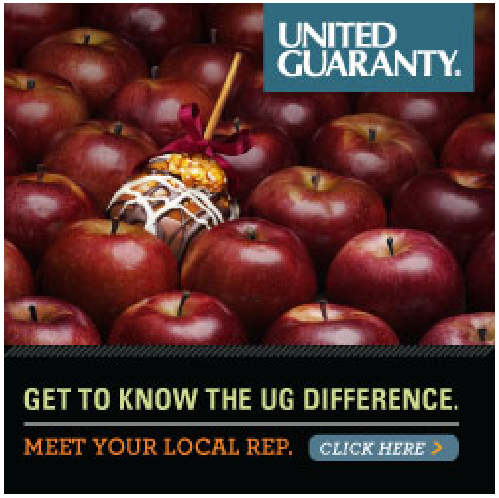

BY JANN SWANSON

New Servicer Rules Address Disconnect in a "Broken System"

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In remarks to a Mortgage Servicing Field Hearing this morning, Richard Cordray, Director of the Consumer Financial Protection Bureau (CFPB), announced the release today of CFPB's final **Mortgage Servicing Rules** spoke and personally about the need for the new regulations. The rules set for the responsibilities of servicers to their borrowers, outlining requirements for servicers to meet in collecting payments and maintaining performing loans in their portfolios and in managing delinquent and defaulted loans from initial collection contacts through foreclosure.

Cordray told of the first time in encountered a "**foreclosure crisis**." It was in 2004, several years before the nationwide and ongoing one. As treasurer in his Ohio county he noticed there was suddenly an unusual number of people losing their homes. This was puzzling to because there appeared to be no underlying economic cause. Local officials organized a "Save our Homes" task force and mounted a public information campaign advising people to "call your lender."

The Director said this was the first time he realized that a problem had been building for years and that foreclosure filings in Ohio had set a new record each year from 1996 to 2009. "Predatory lending, equity stripping, and outright fraud created many of the problems," he said, but a notable feature of the situation was how often people with a problem were entirely unable to find a solution. 'Call your lender,' we had advised," but then we discovered a disconnect - "the direct link between borrower and servicer had snapped." "'Call your lender' was not the answer if people did not know whom to call and could not get help even if they did know. People were trapped in a broken system, with deeply tragic consequences."

Cordray said the CFPB has been writing rules to address the main flaws of that **broken system**. Americans have about $10 trillion in mortgages on their homes most of these mortgages are managed by servicers. "Because of what servicers do and the size of the market, their effects on borrowers can be profound."

The new mortgage servicing rules achieve two main objectives. First, they will help prevent all borrowers from being caught off guard by surprises and getting the runaround from their servicers. Second, there are special protections for borrowers who are having trouble making their mortgage payments.

The final rules will **take effect on January 10, 2014** and will be set forth in two notices, one to amend Regulation Z, which implements the Truth in Lending Act, and one to amend Regulation X, which implements the Real Estate Settlement Procedures Act and cover nine major topics. The rules implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that relate to mortgage servicing.

The final rules include a number of exemptions and other adjustments for **small servicers**, defined as servicers that service 5,000 or fewer mortgage loans and service only mortgage loans that they or an affiliate originated or own. CFPB says this definition covers substantially all of the community banks and credit unions that are involved in servicing mortgages and should help reduce burdens for these institutions that have strong consumer service safeguards already built into their business models.

Here is a **summary of the nine topic** areas and rules. The term "servicers" where used is shorthand for "servicers, creditors, and assignees" and each topic area notes that there are unspecified exceptions for small servicers.

1. Servicers must provide a **periodic statement** for each billing cycle containing, among other things, information on current and past payments, fees imposed, transaction activity, application of past payments, contact information for the servicer and housing counselors, and, where applicable, information regarding delinquencies. Periodic statements are not required for fixed-rate loans where the servicer provides a coupon book, so long as the coupon book contains information specified in the rule.

2. Where the consumer has an **adjustable rate mortgage** (ARM) the servicer must provide a notice between 210 and 240 days before the first payment due after the first rate adjustment. This notice may contain an estimate of the new rate and new payment. If a rate adjustment causes the payment to change there must also be a notice between 60 and 120 days before the first adjusted payment is due. The current annual notice that must be provided for ARMs for which the interest rate, but not the payment, has changed over the course of the year is no longer required.

3. Servicers **must credit periodic payments** from borrowers as of the day of receipt. A periodic payment consists of principal, interest, and escrow (if applicable). If a servicer receives a payment that is less than the amount due for a periodic payment, the payment may be held in a suspense account, but when the amount in the suspense account covers a periodic payment the funds must be applied to the consumer's account. Servicers must provide an accurate payoff balance to a consumer no later than seven business days after receipt of a written request.

4. Servicers are **prohibited** from charging a borrower for **force-placed insurance coverage** unless the servicers has a reasonable basis to believe the borrower has not maintained hazard insurance and has provided the consumer with a notice at least 45 days before charging the borrower for force-placed insurance coverage, and a second reminder notice at least 30 days after the first notice and 15 days before charging for force-placed coverage. If a borrower provides proof of hazard insurance coverage, the servicer must cancel any force-placed insurance policy and refund any premiums paid for overlapping periods in which the borrower's coverage was in place. Charges related to force-placed insurance (other than those subject to State regulation or authorized by Federal law for flood insurance) must be for a service that was actually performed and must bear a reasonable relationship to the servicer's cost of providing the service.

If the borrower has an escrow account for the payment of hazard insurance premiums, the servicer may not obtain force-place insurance where it can continue the borrower's insurance, even if this requires advancing funds to the escrow account to do so. The rule exempts small servicers as defined above so long as any force-placed insurance is less expensive to a borrower than the disbursement the servicer would have made to maintain hazard insurance coverage.

5. The following applies to **written customer requests** for information or complaints. Servicers may designate a specific address for borrowers to use and are generally required to acknowledge the request or notice of error within five days. Servicers also generally are required to correct the error asserted by the borrower and provide the borrower written notification of the correction, or to conduct an investigation and provide the borrower written notification that no error occurred, within 30 to 45 days. Further, within a similar

amount of time, servicers generally are required to acknowledge borrower written requests for information and either provide the information or explain why the information is not available.

6. Servicers are required to **establish policies and procedures** reasonably designed to achieve objectives specified in the rule. "Reasonably" will take into account the size, scope, and nature of the servicer's operations. Examples of the specified objectives include accessing and providing accurate and timely information to borrowers, investors, and courts; properly evaluating loss mitigation applications according to eligibility rules established by investors; facilitating oversight of, and compliance by, service providers; facilitating transfer of information during servicing transfers; and informing borrowers of the availability of written error resolution and information request procedures. In addition, servicers are required to maintain certain documents and information for each mortgage loan in a manner that enables the services to compile it into a servicing file within five days. The Bureau and the prudential regulators will be able to supervise servicers within their jurisdiction to assure compliance with these requirements but there will not be a private right of action to enforce these provisions.

7. Servicers are required to make **early intervention attempts** with delinquency borrowers, establishing live contact by the 36th day of their delinquency or making good faith efforts to do so. Borrowers should be promptly informed that loss mitigation options may be available and provided written notification of loss mitigation options by the 45th day of delinquency.

8. Servicers are required to provide **continuity of contact** with delinquent borrowers, giving them access to personnel to assist them with loss mitigation options where applicable. Personnel should be assigned to a delinquent borrower by the time of the first written early intervention notice but in any case by the 45th day of delinquency. Assigned personnel should be accessible to the borrower by phone to assist the borrower in pursuing loss mitigation options, and advise the borrower on the status and timelines of any loss mitigation application. Assigned personnel should have access to all of the information provided by the borrower to the servicer and provide that information, when appropriate, to those responsible for evaluating the borrower for loss mitigation options.

9. Servicers are required to follow **specified loss mitigation procedures** for a mortgage loan secured by a borrower's principal residence. If a borrower submits an application for loss mitigation the servicer is generally required to acknowledge receipt in writing within five days and inform the borrower of any additional information required to complete the application. The servicer is required to exercise reasonable diligence in obtaining documents and information to complete the application.

For a complete loss mitigation application received more than 37 days before a foreclosure sale, the servicer is required to evaluate the borrower, within 30 days, for all loss mitigation, both home retention and non-retention, options for which he may be eligible. Servicers are free to follow "waterfalls" established by an investor to determine eligibility for particular loss mitigation options.

The servicer must provide the borrower with a written decision, including an explanation of the reasons for denying the borrower a loan modification option and any inputs used to make a net present value calculation if such inputs were the basis for the denial. A borrower may appeal a denial of a loan modification program so long as the borrower's complete loss mitigation application is received 90 days or more before a scheduled foreclosure sale.

The rule **restricts "dual tracking,"** specifically prohibiting a servicer from making the first notice or filing required for a foreclosure process until a mortgage loan account is more than 120 days delinquent. Even if a borrower is more than 120 days delinquent and submits a complete application for a loss mitigation option before the first notice or filing required for a foreclosure process is made a servicer may not start the foreclosure process unless (1) the servicer informs the borrower that the borrower is not eligible for any loss mitigation option (and any appeal has been exhausted), (2) a borrower rejects all loss mitigation offers, or (3) a borrower fails to comply with the terms of a loss mitigation option such as a trial modification.

If a borrower submits a complete application for a loss mitigation option after the foreclosure process has commenced but more than 37 days before a scheduled foreclosure sale, a servicer may not move for a foreclosure judgment or order of sale, or conduct a foreclosure sale, until one of the three conditions above has been satisfied. In all of these situations, the servicer is responsible for promptly instructing foreclosure counsel retained by the servicer whether or not to proceed with filing for foreclosure judgment or order of sale or to conduct a foreclosure sale.

While this section includes an exemption for **small servicers they are required** to comply with two requirements: (1) a small servicer may not make the first notice or filing required for a foreclosure process unless a borrower is more than 120 days delinquent, and (2) a small servicer may not proceed to foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a loss mitigation agreement.

So far **reaction to the new rule** has been received from the Center for Responsible Lending (CRL), the Mortgage Bankers Association (MBA) and the Center for American Progress (CAP). MBA President and CEO David H. Stevens commended CFPB for continuing to produce regulations that enhance transparency and certainty for borrowers and servicers alike. "Overall, the objective of this effort is the right one - create one set of rules so that borrowers know how they will be treated and servicers know what is expected of them.

Stevens said that MBA needs time to evaluate the full rule but that the information so far indicates that CFPB made productive changes and had listened to suggestions from MBA and other stakeholders. "As with any rule of this size, the devil is truly in the details, and for servicers, that means how the rules are implemented and operationalized." He pointed to a few initial concerns; what he called a too narrow definition of "small servicer" and to some apparent inconsistencies between the rule's dual tracking regulations and existing timelines mandated by the GSEs, FHA, and some states.

CRL President **Mike Calhoun** said, "New rules from the Consumer Financial Protection Bureau will benefit millions of Americans by fixing several key problems that have plagued mortgage servicing. The rules establish basic standards such as requiring a timely application of monthly mortgage payments and a prompt correction of errors. The rules also restrict servicers from forcing borrowers into high-cost homeowners' insurance policies-a common, needless and deceptive practice.

"A specific improvement from the CFPB's original proposal requires servicers to wait 120 days after a missed payment before beginning the foreclosure process. Combined with the rules' strong requirement for servicers to reach out early to delinquent borrowers, this 120-day period gives time for everyone - servicers, investors, and borrowers alike - to see if an alternative to foreclosure can be found. This eliminates unnecessary costs and increases the likelihood that borrowers can stay in their homes."

CRL also had **concerns** with parts of the rule:

- Some protections for borrowers who apply for foreclosure alternatives after the foreclosure process has started should be stronger.
- The deadline requiring a borrower to complete an application for a foreclosure alternative at least 37 days before a scheduled foreclosure sale is an improvement over the 90-days initially proposed, but a 14-day deadline would have been better.
- Rather than preventing servicers from seeking a foreclosure judgment or holding a sale until an application for relief is reviewed, the foreclosure proceedings should be put on hold during the review.
- The rule limits a borrower's ability to appeal when a request for an alternative to foreclosure is denied, which will prevent some borrowers from having an improper denial corrected.

Julia Gordon, CAP's Director of Housing Finance and Policy congratulated CFPB on several specific improvements it had made from earlier drafts and said, "The new rule takes a critically important step toward providing comprehensive standards for all mortgage servicers. While bad lending practices and risky products triggered the housing crisis, the abject failure of the mortgage-servicing industry to mitigate losses or to follow the law when pursuing foreclosures greatly exacerbated the damage done to homeowners, communities, the housing market, and the larger economy. The rule addresses some of the most pernicious practices causing unnecessary damage to families, including dual-tracking foreclosures and force-placed insurance. What's more, individual homeowners now have the ability to enforce these rules, a crucial piece that has been missing from previous foreclosure-prevention programs."

But due to **concerns about the extent of its authority**, the Consumer Financial Protection Bureau missed an opportunity to mandate that all servicers offer affordable loan modifications to homeowners who qualify. We urge the bureau to work closely with other regulators to ensure that affordable and sustainable loan modifications remain broadly available after the Home Affordable Modification Program expires.

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