



Insights: Alerts

CFPB Announces Changes to Mortgage Servicing Rules

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On October 4, the Consumer Financial Protection Bureau (CFPB or Bureau) announced changes to its mortgage servicing rules. The Bureau issued an interim final rule¹ and a proposed rule² to provide mortgage servicers more flexibility and certainty around requirements to communicate with borrowers under the CFPB's 2016 mortgage servicing amendments. The Bureau states that it "does not intend to revisit major policy decisions" in the proposed rulemaking "or distract from industry's implementation efforts," which the Bureau believes have been progressing.

Background

In 2016, the Bureau made changes to the mortgage servicing rules to require mortgage servicers to send written notices, referred to as early intervention notices, to consumers at risk of foreclosure, who have requested a cease in communication under the Fair Debt Collection Practices Act (FDCPA). Once these borrowers become delinquent, the Bureau's 2016 amendments generally require that mortgage servicers send notices to these consumers every 45 days to inform them of available foreclosure prevention options but prohibit servicers from sending the notices more than once in a 180-day period. The CFPB has heard concerns that once a servicer sends a notice to one of these borrowers, the rule, read in conjunction with the early intervention provision's other timing requirements for written notices, requires servicers to provide the next notice exactly on the 180th day after the prior one, regardless of whether it is a weekend or a holiday.

The Bureau has also learned that some technical aspects of the 2016 amendments, requiring the timing for servicers to provide periodic statements about a borrower's bankruptcy case, may create unintended challenges and be subject to different legal interpretations.

Interim Final Rule

The interim final rule gives servicers a longer, 10-day window to provide the modified notices at the end of the 180-day period. Specifically, the interim final rule amends a provision of the 2016 Regulation X mortgage servicing rules about the timing for servicers to provide modified written early intervention notices to borrowers, who have invoked their cease communication rights under the FDCPA. According to the CFPB, "a 10-day window at the end of the 180-day period affords servicers sufficient time to provide the notice, while also ensuring that servicers provide the subsequent notice in a timely way, maximizing a borrower's opportunities to pursue loss mitigation and avoid further delinquency."

The interim final rule becomes effective on Oct. 19, 2017, the same date that the related 2016 rule provisions become effective.

Proposed Rule

Regulation Z contains periodic statement and coupon book requirements when a person is a debtor in bankruptcy. It includes a single-billing-cycle exemption from the requirement to provide a periodic statement or coupon book in certain circumstances after one of several specific triggering events occurs, resulting in a servicer needing to transition to or from providing bankruptcy-specific disclosures. The single-billing-cycle exemption applies only if the billing cycle's payment due date is no more than 14 days after the triggering event.

The CFPB is proposing amendments to Regulation Z mortgage servicing rules about the timing for servicers to transition to providing modified or unmodified periodic statements and coupon books for a consumer's bankruptcy case. The proposal would replace the single-billing-cycle exemption with a single-statement exemption. Specifically, the proposal seeks to provide a single-statement exemption for the next periodic statement or coupon book that a servicer would otherwise have to provide, regardless of when the triggering event occurs in the billing cycle.

The proposed effective date for the proposed rule is April 19, 2018, the same date that the sections of the 2016 rule that the proposal would amend become effective. The Bureau believes that the proposed revisions should not require substantial systems reprogramming.

Compliance Considerations

The interim final rule should help alleviate any unintended challenges and facilitate timely provision of written early intervention notices to these borrowers by providing clearer and more flexible standards. In addition, the Bureau's proposed rule would provide a clearer and more straightforward timing standard for the delivery of periodic statements containing important loan information to borrowers in bankruptcy.

Public Comment

The Bureau is seeking comment on the interim final rule and will consider whether to revisit it in the future. The comment period on both the interim final rule and the proposed rule will close 30 days after publication in the *Federal Register*.

[1] Consumer Financial Protection Bureau. *Amendments to the 2016 Amendments to the 2013 Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (Oct. 4, 2017)*, available at http://files.consumerfinance.gov/f/documents/201710_cfpb_amendments-to-2016-Servicing-Rule_interim-final-rule.pdf.

[2] Consumer Financial Protection Bureau. *Amendments to the 2016 Amendments to the 2013 Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (Oct. 4, 2017)*, available at http://files.consumerfinance.gov/f/documents/201710_cfpb_amendments-to-2016-Servicing-Rule_interim-final-rule.pdf.

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