

Summary of Mortgage Servicing Rules

The Consumer Financial Protection Bureau (CFPB) released its final rules on mortgage loan servicing on January 17, 2013. These new national standards are changes to Regulation Z, Truth in Lending Act, and Regulation X, Real Estate Settlement Procedures Act.

Effective Date: January 10, 2014

Link to the Final Rule and CFPB Summary:

<http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/>

Scope of the Rule

This rule applies to all entities that service consumer first lien mortgage loans regardless if the loan is retained in portfolio by the originator or is sold into the secondary market and the entity services that loan for an investor.

This rule does not cover:

- Reverse mortgage loans;
- Bridge loans;
- The construction phase of a construction to permanent loan;
- Loans for business purposes secured by a consumer's dwelling; or
- Mortgages secured by farm or agricultural properties where the lender is a qualified lender under the Farm Credit Act of 1971.

Small Servicer Exemption

The bureau has created a small servicer threshold that will exempt smaller servicers from mandatory compliance with some of the provisions in the rules. A small servicer is defined as one that services 5,000 or fewer consumer mortgages which they or an affiliate own or originated.

Periodic Billing Statements (Small Servicers are Exempt from this Section)

All creditors, assignees and servicers, **except small servicers**, must provide a periodic billing statement for each billing cycle that contains the following information:

- Amount due;
- Due date;

- Late fee information;
- Explanation of amount due (includes a breakdown of amounts allocated to principal and interest, and escrow including the total sum of any fees or charges and the amount of any past due payment);
- Past payment breakdown of what's been allocated to principal, interest, escrow, late fees etc.; and
- Transaction activity.

Additional Required Information on Periodic Statements

- Certain messages, such as detail on the application of partial payments or funds held in a suspense account.
- Contact information for the servicer.
- Current unpaid principal balance.
- Current interest rate.
- Next interest rate change date (if applicable).
- Contact information for homeownership counselors.
- Additional delinquency information if the borrower is more than 45 days past due.

Delivery to the Borrower: The periodic statement must be provided/sent either electronically or by regular mail to the borrower within a reasonably prompt time after the close of the grace period of the previous billing cycle. The CFPB has determined that four days after the close of any grace period would be considered reasonably prompt.

Billing Cycle: The billing cycle corresponds to the frequency of payments from the borrower as evidenced by the note and mortgage/deed of trust/ loan modification documents.

Coupon Book Exemption: The final rule provides an exemption for all servicers who use coupon books rather than monthly or periodic statements. The provisions of this exemption are listed below.

- Applies to fixed-rate/fixed payment mortgages only.
- Required information on **each payment coupon:**
 - Payment due date;
 - Amount due; and
 - Amount of any late charge and the date incurred.
- Required information included **in the coupon book itself, but not necessarily on each coupon:**
 - Principal balance (as of the issuance of the coupon book);
 - Interest rate;
 - Amount of any prepayment penalty;

- Contact information for the servicer and homeownership counselor; and
- How the consumer can get more current information on their loan;
- Required information ***to be made available to consumers (so called “dynamic information”)***:
 - Breakdown of monthly principal, interest and escrow amounts;
 - Total of all payments received;
 - Any past due amounts or other amounts owed;
 - Any payments held in suspense;
 - Total transaction activity;
 - Total of any fees or charges applied to the account and when they occurred; and
 - Information must be made available either orally, in person, electronically, or in writing; delinquency information must be made in writing as a separate communication.
- **This exemption for coupon books is separate from the small servicer exemption and is available to all servicers that use coupon books for fixed rate mortgages.**

Interest Rate Adjustment Notices for ARMs

- Applies to **all** servicers who service ARM loans.
- New notice of first adjustment required to be sent to borrower 210-240 days prior to the first adjustment.
- Subsequent adjustment notices must now be sent 60-120 days prior to the adjustment of the borrower’s payment.
- If an interest rate change **does not** result in a payment change, then no notice is required.
- Applies to all ARM loans serviced.

Prompt Crediting of Payments and Provision of Payoff Statements

- Applies to **all** servicers.
- Borrower payments must be credited as of the day of receipt.
- Partial payments must be accepted and either held in a suspense account or credited to the borrowers account. Once the amount in the suspense account covers a full payment it must be credited to the borrower’s account.
- Servicers must provide an accurate payoff balance to the consumer within seven business days of receipt of a written request.

Force-Placed Insurance

- Servicer cannot charge borrower for force-placed coverage unless:
 - Servicer has reason to believe borrower has allowed coverage to lapse;

- First notice is sent 45 days prior to charging borrower for force-placed insurance; and
- Second notice is sent at least 30 days after the first notice and at least 15 days before charging the borrower for force-placed coverage;
- Servicer must cancel any force-placed coverage and refund any premiums paid during periods of overlapping coverage.
- For loans that are escrowed, servicers must continue to advance premiums and cannot obtain force-placed insurance. **Small servicers are exempt from this provision provided the force-placed coverage is less than any disbursement from the escrow account the servicer would have made to maintain the borrower's insurance coverage.**

Error Resolution and Information Requests

- Servicers must respond to a written notification of an error from a borrower as follows:
 - Must acknowledge any written notice of error within 5 business days of receipt unless error is corrected;
 - Must acknowledge error is corrected in writing; and
 - All errors must be corrected within 30 days of receipt of a written request.
- Servicers must maintain policies and procedures to ensure that oral requests for information and notices of errors are resolved quickly.

General Servicing Policies, Procedures and Requirements (Small Servicers are Exempt from this Section)

Servicers, **except small servicers**, must establish and maintain policies and procedures to achieve the following:

- Provide accurate and timely information to borrowers, investors, courts.
- Properly evaluate loss mitigation applications per investor guidelines.
- Monitor compliance of service providers.
- Facilitate transfers of servicing.
- Inform borrowers of written error resolution requests.
- Maintain the following and be able to provide it in a servicing file within 5 days of receipt of a request from a borrower:
 - Schedule of payments credited or debited to the borrower's account;
 - Escrow payments and history;
 - Copies of the borrower's security instrument;
 - Collection notes made by the servicer reflecting communication with borrower;
 - Any data fields relating to a mortgage loan account created by servicer's auto dial and response system regarding collection activity; and
 - Copies of documents provided by the borrower to the servicer in connection with the collection of their mortgage loan account.

Early Intervention with Delinquent Borrowers (Small Servicers are Exempt from this Section)

Servicers, **except small servicers**, must:

- Establish or make good faith efforts to establish “live” contact with delinquent borrowers by 36th day of delinquency.
- Where appropriate, inform delinquent borrowers of available loss mitigation options.
- Provide written notice of loss mitigation options by 45th day of delinquency.

Continuity of Contact (Small Servicers are Exempt from this Section)

Servicers, **except small servicers**, must establish reasonable policies and procedures which would provide delinquent borrowers access to personnel from servicer’s staff who are qualified to assist them with loss mitigation options if applicable. This staff must be:

- Accessible by phone;
- Assigned to the borrower by the 45th day of delinquency;
- Able to assist borrower with any loss mitigation options that may be available to them;
- Able to advise the borrower on the status of any loss mitigation application and the applicable timelines; and
- Able to access all information provided by the borrower to the servicer and provide that information to staff responsible for evaluating the borrower for loss mitigation alternatives.

Loss Mitigation Procedures (Small Servicers are Exempt from this Section but Must Follow Certain Foreclosure Requirements)

Small servicers are exempt from this section, but must follow these two rules: (1) the servicer may not file first notice for foreclosure unless the borrower is more than 120 days delinquent; and (2) the servicer may not proceed to foreclosure or sale if a borrower is performing under the terms of a loss mitigation agreement.

- Servicers, **except small servicers**, must have specified procedures for loss mitigation.
- Servicers must acknowledge receipt of a loss mitigation option within 5 days, informing the borrower if the application is complete or not and what information is missing.
- Servicers must exercise reasonable diligence to obtain needed documents to complete the application.
- Complete loss mitigation applications must be reviewed within 30 days if received more than 37 days prior to foreclosure sale.
- Borrower must be evaluated for all loss mitigation options they may be eligible for in accordance with the investor’s rules, including both retention of the home (modification) and non retention of the home (short sales).

- Servicer must provide borrower a written decision, including reasons for denial of any option, and provide any data used to make any “net present value” calculation.
- Borrower may appeal the decision as long as a complete loss mitigation application is received 90 days or more before a scheduled foreclosure.
- “Dual tracking” is restricted; servicer may not start the foreclosure process unless the borrower is not eligible for loss mitigation option and all appeals have been exhausted, or the borrower rejects all loss mitigation options, or borrower fails to comply with the terms of any loss mitigation option (trial modification).
- Servicer may not move to obtain a foreclosure judgment, or conduct a foreclosure sale, if a borrower submits a complete application for a loss mitigation option after the foreclosure process has started but more than 37 days from a foreclosure sale.
- Servicer cannot move forward with foreclosure unless borrower is not eligible for loss mitigation options and all appeals have been exhausted, the borrower rejects all loss mitigation options, or the borrower fails to comply with the terms of any loss mitigation option.