



National Banker Call Mortgage Servicing Rules

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Mortgage Loan Servicing

THE DODD-FRANK ACT AMENDMENTS TO MORTGAGE SERVICING

Truth in Lending Act (TILA)

Regulation Z – TILA's Implementing Regulation

Real Estate Settlement Procedures Act (RESPA)

Regulation X – RESPA's Implementing Regulation

Mortgage Loan Servicing

Mortgage Servicing Rules – Two Rules / Nine Topics

TILA Regulation Z (2013 TILA Servicing Rule)

- Topic 1: Periodic statements
- Topic 2: Interest rate adjustment notices for Adjustable Rate Mortgages
- Topic 3: Prompt crediting of payments and payoff statements

RESPA Regulation X (2013 RESPA Servicing Rule)

- Topic 4: Force-placed insurance
- Topic 5: Error resolution and information requests
- Topic 6: General servicing policies, procedures, and requirements
- Topic 7: Early intervention with delinquent borrowers
- Topic 8: Continuity of contact with delinquent borrowers
- Topic 9: Loss mitigation procedures

E-mail your questions to:

bankerteleconference@fdic.gov

Mortgage Loan Servicing

Mortgage Servicers

- Play vital role within broader mortgage market
- Undertake day-to-day management of mortgage loans for lenders and investors

Why Regulate Mortgage Servicing?

- Improper servicing practices
- Inadequate response to distressed borrowers

Actions Taken by State and Federal Regulators

- The National Mortgage Settlement Agreement
- Consent orders with financial institutions
- Adoption of mortgage servicing standards

Effective Date of Mortgage Servicing Final Rules

- January 10, 2014

Mortgage Loan Servicing

Small Servicer Exemption

“Small Servicer” Exemption:

- Servicer that services $\leq 5,000$ mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; or
- Servicer is a Housing Finance Agency as defined by HUD regulations (24 CFR § 266.5)

Small Servicer Determination

- Made as of January 1 of each year
- A servicer that crosses the $\leq 5,000$ threshold, has 6 months or until the next January 1 (whichever is later) to comply with any requirements for which the servicer is no longer exempt as a small servicer.

Mortgage Loan Servicing

Small Servicer Exemption

Small Servicer Exemptions

- **Regulation Z**
 - Periodic statements
- **Regulation X**
 - General servicing policies, procedures, and requirements
 - Early intervention with delinquent borrowers
 - Continuity of contact with delinquent borrowers
 - Loss mitigation procedures (other than dual tracking limitations)

Master Servicer / Sub-servicer Arrangements

- Both master servicer and sub-servicer must meet the requirements of a small servicer to qualify for exemption

Mortgage Loan Servicing

2013 TILA Servicing Rule

Topic 1: Periodic Statement

- Provides information about payment obligations and delinquency, among other things
- Aids in error detection and resolution

Topic 2: Interest Rate Adjustment Disclosures for ARMs

- Provides consumers advance notice of rate adjustments
- Helps consumers evaluate available options to avoid payment shock

Topic 3: Prompt Crediting of Payments and Payoff Statements

- Ensures consumers benefit from efforts to pay mortgage debt
- Provides consumers payoff information in a reasonable timeframe

Mortgage Loan Servicing

Periodic Statement

Periodic Statements

A servicer of a mortgage loan must “provide the consumer, for each billing cycle, a periodic statement”

Scope

- Closed-end consumer credit transactions secured by a dwelling
- Creditor, assignee, or servicer (as applicable)

Exemptions

- Reverse mortgages
- Timeshare plans
- Fixed-rate loans, **if** servicer provides a coupon book with required information
- Small servicer (if servicer qualifies under the “small servicer” exemption)

Requirements

- Must meet content, timing, and format requirements
- Only one periodic statement per billing cycle is required (for billing cycles shorter than 31 days, servicer may provide a periodic statement covering the entire month)

Mortgage Loan Servicing

Periodic Statement

Coupon Book Exemption

- **The periodic statement requirement does not apply to a fixed-rate loan with a coupon book, if:**
 - Amount due is on each coupon;
 - Required account information (including the current interest rate in effect for the mortgage loan), and contact information for the servicer, is somewhere on the coupon book;
 - Upon the consumer's request, certain information required in the periodic statement is made available in another form such as by telephone, in writing, or electronically, if the consumer consents; and
 - Servicer must provide the consumer delinquency information in writing for any billing cycle during which the consumer is more than 45 days delinquent
- **Exemption information can be found under 12 CFR § 1026.41(e)(3)**

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Periodic Statement

Content

- **The periodic statement must include the following items:**
 - Amount due;
 - Explanation of amount due;
 - Past payment breakdown;
 - Transaction activity;
 - Information regarding any suspense account or unapplied funds account;
 - Contact information for the servicer;
 - Account information including the outstanding principal balance and the current interest rate, and the website to access homeownership counselors and organizations; and
 - Account delinquency, foreclosure, and loss mitigation information for consumers more than 45 days delinquent
- **Content information for the periodic statement can be found under 12 CFR § 1026.41(d)**

Mortgage Loan Servicing

Periodic Statement

Timing

- Delivered or placed in mail within “reasonably prompt time” after the payment due date or the end of any courtesy period
 - Generally delivered or mailed within four days of the close of the courtesy period of the previous cycle
- May be provided electronically with consumer’s “affirmative consent”

Format

- Clearly and conspicuously in writing (or electronically with “affirmative consent” from consumer), in a form consumer may keep
- Table format is required and must be substantially similar to model forms
- Servicer complies with form and layout requirements with proper use of sample Forms in Appendix H of Regulation Z

Mortgage Loan Servicing Periodic Statement

Model Form H-30(A)

H-30(A) Sample Form of Periodic Statement

Springside Mortgage

Customer Service: 1-800-555-1234
www.springsidemortgage.com

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Mortgage Statement

Statement Date: 3/20/2012

Account Number	1234567
Payment Due Date	4/1/2012
Amount Due	\$2,079.71
<i>If payment is received after 4/15/12, \$160 late fee will be charged.</i>	

Account Information	
Outstanding Principal	\$264,776.43
Interest Rate (Until October 2012)	4.75%
Prepayment Penalty	Yes

Explanation of Amount Due	
Principal	\$386.46
Interest	\$1,048.07
Escrow (for Taxes and Insurance)	\$235.18
Regular Monthly Payment	\$1,669.71
Total Fees Charged	\$410.00
Total Amount Due	\$2,079.71

Transaction Activity (2/20 to 3/19)			
Date	Description	Charges	Payments
3/16/12	Late Fee (charged because full payment not received by 3/15/2012)	\$160.00	
3/17/12	Payment Received – Thank you		\$1,669.71
3/19/12	Property Inspection Fee	\$250.00	

Past Payments Breakdown		
	Paid Last Month	Paid Year to Date
Principal	\$384.93	\$1,150.25
Interest	\$1,049.60	\$3,153.34
Escrow (Taxes and Insurance)	\$235.18	\$705.54
Fees	\$0.00	\$0.00
Total	\$1,669.71	\$5,009.13

Springside Mortgage

Springside Mortgage
P.O. Box 11111
Memphis, TN 38101

Amount Due	
Due By 4/1/2012:	\$2,079.71
<i>\$160 late fee will be charged after 4/15/12</i>	
Additional Principal	\$.
Additional Escrow	\$.
Total Amount Enclosed	\$.

Make check payable to Springside Mortgage.

Mortgage Loan Servicing

Interest Rate Adjustment Disclosures for ARMs

Regulation Z – 2013 TILA Servicing Rule

- Revises the existing requirements for interest rate adjustment disclosures for ARMs with or without a corresponding change in payment
- Adds an initial interest rate disclosure for ARMs

Mortgage Loan Servicing

Initial Interest Rate Adjustment Disclosure for ARMs

Scope

- Closed-end consumer credit transactions secured by the consumer's principal dwelling in which the annual percentage rate may increase after consummation
- Creditor, assignee, or servicer of **ANY** ARM

Exemptions

- ARMs with terms of one year or less; and
- Loan modifications made for loss mitigation purposes (with exception)

Requirements

- Disclosure must be in a separate document: if mailed, can be with other documents; if emailed must be a separate attachment
- Must meet content, timing, and format requirements

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Initial Interest Rate Adjustment Disclosure for ARMs

Content

- **The initial interest rate adjustment disclosure must include the following:**
 - Date of disclosure;
 - A statement with an explanation of changes in the payment and loan terms, and when rate adjustments will occur;
 - A table of current and new interest rates and payments (or an estimate of the new rate and new payment);*
 - An explanation of how the new payment is determined, including index or formula used;
 - Any limits on interest rate or payment increases at each interest rate adjustment;
 - Circumstances under which prepayment penalties may be applied;
 - Contact information for the creditor, assignee, or servicer;
 - List of alternatives to paying at the new rate, including refinancing or modifying loan terms;
 - The website for homeownership counselors; and
 - Other disclosures as applicable
- **Content requirements for the initial interest rate adjustment disclosure can be found under 12 CFR § 1026.20(d)(2)**

*If new interest rate (or new payment calculated from the new interest rate) is not known as of the date of the disclosure, an estimate must be disclosed and labeled as an estimate.

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Initial Interest Rate Adjustment Disclosure for ARMs

Timing

- Must be provided between 210 days but no more than 240 days before the first payment at the adjusted level is due
- If the first payment at the adjusted rate is due within the first 210 days after consummation, must be provided at consummation
- Delivered or placed in the mail (or electronically, if consumer consents), within the timing requirements

Format

- Clearly and conspicuously in writing or electronically (if the consumer agrees) and in a form that the consumer may keep
- Must be in table form substantially similar to sample model forms in Appendix H of Regulation Z
 - Proper use of the model forms complies with the form and layout requirements
- An interior table within the larger table must contain the current and new interest rates and payments, and due date of the first new payment

Mortgage Loan Servicing

Initial Interest Rate Adjustment Disclosure for ARMs

Model Form H-4(D)(4)

Changes to Your Mortgage Interest Rate and Payments on *(date)*

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a *(duration)* period during which your interest rate stayed the same. That period ends on *(date)*, so on that date your interest rate may change. After that, your interest rate may change *(frequency)* for the rest of your loan term. Any change in your interest rate may also change your mortgage payment. [Also, as of *(date)* *(change(s) to loan terms, features or options)*.]

	Current Rate and <i>(frequency)</i> Payment ____%	[<i>Estimated</i>] New Rate and <i>(frequency)</i> Payment ____%
Interest Rate	____%	____%
[Principal]	[\$ _____]	[\$ _____]
[Interest]	[\$ _____]	[\$ _____]
[Escrow (Taxes and Insurance)]	[\$ _____]	[\$ _____]
Total <i>(frequency)</i> Payment	\$ _____	\$ _____ (due <i>(date)</i>)

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is *(index)* and your margin is ____%. The *(index)* is published *(frequency)* in *(source of information)*. [Description and amount of other adjustment(s) to the index.]

Rate Limit(s): [Your rate cannot go higher than ____% over the life of the loan.] [Your rate can change each year by no more than ____%.] [We did not include an additional ____% interest rate increase to your new rate because a rate limit applied. This additional increase may be applied to your interest rate when it adjusts again on *(date)*.]

New Interest Rate and Monthly Payment: The table above shows [our estimate of] your new interest rate and new monthly payment. These amounts are based on the *(index)* as of now, your margin, [description of other adjustment(s) to the index,] your loan balance of \$____, and your remaining loan term of ____ months. [However, if the *(index)* has changed when we calculate the exact amount of your new interest rate and payment, your new interest rate and payment may be different from the estimate above. We will send you another notice with the exact amount of your new interest rate and payment 2 to 4 months before the first new payment is due, if your new payment will be different from your current payment.]

Interest-Only Payments: Your new payment will not cover any principal. Therefore, making this payment will not reduce your loan balance.]

Warning about Increase in Your Loan Balance: Your new payment covers only part of the interest and no principal. Therefore, the unpaid interest will add to the balance of the loan. In order to fully pay off your loan by the end of the loan term at the new interest rate, you would have to pay \$____ per month.]]

Prepayment Penalty: [None] [Keep in mind that if you pay off your loan, refinance or sell your home before *(date)*, you could be charged a penalty. Contact *(mortgage company)* at the telephone number [or *(email address)*] below for more information, such as the maximum amount of the penalty you could be charged.]]

If You Anticipate Problems Making Your Payments:

- Contact *(mortgage company)* at *(telephone number)* [or *(email address)*] as soon as possible.
- If you seek an alternative to the upcoming changes to your interest rate and payment, the following options may be possible (most are subject to lender approval):
 - Refinance your loan with us or another lender;
 - Sell your home and use the proceeds to pay off your current loan;
 - Modify your loan terms with us;
 - Payment forbearance temporarily gives you more time to pay your monthly payment.
- If you would like contact information for counseling agencies or programs in your area, call the U.S. Department of Housing and Urban Development (HUD) at *(telephone number)* or visit *(internet address of the U.S. Department of Housing and Urban Development counseling agency list)* [or] [the U.S. Consumer Financial Protection Bureau (CFPB) at *(internet address of the U.S. Consumer Financial Protection Bureau homeownership counselors and counseling organization list)*]. If you would like contact information for a state housing finance agency, contact the U.S. Consumer Financial Protection Bureau (CFPB) at *(internet address of U.S. Consumer Financial Protection Bureau state housing finance agency access list)*.

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Change in Payment Disclosure for ARMs

2013 TILA Servicing Rule

- Revises the existing requirements for interest rate adjustment disclosures for ARMs with or without a corresponding change in payment in two key respects:
 - Eliminates annual notice currently required when the interest rate adjusts during the course of a year without a corresponding change in payment; and
 - Revises the current disclosure when an interest adjustment results in a corresponding change in payment

Mortgage Loan Servicing

Change in Payment Disclosure for ARMs

Scope

- Closed-end consumer credit transactions secured by the consumer's principal dwelling in which the annual percentage rate may increase after consummation
- Creditor, assignee, or servicer of **ANY** ARM – includes financial institutions and non-financial institutions
- Disclosure is required for a change in payment resulting from an ARM conversion to a fixed-rate transaction

Exemptions

- ARMs with terms of one year or less
- The first interest rate adjustment to an ARM, if:
 - First payment at adjusted level due within 210 days after consummation; and
 - The new interest rate disclosed at consummation was not an estimate
- Loan modifications made for loss mitigation purposes (with exception)

*** Must meet content, timing, and format requirements**

Mortgage Loan Servicing

Change in Payment Disclosure for ARMs

Content

- Similar content to requirements of the initial interest rate adjustment disclosure
- No requirement that disclosure provide the list of alternatives to paying at the new rate, including refinancing or modifying loan terms

Timing

- Must be provided at least 60 days, but no more than 120 days before the first payment at the adjusted level is due
- Exceptions to the standard timing requirement:
 - Loans originated before January 10, 2015, with look-back periods of less than 45 days; and
 - ARMs with uniformly scheduled interest rate adjustments occurring every 60 days or more often

For these transactions, the disclosure must be provided to the consumer at least 25 days, but no more than 120 days, before the first payment at the adjusted level is due.

- Estimate: where *first* adjustment to ARM is within 60 days of consummation and new interest rate disclosed at consummation was an estimate, the disclosure must be provided as soon as practicable, but not less than 25 days before the first payment at adjusted level is due

Mortgage Loan Servicing

Change in Payment Disclosure for ARMs

Format

- Must be in table form substantially similar to the model forms in Appendix H of Regulation Z
 - Proper use of the sample forms in the regulation complies with the form and layout requirements
- An interior table within the larger table must contain the current and new interest rates and payments, and due date of the first new payment

Mortgage Loan Servicing

Change in Payment Disclosure for ARMs

Model Form H-4(D)(1)

Changes to Your Mortgage Interest Rate and Payments on *(date)*

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a *(duration)* period during which your interest rate stayed the same. That period ends on *(date)*, so on that date your interest rate and mortgage payment change. After that, your interest rate may change *(frequency)* for the rest of your loan term. [Also, as of *(date)* *(changes to loan terms, features or options)*.]

	Current Rate and <i>(frequency)</i> Payment	New Rate and <i>(frequency)</i> Payment
Interest Rate	___%	___%
[Principal]	[\$ ____]	[\$ ____]
[Interest]	[\$ ____]	[\$ ____]
[Escrow (Taxes and Insurance)]	[\$ ____]	[\$ ____]
Total <i>(frequency)</i> Payment	\$ ____	\$ ____ (due <i>(date)</i>)

Interest Rate: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is *(index)* and your margin is ___%. The *(index)* is published *(frequency)* in *(source of information)*. [Description and amount of other adjustment(s) to the index].

Rate Limit(s): [Your rate cannot go higher than ___% over the life of the loan.] [Your rate can change each year by no more than ___%.] [We did not include an additional ___% interest rate increase to your new rate because a rate limit applied. This additional increase may be applied to your interest rate when it adjusts again on *(date)*.]

New Interest Rate and Monthly Payment: The table above shows your new interest rate and new monthly payment. Your new payment is based on the *(index)*, your margin, [description of other adjustment(s) to the index], your loan balance of \$ ____, and your remaining loan term of ___ months.

Interest-Only Payments: Your new payment will not cover any principal. Therefore, making this payment will not reduce your loan balance.]

Warning about Increase in Your Loan Balance: Your new payment covers only part of the interest and no principal. Therefore, the unpaid interest will add to the balance of the loan. [In order to fully pay off your loan by the end of the loan term at the new interest rate, you would have to pay \$ ____ per month.]

Prepayment Penalty: [None] [Keep in mind that if you pay off your loan, refinance or sell your home before *(date)*, you could be charged a penalty. Contact *(mortgage company)* at *(telephone number)* [or *(email address)*] for more information, such as the maximum amount of the penalty you could be charged.]

Mortgage Loan Servicing

Regulation Z Servicing Practices

2013 TILA Servicing Rule

- **Implements Dodd-Frank Act requirements related to specific servicing practices under Regulation Z**
- **Servicing practices**
 - Prompt Crediting of Payments
 - Scope: open- and closed-end loans secured by a consumer's principal dwelling
 - Pyramiding of Late Fees
 - Scope: open- and closed-end loans secured by a consumer's principal dwelling
 - Payoff Statements
 - Scope: open- and closed-end loans secured by a consumer's dwelling

Mortgage Loan Servicing

Prompt Crediting of Payments

2013 TILA Servicing Rule

- Retains existing general requirement for prompt crediting of payments, but makes some revisions:
 - Adds new definitions: “periodic payment” and “partial payment”
 - Addresses the use of suspense or unapplied funds accounts
 - Requires certain procedures for handling “partial payments”

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Prompt Crediting of Payments

Periodic Payment

- Definition: “amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle”
- Payment qualifies even if not sufficient to cover late fees, other fees, or non-escrow payments advanced by the servicer
- Must be credited as of the date of receipt, except when delay does not result in negative consequences for borrower
- Method of crediting based on legal obligation of parties

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Prompt Crediting of Payments

Partial Payment

- Definition: “any payment less than a periodic payment”
- Upon receipt of a partial payment, the servicer must, either:
 - Credit partial payment upon receipt;
 - Return the partial payment to the consumer; or
 - Hold the payment in a suspense or unapplied funds account
- Servicer not required to retain partial payments in suspense or unapplied funds account, but if retained, servicer must:
 - Disclose amount in suspense or unapplied funds account in periodic statement; and
 - On the accumulation of sufficient funds to cover a periodic payment, treat such funds as a periodic payment received

Mortgage Loan Servicing

Pyramiding of Late Fees

2013 TILA Servicing Rule

- Makes no substantive changes to the existing prohibition on pyramiding of late fees
 - But, redesignates the provision to 12 CFR § 1026.36(c)(2)
- Requirements:
 - A servicer, in connection with a consumer credit transaction secured by a consumer's *principal* dwelling, may not impose any late fee or delinquency charge if:
 - The fee or charge is solely attributable to non-payment of a late fee or delinquency charge on an earlier payment; and
 - The payment is otherwise a periodic payment received on the due date or within any applicable courtesy period

Mortgage Loan Servicing Payoff Statements

2013 TILA Servicing Rule

- **Four substantive changes to existing Regulation Z's requirements for payoff statements:**
 - Applies to creditors and assignees, not just servicers;
 - Expands the scope to *any* dwelling, not just a principal dwelling;
 - Limits the reasonable response time to not more than 7 business days (or within a reasonable time in certain limited circumstances); and
 - Requires a written request
- **Creditors, assignees, or servicers are permitted to continue providing payoff statements in response to oral requests**

Mortgage Loan Servicing

2013 RESPA Servicing Rule

2013 RESPA Servicing Rule – Major Topics 4-9 of the Final Servicing Rules

Topic 4: Force-Placed Insurance

- Restrictions on charging a borrower for force-placed insurance unless servicer has “reasonable basis”

Topic 5: Error Resolution and Information Requests

- Requirement to respond to written information requests and error complaints within required time periods

Topic 6: General Policies, Procedures, and Requirements

- Obligation to maintain certain policies and procedures reasonably designed to achieve specific objectives

Mortgage Loan Servicing

2013 RESPA Servicing Rule

Major Topics 4-9 of the Final Servicing Rules – Cont.

Topic 7: Early Intervention with Delinquent Borrowers

- Requirement to make good faith effort to establish live contact with delinquent borrowers and, where applicable, inform them of available loss mitigation options

Topic 8: Continuity of Contact with Delinquent Borrowers

- Requirement to maintain policies and procedures reasonably designed to ensure assignment of personnel to a delinquent borrower

Topic 9: Loss Mitigation Procedures

- Requirement to follow specific loss mitigation procedures

Other Provisions of the 2013 RESPA Servicing Rule

- Refund of escrow balances
- Mortgage servicing transfer disclosures
- State law preemption

Mortgage Loan Servicing

2013 RESPA Servicing Rule

Scope

- New rule applies only to servicers
- Definition of “servicer” remains unchanged
- Rule covers what are now defined in the rule as “mortgage loans” including subordinate-lien loans, but not HELOCs

Mortgage Loans

- New term defined to mean a “federally related mortgage loan” subject to RESPA’s standard exemptions, such as business purpose loans and loans for vacant land

Exempt From Some Requirements of the 2013 RESPA Servicing Rule

- Servicers qualified under Farm Credit Administration
- Servicers of reverse mortgages
- Small servicers

Mortgage Loan Servicing

Force-Placed Insurance

Force-Placed Insurance

- Defined in Regulation X

“hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan that insures the property securing such loan”

Types of Insurance Not Consider Force-Placed Insurance

- Hazard insurance required by Flood Disaster Protection Act of 1973
- Certain policy renewals by servicers

Mortgage Loan Servicing

Force-Placed Insurance

Requirements

- Servicer must have “reasonable basis” to obtain force-placed insurance before charging borrower; and
- Must have provided written notices to borrower in advance and in compliance with the timeframes provided for in the rule

→Notice requirements

- First notice
 - 45 days before charging borrower
 - Notice must contain specific information including identifying information for servicer and borrower
- Reminder notice
 - No earlier than 30 days after first notice and 15 days before charging borrower and by the end of the 15th day not received evidence from the borrower of continuous coverage
 - Content is different than first notice depending on information received from borrower in connection with first notice
 - Notice must state, among other things, that it is the “second and final” notice and include cost or reasonably estimated cost

Mortgage Loan Servicing

Force-Placed Insurance

Requirements – Cont.

- Charges must be reasonable and for services actually performed
- Model notices in Appendix MS-3 of Regulation X may be used to comply with the notice requirements

Renewals

- Servicer must meet notice requirements before charging borrower
- Notice requires similar information required for first notice, except that it also requires a statement explaining servicer's intent to continue force-placed coverage

Cancellation

- Servicer must cancel force-placed insurance upon proof of borrower's hazard insurance coverage
- Must refund to borrower any premiums and related fees for overlapping periods

Mortgage Loan Servicing

Force-Placed Insurance

Escrow Account – Restrictions

- **Servicer may purchase insurance only if “unable to disburse funds” from borrower’s escrow account**
 - Unable to disburse funds: reasonable basis to believe hazard insurance has been cancelled or not renewed for reasons other than non-payment of insurance premiums or vacant property
 - Insufficient funds in the escrow account does not mean a servicer is unable to disburse funds
- **Servicer may seek repayment from borrower for the funds advanced**

Mortgage Loan Servicing

Force-Placed Insurance

Small Servicer Exemption

- **Force-placed insurance restrictions generally apply to all servicers**
- **Special rule exempts a servicer that qualifies as a small servicer if:**
 - Cost of force placed insurance to the borrower is less than the amount the small servicer would need to disburse from escrow account to ensure timely payment of the borrower's hazard insurance premiums

Mortgage Loan Servicing

Error Resolution / Information Requests

Timing

- Acknowledgment of receipt of notice of error required within 5 days*
- Response required within 30 days* with possible 15-day* extension
 - Similar time frame applies to requests for information

Types of Errors

- Servicer required to comply with error resolution procedures for ten (10) specific types of errors and any other type of error related to servicing of a borrower's mortgage loan

Requirements

- Must provide contact information for borrowers to assert errors
- May designate a specific address to use for submitting error notices/information requests
- Requirements of error notices/information requests do not apply to a borrower's oral requests
→ Servicer must maintain policies and procedures for responding to oral notices of error or requests for information

“Small servicers” must comply with the error resolution/information request rules

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Error Resolution / Information Requests

Requirements – Cont.

- Servicers need not respond to error notices or information requests if:
 - Duplicative;
 - Overbroad; or
 - Untimely
- For information requests, servicers need not respond if:
 - Request involves confidential, proprietary, or general corporate information; or
 - Information is not directly related to the borrower's mortgage loan account
 - But servicer must notify borrower in writing of its determination

Mortgage Loan Servicing Discretionary Rules

2013 RESPA Servicing Rule

Four New Servicer Obligations:

- General servicing policies, procedures, and requirements;
- Early intervention with delinquent borrowers;
- Continuity of contact with delinquent borrowers; and
- Loss mitigation procedures

Requirements
apply to borrower's
principal residence

Exemptions

- Reverse mortgages
- Qualified lenders under the Farm Credit System
- Small servicers, except for dual-tracking limitations

Mortgage Loan Servicing

General Policies, Procedures, and Requirements

General Policies, Procedures, and Requirements

“A servicer shall maintain policies and procedures that are reasonably designed to achieve [certain] objectives”

Requirements

- **Policies and procedures should ensure that the servicer can:**
 - Access and provide timely and accurate information
 - Properly evaluate loss mitigation applications
 - Facilitate oversight of, and compliance by, service providers
 - Facilitate transfer of information during servicing transfers
 - Inform borrowers of the written error resolution and information request procedures

Servicers that qualify under the “small servicer exemption” are exempt from this requirement

Mortgage Loan Servicing

General Policies, Procedures and Requirements

- **Record retention requirements**
 - Servicer must retain records for each mortgage loan until one year after loan is discharged or transferred
- **Servicing file**
 - File must be maintained in manner to enable servicer to compile information into a servicing file within five days:
 - Schedule of all transactions credited and debited, including any escrow and suspense accounts;
 - Copy of the security instrument;
 - Communication notes about the mortgage account created by servicer personnel;
 - Report of data fields by name (to the extent applicable); and
 - Copies of any information or documentation provided by borrower (in accordance with error resolution and loss mitigation procedures)
 - Borrower may request servicing file subject to information request provisions

Mortgage Loan Servicing

Early Intervention with Delinquent Borrowers

Early Intervention with Delinquent Borrowers

“A servicer shall establish or make good efforts to establish live contact with a delinquent borrower”

Requirements

- **Live contact**
 - Servicer must establish live contact with delinquent borrower by the 36th day of delinquency
 - Promptly provide information about the availability of loss mitigation options
- **“Good faith effort”**
 - Reasonable steps to reach borrower by telephone more than once or sending written or electronic communication to establish live contact
- **Delinquency**
 - Delinquency begins on day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid

Servicers that qualify under the “small servicer exemption” are exempt from this requirement

Mortgage Loan Servicing

Early Intervention with Delinquent Borrowers

- **Written notice requirement**

- Notice about loss mitigation options must be provided by the 45th day of a borrower's delinquency
- Notice need not be provided more than once during any 180-day period
 - → BUT written notice required even if servicer previously communicated loss mitigation options to the borrower orally
- Model clauses to comply with requirements can be found in Appendix MS-4 of Regulation X

Mortgage Loan Servicing

Continuity of Contact with Delinquent Borrowers

Continuity of Contact with Delinquent Borrowers

“A servicer shall maintain policies and procedures that are reasonably designed to achieve [certain] objectives”

Requirements

- Assign personnel (single person or team of personnel) to delinquent borrower by the time servicer provides borrower early intervention notice but no later than the 45th day of the borrower’s delinquency
- Make assigned personnel available by telephone to respond to inquiries and assist borrower with loss mitigation (as applicable) until borrower has made two consecutive mortgage payments under the terms of a permanent loss mitigation agreement
- If borrower does not receive immediate live response from assigned personnel, ensure servicer can provide live response in a timely manner

Assigned Personnel

- Must have access to all borrower information and records; and
- Provide such information to personnel responsible for evaluation of borrower’s loss mitigation options

Servicers that qualify under the “small servicer exemption” are exempt from this requirement

Mortgage Loan Servicing

Loss Mitigation Procedures

Loss Mitigation

“Alternative to foreclosure offered by the owner or assignee of a mortgage loan that is made available through the servicer to the borrower”

Requirements

- Loss mitigation can include forbearance or loan modification options or non-home retention options
- Final rule makes no formal requirement that a servicer offer loss mitigation options
- Procedural steps required prior to initiation of foreclosure or proceeding to foreclosure sale

Servicers that qualify under the “small servicer exemption” are exempt from this requirement, except that the small servicer must still comply with the dual tracking limitations of the loss mitigation procedures

Mortgage Loan Servicing

Loss Mitigation Procedures

Timing and Procedures

- If application is received 45 days or more before foreclosure sale, servicer must promptly review application to determine if application is complete, and acknowledge receipt of application within 5 days*
- If a complete application is received more than 37 days before foreclosure sale, servicer must evaluate borrower for all loss mitigation options available to the borrower within 30 days, and provide written notice of determination
- If complete application is received 90 days or more before foreclosure sale, servicer must allow borrower 14 days to accept or reject loss mitigation offer
- If servicer receives complete application less than 90 days but more than 37 days before foreclosure sale, must allow borrower 7 days to accept or reject loss mitigation offer

*Excluding legal public holidays, Saturdays and Sundays

Mortgage Loan Servicing

Loss Mitigation Procedures

Appeals

- Borrower may appeal servicer denial of any trial or permanent loan modification available if complete application received 90 days or more before foreclosure sale (or during 120-day pause)
- Borrower has 14 days to appeal after servicer provides notice of offer
- Servicer must provide notice to the borrower of its determination within 30 days of borrower's appeal
 - Borrower has 14 days after notice received to accept or reject an offer
 - No further appeal available after determination

Dual Tracking Restrictions

- Dual Tracking: evaluating borrower for loan modifications or other loss mitigation options while pursuing foreclosure and sale of the property

Mortgage Loan Servicing

Loss Mitigation Procedures

120-Day Pause

- Servicer must wait until a loan is more than 120 days delinquent before making first notice or filing required for foreclosure
- Servicer also restricted if borrower has already submitted complete loan modification application by the applicable deadline and is pending review
- If borrower is performing under a loss mitigation agreement, trial modification or other agreed-upon option, servicer cannot begin foreclosure process
- If foreclosure process has started and borrower submits a complete loss mitigation application more than 37 days before a foreclosure sale, a servicer must not move for foreclosure judgment or order of sale, or conduct a foreclosure sale unless, certain requirements under the rule are met

Mortgage Loan Servicing

Loss Mitigation Procedures

Exemptions

- **Exempt from the loss mitigation procedures:**
 - Small Servicers (except for dual tracking limitations);
 - Reverse Mortgages; and
 - Certain Farm Credit Systems Institutions
- **Small servicer dual tracking limitations:**
 - May not make first notice or filing required for foreclosure unless borrower is more than 120 days delinquent; and
 - May not proceed to foreclosure judgment or order of sale, or conduct a foreclosure sale, if borrower performing under loss mitigation agreement

Mortgage Loan Servicing

Refund of Escrow Balance

Refund of Escrow Balance

“A servicer shall return to the borrower any amounts remaining in an escrow account that is within the servicer’s control”

Requirements

- **Timing of refund**
 - Servicer must return to the borrower any amount in escrow within the servicer’s control within 20 days* of a borrower’s payment in full of a mortgage loan
- **If the borrower consents, a servicer may credit funds to an escrow account for a new mortgage loan if:**
 - The lender was also the lender to whom the prior mortgage loan was initially payable;
 - The lender is the owner or assignee of the prior mortgage; or
 - The lender uses the same servicer of the prior mortgage loan as the servicer of the new loan

*Excluding legal public holidays, Saturdays and Sundays

Mortgage Loan Servicing

Mortgage Servicing Transfer Disclosures

Mortgage Servicing Transfers

- **2013 RESPA Servicing Rule**
 - Within three days after a person applies for a first-lien loan, servicer must provide consumer with servicing disclosure statement
 - Disclosure must state whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time
 - Servicers are no longer required to include statement in required notice regarding borrower's rights under complaint resolution process
 - If transferor receives a payment after transfer of the loan, servicer must:
 - Transfer payment to transferee, or
 - Return payment to the person who made the payment and notify of proper recipient
 - Model forms for both the disclosure statement and transfer notices may be found under Appendix MS-1 of Regulation X

Mortgage Loan Servicing

State Law Preemption

State Law Preemption

- **Servicing rules generally do not preempt state law, but some rules may have such an effect, for example:**
 - If the foreclosure notice or filing requirements under the final rule is more restrictive than state law, state law may be preempted
 - Similarly, servicing transfer disclosure requirements under the final rule may preempt state laws that require similar servicing transfer disclosures

Mortgage Loan Servicing Resources

[Mortgage Servicing Rules Under the Truth in Lending Act \(Regulation Z\)](https://federalregister.gov/a/2013-01241) - <https://federalregister.gov/a/2013-01241>

[Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act \(Regulation X\)](https://federalregister.gov/a/2013-01248) - <https://federalregister.gov/a/2013-01248>

[CFPB Regulation Page - 2013 Real Estate Settlement Procedures Act \(Regulation X\) and Truth in Lending Act \(Regulation Z\) Mortgage Servicing Final Rules](http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/) - <http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/>

Questions and Answers

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Thank You

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