

Mortgage Servicing Requirements in TILA & RESPA

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Overview of Mortgage Servicing

- Three main models of mortgage servicing
 - First party servicing: the institution originates the loan and services the loan
 - Third party servicing: the institution originates the loan, sells the right to service the loan to another institution
 - Subservicing: a third party institution services the loan in the name of another institution



Overview of Mortgage Servicing

- Payment processing
- Escrow administration
- Collections
- Loss mitigation
- Foreclosure



Servicing Policies & Requirements

- Requirement to establish “reasonably designed” policies & procedures
- Applies to all federally related mortgage loans, with certain exceptions
- Objectives of servicing policies & procedures



Error Resolution

- What constitutes an “error”
- Written notice only triggers error resolution requirements if it is a valid written notice of error under the rule
- Error resolution procedures



Requests for Information

- Valid written request for information regarding the servicing of a member’s account
- Request response procedures
 - Exceptions
- Requests for information vs. error notices



Servicing Performing Mortgages



Onboarding

- Onboarding comes in two flavors
 - Immediate transfer to servicing system after origination
 - Bulk servicer to servicer transfers
- Loan setup sets groundwork for correctly processing payment



Prompt Crediting

- Periodic payment: an amount sufficient to cover principal, interest, and escrow
- Partial payment: payment insufficient to cover principal, interest, and escrow
- Non-conforming payments: payment does not meet specified requirements



Periodic Statements

- Servicers are required to provide a periodic statement each billing cycle
 - Exemptions for certain types of loans
- Coupon book vs. periodic statement
- Detailed content requirements under Regulation Z



Adjustable-Rate Mortgage Notices

- Disclosures are required when an interest rate changes on an ARM
 - Initial rate adjustment notices
 - Ongoing interest rate adjustment notices
- Content requirements for ARM notices



Payoff Statements

- Gives member or third party information regarding the amount that must be paid to satisfy the obligation
- Must specify a “good through” date
- Must be provided within a reasonable time, but in no case more than 7 business days



Escrow Administration

- Escrow account may include payments for:
 - Property taxes
 - Flood insurance
 - Hazard insurance
 - Mortgage insurance
- Servicer can advance money to protect the collateral if member fails to pay



Escrow Administration

- Limitation on what can be collected
 - Servicer may charge 1/12 of reasonably anticipated amount of total annual payments
 - Servicer may add a cushion no greater than 1/6 of estimated total annual payments
- Periodic analyses



Escrow Administration

- Analyses can result in too much, or too little, being left in the account, which creates surpluses, deficiencies, or shortages
- Annual escrow account statement



Escrow Administration

- Servicer is obligated to pay disbursements in a timely manner that is on or before the deadline to avoid a penalty
 - Servicer, typically through a vendor, must track and pay property taxes
 - Servicer also must monitor insurance policy renewals and make payments necessary to keep those policies in force



Escrow Closing Notice

- Notice must be provided before cancelling an escrow account
 - Notice provides warning to member regarding risks associated with failure to pay escrow items
- Timing of notice



Servicing Delinquent Mortgages



Collections Practices

- Member goes to “Collections” when they are late on their scheduled payments
- Early intervention requirements
- Live Contact
- Written Notice



Loss Mitigation

- Loss mitigation refers to relief that may be available to members to avoid foreclosure
- Regulation X sets forth both procedural obligations for process and specific default servicing requirements for handling loss mitigation applications



Loss Mitigation Applications

- If member submits a Loss Mitigation Application (“LMA”) 45 days or more before foreclosure sale, servicer must:
 - Promptly, upon receipt of LMA, review the LMA to determine if it is complete
 - Notify member in writing within 5 business days of receipt



Evaluation of Loss Mitigation Applications

- If the LMA is incomplete, servicer must:
 - In the notice, list the documents and information necessary to complete application with a “return date” for submission
 - Exercise reasonable diligence in obtaining the documents and information necessary to complete a loss mitigation application



Evaluation of Loss Mitigation Applications

- Once LMA is complete, servicer must provide written notice within five days of receipt
- Evaluating the complete LMA
- Communicating the evaluation



Servicing Transfers

- Requirements related to servicing transfer on loss mitigation
 - General rule: Transferee servicers must meet all deadlines and requirements for loss mitigation under Regulation X based on the date the application was received by the transferor servicer



Force-Placed Insurance

- Charging force-placed insurance to member for failing to maintain insurance
 - Need a “reasonable basis” to believe member has failed to maintain insurance
- Force-placed insurance notices
- Obtaining/renewing force-placed insurance



Foreclosure: Federal Obligations



Foreclosure

- Foreclosure processes differ by state, but are generally conducted in two ways:
 - Judicial foreclosure
 - Non-judicial foreclosure
- Regulation X provides the mortgage servicing rules related to foreclosure



First Notice or Filing

- Prohibitions on making the first notice or filing for a judicial or non-judicial foreclosure
 - Judicial foreclosure
 - Non-judicial foreclosure (with or without recording or publication requirement)



“Dual Tracking”

- Prohibits servicer from initiating foreclosure process while simultaneously working with member to avoid foreclosure
- Prohibits servicer from taking certain foreclosure-related actions upon receipt of a complete LMA



Transfers of Rights



Servicing Transfers

- Transferor and transferee responsible for giving notice of transfer, sale, or assignment of mortgage servicing
- Current servicer: “goodbye” notice at least 15 days before effective date of transfer
- New servicer: “hello” notice within 15 days of effective date of transfer



Servicing Transfers

- Post-servicing notice under Regulation Z
 - Must include information about new servicer’s policy regarding partial payments
- Prohibition on charging late fees when members made timely payments to wrong servicer during 60-day period beginning on date of transfer



Successors in Interest

- Who is a successor in interest?
- Servicers must have policies/procedures that address confirming successors in interest
- Certain “borrower” rights to Confirmed Successor in Interest



Small Servicer Exemption

- What is a small servicer?
 - Threshold calculation
- Small servicers are exempt from certain mortgage rules
- Still applicable rules for small servicers

