

To the Point!

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Legal, Operations and Strategy Briefs for Financial Institutions



Mortgage Servicing Foreclosure Practices

The mortgage servicing rule has been in effect since January 2014, and compliance with the rule continues to be a focus of the CFPB. Banks should review their policies and procedures in light of CFPB guidance and enforcement actions related to loss mitigation practices.

The mortgage servicing rule requires mortgage servicers to take the following steps when servicing delinquent loans to ensure borrowers get a “fair process to avoid foreclosure”:

- notify borrowers about their loss mitigation options after borrowers have missed two consecutive payments;
- deliver a written notice to borrowers that includes examples of options that might be available as alternatives to foreclosure, and instructions on how to obtain more information;
- not engage so-called dual-tracking;
- not start a foreclosure proceeding if a borrower has already submitted a complete application for a loan modification (or other alternative to foreclosure) and the application is still pending;
- not file first notice or filing required in the foreclosure process until a home mortgage loan account is delinquent by more than 120 days; and
- implement policies and procedures to provide delinquent borrowers with direct, ongoing access to employees responsible for helping them, and alert borrowers to any missing information on their loss mitigation applications, tell borrowers about the status of any application, and expedite application processing.

In April 2016 the CFPB released its *Monthly Complaint Snapshot* that focused on mortgage servicing complaints, including those related to loss mitigation practices, and in June 2016 the CFPB issued its *Supervisory Highlights Mortgage Servicing—Special Edition* that provides guidance on the legal requirements and the defective practices the CFPB identified through consumer complaints and its supervisory and enforcement functions regarding mortgage servicing practices. Three of the five practices highlighted in this publication relate to loss mitigation practices.

Since the effective date of the rule, the CFPB has taken action three times against mortgage servicers related to their loan foreclosure practices. In its enforcement orders the CFPB identified the following practices, among others, as in breach of the rule’s requirements: excessive and unnecessary paperwork demands; failure to characterize a borrower’s request for a deferment as a request for foreclosure relief; failure to inform consumers of loan modification options; failure to properly process applications; failure to provide accurate information about the status of foreclosure proceedings; use of robo-signed foreclosure documents; denial of modifications for qualified consumers; and delaying finalizing permanent loan modifications.

We recommend that banks review this CFPB guidance and its enforcement actions related to foreclosure practices. The enforcement orders should be of particular interest to banks because they identify specific practices that the CFPB has determined fail to comply with the loss mitigation requirements provided in the rule. Each bank should compare those practices found to violate the rule to the bank’s policies and procedures, taking into consideration the CFPB’s stated intent in establishing the rule to help borrowers “avoid foreclosure.” Based on the results of its review, to help ensure compliance with the rule, a bank should consider improved borrower communications to aid borrowers in understanding available options; policy revisions to eliminate unnecessary or burdensome requirements; and timely, effective responses to borrower questions, as applicable.



OCC Semiannual Risk Perspective

The recently issued *OCC Semiannual Risk Perspective for Fall 2016* identified compliance concerns as continuing to be “high,” focusing on the following:

BSA/AML compliance risk. The OCC noted that new BSA/AML technology may increase banks’ vulnerability to criminals, termination of high-risk customers by banks may result in those customers’ migration to other banks that are less experienced in managing BSA/AML risk, and constraints on resources to successfully implement BSA/AML controls may all result in greater risk. The OCC called on banks to design and implement effective controls to mitigate these risks.

Change management for compliance with new regulatory requirements. The OCC noted that full compliance with the amendments to the Military Lending Act that became effective October 3, 2016, is expected. The OCC identified the following requirements to ensure compliance, implement processes and systems to identify covered borrowers and loan products, provide correct calculation of the MAPR and required disclosures, and implement limits on contract provisions.

In addition, full compliance with the Integrated Disclosure/Know Before You Owe Rule is expected, and the OCC will assess compliance in its fiscal year 2017 examinations using the FFIEC Interagency Examination Procedures.

Use of third-party relationships for compliance. The OCC advised banks to have strong due diligence processes and ongoing monitoring of third parties involved in product development, origination, and management. In particular, the OCC focused on the use of third parties to conduct application and underwriting processes or to make decisions related to terms or pricing, since these activities are directly related to fair lending risk.

Banks should use this resource to consider their compliance risk exposure and develop mitigants, as appropriate.

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[Marc Franson](#) • 312.845.2988

[Scott Fryzel](#) • 312.845.3784

[Heather Hansche](#) • 312.845.3714

[Dianne Rist](#) • 312.845.3404

[John Martin](#) • 312.845.3474

[Lindsay Henry](#) • 312.845.3869

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