

CFPB Mortgage Servicing Rules Overview

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Consumer Financial
Protection Bureau

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Introduction

- **The Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) currently impose certain requirements on mortgage servicers.**
- **Sections 1418, 1420, 1463 and 1464 of the Dodd-Frank Act empower the CFPB to address problems in the servicing industry.**
- **CFPB final rules implement requirements set forth in both TILA and RESPA through Regulation Z and Regulation X, respectively.**

Introduction (cont'd)

➤ General rules

- Periodic Statement
- ARM Disclosures
- Prompt Crediting/Payoff Statements
- Error Resolution/Information Requests
- Force-Placed Insurance

➤ Special protections for loans in delinquency

- Early Intervention
- Continuity of Contact
- Loss Mitigation Procedures

➤ General Servicer Policies, Procedures, and Requirements

Periodic Billing Statements

- Creditors, assignees, and servicers must provide a **periodic statement** for each billing cycle containing certain information.
- These statements must meet the **timing, form, and content** requirements provided in the rule.
- **Coupon books:** The periodic statement requirement generally does not apply to fixed-rate loans if the servicer provides a coupon book, so long as the coupon book contains certain information.
- **Small Servicers:** The rule also includes an exemption for small servicers.

ARM Interest Rate Adjustment Notices

- The rule contains two ARM notice requirements:
- **Upfront ARM Notice (20(d) Notice):**
 - Creditors, assignees, and servicers must provide a consumer whose mortgage has an adjustable rate with a notice **between 210 and 240 days** prior to **the first payment due after the rate first adjusts**.
 - This notice may contain an estimate of the new rate and new payment.
- **Upfront and on-going ARM Notice (20(c) Notice):**
 - Creditors, assignees, and servicers also must provide a notice **between 60 and 120 days** before **payment at a new level is due** when a rate adjustment causes the payment to change.

Prompt Payment Crediting & Payoff Statements

- **Prompt Crediting:** Servicers must promptly credit periodic payments from borrowers as of the day of receipt. A periodic payment consists of **principal, interest, and escrow (if applicable)**.

- **Suspense Accounts:** If a servicer receives a payment that is less than the amount due for a periodic payment, the payment may be held in a suspense account. When the amount in the suspense account covers a periodic payment, the servicer must apply the funds to the consumer's account.

- **Payoff Statements:** Creditors, assignees, and servicers must provide an accurate payoff balance to a consumer no later than seven business days after receipt of a written request from the borrower for such information.

Error Resolution and Information Requests

- The rule sets forth procedures that servicers must follow for notices of error and information requests. The rules apply to:
 - Written notices of error or information requests;
 - Received by the servicer at the address designated by the servicer, if one has been designated.
- **Scope of errors:** The rule requires servicers to comply with the error resolution procedures for certain listed errors, as well as, any error relating to the servicing of a mortgage loan.
- **Procedures:** Subject to certain exceptions, a servicer must acknowledge a notice in 5 days and:
 - **For errors,** within 30 days, correct the error asserted, or conduct an investigation and provide a notice in writing that the servicer has determined no error occurred.
 - **For information requests:** within 30 days, provide the information or explain, in writing, why the information is not available.

Force-Placed Insurance Requirements

- **Restrictions on Charges:** Servicers are prohibited from charging a borrower for force-placed insurance coverage unless (1) the servicer has a reasonable basis to believe the borrower has failed to maintain hazard insurance and (2) has provided required notices.
 - **First Notice:** A first notice to the borrower is required at least 45 days before charging for forced-place insurance coverage.
 - **Second Notice:** A second notice is required no earlier than 30 days after the first notice.

- **Charges:** Charges related to force-placed insurance must be:
 - for a service that was actually performed, and
 - must bear a reasonable relationship to the servicer's cost of providing the service.

Force-Placed Insurance Requirements (cont'd)

- **Refund of overlapping policies:** If a borrower provides proof of hazard insurance coverage, the servicer must:
 - cancel any force-placed insurance policy, and
 - refund any premiums paid for overlapping periods in which the borrower's coverage was in place.

- **Escrowed borrowers:** A servicer may not obtain force-placed insurance for a delinquent borrower with an escrow account if the servicer can maintain the borrower's hazard insurance.
 - **Advances:** A servicer is able to maintain hazard insurance even if an escrow account has insufficient funds because a servicer may advance funds to maintain coverage.
 - **Unable to maintain:** A servicer is unable to maintain hazard insurance even if the servicer needs to advance funds to the borrower's escrow account to do so.
 - **Small Servicers:** A limited exemption exists for small servicers for maintaining insurance for borrowers with escrow accounts.

General Servicing Policies, Procedures, and Requirements

- **Policies & Procedures:** Servicers are required to establish policies and procedures reasonably designed to achieve objectives specified in the rule.

- **Objectives** relate to the following categories:
 - Provide accurate and timely information to borrowers, investors, and courts;
 - Properly evaluating loss mitigation applications;
 - Facilitating oversight of, and compliance by, service providers;
 - Facilitating transfer of information during servicing transfers;
 - Informing borrowers of written error resolution/information request procedures.

- The reasonableness of a servicer's policies and procedures takes into account the size, scope, and nature of the servicer's operations.

- **Requirements:** Document Retention, Servicing File

Early Intervention

- **Live Contact:** Servicers would be required to make good faith efforts to establish live contact with delinquent borrowers by the **36th day** of their delinquency and promptly inform such borrowers, where appropriate, that loss mitigation options may be available.

- **Written Information:** A servicer must provide a borrower a written notice with information about loss mitigation options by the **45th day** of a borrower's delinquency.

Continuity of Contact

- **Policies and Procedures:** Servicers are required to maintain reasonable policies and procedures with respect to providing delinquent borrowers with access to personnel to assist them with loss mitigation options, where applicable.
- **Assignment:** Ensure that a borrower is assigned personnel by the earlier of the written information or the 45th day of delinquency.
- **Capabilities:** Personnel should be:
 - Assist the borrower by phone with loss mitigation options, including advising on the status of any loss mitigation application and applicable timelines.
 - Access all information provided by the borrower and provide that information, when appropriate, to those responsible for evaluating the borrower for loss mitigation options.

Loss Mitigation Procedures (Application)

➤ **Application:**

- A loss mitigation application is an oral or written request for a loss mitigation option that is accompanied by any information required by a servicer for evaluation for a loss mitigation option.
- A loss mitigation application is **complete** if a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower.

➤ **Notice:** For any application received **45 days** or more before a foreclosure sale, a servicer shall:

- Review the application,
- Determine if the application is complete or incomplete, and
- Provide a written notice within 5 days stating the determination of completeness, and if incomplete, the information required to complete the application and the date when such information should be provided.

➤ **Additional duty:** A servicer is required to exercise reasonable diligence in obtaining documents and information to complete the application.

Loss Mitigation Procedures (Review Requirements)

- **Review for all available loss mitigation options:** A servicer must review a borrower for all loss mitigation options available to the borrower from the owner or assignee of a borrower's mortgage loan (including home retention and non-home retention options).
- **Denial of a loan modification option:** A servicer that denies a borrower for any loan modification option must provide a written notice to a borrower stating the basis for the servicer's denial.
 - **Net Present Value (NPV) Test:** If an NPV test is the basis for a denial, a servicer must provide the borrower the inputs used in the NPV test.
 - **Investor Requirements:** If an investor requirement is the basis for a denial, a servicer must describe the investor requirements (simply stating that an investor requirement exists is insufficient).
 - **Waterfalls:** Servicers may follow investor "waterfalls" to determine eligibility for particular loss mitigation options but must explain the existence of the waterfall as the basis for the denial of any loan modification option.
- **Appeals:** A borrower that submitted a complete loss mitigation application more than 90 days before foreclosure sale may appeal the denial of a loan modification option; such appeal must be reviewed within 30 days.

Loss Mitigation Procedures (Dual Tracking)

- **120 day prohibition:** A servicer may not make the first notice or filing required for a foreclosure process until a borrower is more than 120 days delinquent.
- **Foreclosure start:** If a borrower submits a complete loss mitigation application before a servicer has made the first notice or filing required for a foreclosure process (including during the period when the borrower is 120 days or less delinquent), a servicer may not make such notice or filing until:
 - The servicer had denied the borrower's application and the time for any appeal had expired;
 - The servicer had offered a loss mitigation option, which the borrower declined or failed to accept; or
 - The borrower failed to comply with the terms of a loss mitigation agreement.
- **Foreclosure completion:** If a borrower submits a complete application after a servicer begins foreclosure but more than 37 days before a foreclosure sale, a servicer may not proceed to foreclosure judgment or order or sale, or complete a foreclosure sale, until reaching the above step.