CARLTON FIELDS

CFPB Report Highlights Focus on Mortgage Servicing

March 31, 2014

Under Dodd-Frank, the CFPB supervises depository institutions and credit unions with total assets of more than $10 billion, as well as certain nonbanks, regardless of size, including mortgage companies, originators, brokers, and servicers. The CFPB has prioritized mortgage servicing problems, viewed as having contributed to the financial crisis, through new rulemaking and supervision. Recently, the Bureau issued a report listing mortgage servicing issues it found in 2013. In January 2014, new CFPB mortgage servicing rules took effect. Amendments to the Real Estate Settlement Procedures Act (RESPA) require servicers to provide loss mitigation options and assistance to delinquent customers, and to refrain from foreclosure during the loss mitigation evaluation process. The RESPA amendments also added requirements for responding to consumers, resolving errors, record retention, and force placed insurance. TILA amendments require mortgage payments to be credited on the date of receipt, provision of accurate payoff balances within seven days of request, and 210 days' advance notice prior to interest rate adjustments. Additionally, they prescribe content for rate adjustment notices; and content, delivery, and frequency of periodic billing statements. Although mortgage servicing issues identified in the report occurred before the new mortgage rules took effect, the CFPB found they violated Dodd-Frank's Consumer Protection Act's ban on unfair, abusive or deceptive acts and practices. Examples cited include failure to honor loan modifications after servicing transfers, requiring borrowers to waive existing claims in connection with loan modification agreements with broad waiver clauses unrelated to individual circumstances, and failing to provide correct information to credit reporting agencies by misreporting short sales as foreclosures, negatively impacting the consumers' credit. CFPB examiners have imposed remedial measures and opened investigations for potential enforcement actions. In December 2013, the CFPB found Ocwen Loan Servicing, the nation's largest non-bank mortgage servicer, engaged in what it found to be "systemic misconduct" in mortgage servicing and ordered Ocwen to provide $2 billion in principal reduction to underwater borrowers and refund $125 million to borrowers already foreclosed upon.

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