

New CFPB Regulations Subject Mortgage Servicers to Private Lawsuits

December 22, 2014

The Consumer Financial Protection Bureau (CFPB) amendments to Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA), place new and onerous requirements on mortgage servicers to correct errors and provide information that borrowers request. Under the new rules, borrowers, or their authorized representatives, who notify mortgage servicers of a claimed loan servicing error (Notice of Error) trigger new servicer obligations to respond under tight deadlines. These obligations carry potential litigation risks. The amendments require servicers to provide written acknowledgement of the Notice of Error within five days. If the claimed error relates to failure to provide an accurate payoff balance, servicers have only seven days from receipt of the Notice of Error to investigate and provide a response that either confirms the error and states it has been corrected, or states that the servicer has determined no error occurred, the basis for that determination, and that the borrower is entitled to request supporting documents. If the Notice of Error claims improper pursuit of foreclosure, servicers must respond within 30 days, or before the foreclosure sale, whichever is earlier. Servicers must respond to all other types of asserted errors within 30 days, although an additional 15-day extension may be obtained to respond to such assertions. However, the regulations do not require that a Notice of Error be submitted in any particular format. **Servicers could find it challenging to ensure these notices are recognized and properly handled within the response deadlines.** In its introduction to the new regulations, the CFPB stated that regulations established pursuant to Section 6 of RESPA are subject to Section 6(f) of RESPA, which gives borrowers a private right of action to enforce such regulations. Consequently, plaintiffs' attorneys, who have already filed several actions against servicers alleging failures to respond to qualified written requests that dispute mortgage loan servicing errors, can add a new weapon to their arsenal: claims for failure to respond to Notices of Error within the time or in the manner required by the new regulation.

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