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CFPB Provides Guidance on Mortgage Servicing Rules

Bureau Resolves Interpretive Issues Before January Implementation

Washington, D.C. – Today, the Consumer Financial Protection Bureau (CFPB) is releasing a bulletin and interim final rule to provide greater clarity to the market concerning mortgage servicing rules that take effect in January 2014. The clarifications address communications with family members after a borrower dies, contact with delinquent borrowers, and treatment of consumers who have filed for bankruptcy or invoked certain protections under the Fair Debt Collection Practices Act.

"As servicing implementation enters its final phases, we heard from many sources that it was important to address these remaining issues to ensure a smooth transition and provide certainty to the market," said CFPB Director Richard Cordray. "When mortgage servicers better understand the rules they have to follow, that is better for consumers."

Mortgage servicers are responsible for collecting payments from mortgage borrowers on behalf of loan owners. They also typically handle customer service, escrow accounts, collections, loan modifications, and foreclosures. Generally, borrowers have no say in choosing their mortgage servicers. Even before the financial crisis, the mortgage servicing industry experienced problems with bad practices and sloppy recordkeeping. Today, many borrowers continue to experience serious problems seeking loan modifications or other alternatives to avoid foreclosure.

In January 2013, the CFPB issued rules to establish new, strong protections for struggling homeowners, including those facing foreclosure. The rules protect mortgage borrowers from costly surprises and runarounds by their servicers.

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Today's clarifications respond to requests for further explanation on three servicing issues:

- **Home retention efforts after a borrower dies:** In cases in which a borrower dies, the rules the CFPB issued in January require servicers to have policies and procedures in place to ensure that they promptly identify and communicate with family members, heirs, or other parties who have a legal interest in the home. Today's bulletin provides examples of such servicer policies and procedures, including allowing for continued payment on the mortgage as well as evaluating the heir (or whomever the legal interest in the home passes to) for assumption of the mortgage and, if appropriate, for loss mitigation measures.

- **Early intervention requirement to contact delinquent borrowers:** The CFPB's new rules require servicers to attempt contact with borrowers each time they miss a payment to provide important information that can help get them on track. Today's bulletin clarifies that this requirement may be met through other contact that servicers have with such borrowers, for example, when evaluating them for loss mitigation or during collection calls. Also, the method of attempted contact may vary depending on how long a borrower is delinquent or on whether the borrower has responded to earlier servicer attempts to communicate.

- **Interplay between the servicing rules, bankruptcy code, and the Fair Debt Collection Practices Act (FDCPA):** Both the FDCPA and bankruptcy law provide significant protections for consumers who decide to invoke them and restrict certain types of communications regarding their debts. The Bureau has received a large number of questions about how these other protections intersect with the servicing rules and how to communicate effectively with borrowers who have invoked their other rights. Among the clarifications the CFPB is responding to today, the CFPB is:
  - Clarifying that even if delinquent borrowers have instructed servicers to stop communicating with them pursuant to the FDCPA, certain notices and communications mandated by the CFPB servicing rules and the Dodd-Frank Wall Street Reform and Consumer Protection Act are still required. Specifically, servicers must communicate with the borrower with regard to requests for loss mitigation, information requests, error resolution, force-placed insurance, initial interest rate adjustment of adjustable-rate mortgages, and periodic statements. However, servicers will not be required to provide certain early intervention contacts or ongoing notices of interest rate adjustments to delinquent borrowers who have instructed the servicer to stop communicating with them.
  - Exempting servicers from being required to provide periodic account

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statements and certain early intervention contacts with borrowers who are in bankruptcy. The Bureau believes further assessment is warranted regarding how bankruptcy protections intersect with these servicing requirements and how to ensure that the servicing communications do not confuse consumers regarding the status of their loans.

Among other things, the interim final rule also clarifies regulations issued by the Bureau in January to implement a provision of the Dodd-Frank Act that requires consumers to receive housing counseling before taking out a high-cost mortgage. The rule specifies which federally required disclosure must be used as the basis for counseling for a small subset of closed-end loans that are not subject to the Real Estate Settlement Procedures Act.

The bulletin is available at:
http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf

After 4 p.m. today, the interim final rule will be available at:
http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_interim.pdf

Throughout 2013, the CFPB has been working to ensure a smooth transition to compliance with the new mortgage servicing rules on Jan. 10, 2014. The Bureau has coordinated with other agencies, published plain-language guides and other compliance aids, and had regular contact with industry participants, consumer advocates, legal aid attorneys, housing counselors, and others to answer their questions. The CFPB also plans to provide educational materials to the public about their new protections under the rules.

The Bureau maintains a Regulatory Implementation website, which consolidates all of the new 2013 mortgage rules and related implementation materials, and is available at: http://www.consumerfinance.gov/regulatory-implementation

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The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.