

PUBLICATION

Summary of Updated Mortgage Servicing Examination Procedures

July 25, 2016

On June 22, 2016, the CFPB released a special edition of its Supervisory Highlights focused on examinations of mortgage servicers between January 2014 and April 2016. Additionally, it released its third update to the mortgage servicing chapter of the CFPB Supervision and Examination Manual. Throughout the Supervisory Highlights, there is a particular focus on perceived technological failures. It is clear from the publication that the CFPB is not persuaded by arguments that system limitations impair a servicer's ability to comply with CFPB regulatory interpretations. The CFPB Director, Richard Cordray, stated, "Mortgage servicers can't hide behind their bad computer systems or outdated technology. There are no excuses for not following federal rules." The updated servicing examination procedures focused on: loss mitigation, complaints, servicing transfers, compliance management systems and fair lending.

Loss mitigation is an area of focus because the CFPB is concerned that subpar compliance programs can lead to inadequate customer support, errors with account transfers and possibly wrongful foreclosure. Examiners found one or more servicers failed to send any acknowledgment notices within five days of receiving the borrower's loss mitigation application due to platform malfunctions. These breakdowns led to improper foreclosures and the failure to convert trial modifications to permanent modifications, which, it found, harmed borrowers.

With regard to managing borrower complaints, the updates to Supervision and Examination Manual provide that examiners will now need to evaluate whether servicers have an adequate process to identify and escalate certain inquiries and complaints. Additionally, servicers are now required to provide an expedited resolution process for borrowers facing foreclosure.

Not surprisingly, CFPB regulators are paying closer attention to servicer transfer issues. There is concern that transferring loans during the loan modification process heightens risks to consumers, including the risk that documents and information might not be accurately transferred to the new servicer. Examiners found incompatible technology platforms between servicers sometimes led to the new servicer's failure to identify and honor modification agreements already in place. As far as the update to the Examination Manual, examiners must evaluate mortgage servicing rules that were not previously included in the section on servicing transfers, including requirements related to error resolution procedures, information requests and record retention.

As compliance safeguards have always been a signature focus of the CFPB, it's no surprise that the updates included a section dedicated to servicers' compliance management systems. The section instructs examiners to review the servicer's overall compliance management systems, specifically vendor oversight and records retention. The CFPB expects servicers to review their vendors' policies to ensure compliance with federal consumer protection laws. Further, the CFPB explicitly states that, in some cases, mortgage servicers may be legally responsible for the activities of their vendors. Examiners are to review policies, procedures and complaints related to vendors, as well as copies of agreements between servicers and their vendors.

Fair lending continues to be at the top of the CFPB's agenda. Examiners are now evaluating mortgage servicers' fair lending compliance using the Equal Credit Opportunity Act (ECOA) Baseline Modules. The ECOA servicing module focuses on whether and how well a servicer's compliance management system identifies and manages fair lending risks. Examiners must determine whether servicers provide fair lending

training to employees, whether and how servicers address the needs of borrowers with limited English proficiency, how servicers handle loss mitigation and whether servicers perform fair lending monitoring of their servicing activities. More importantly, the CFPB has committed to conducting more comprehensive ECOA targeted reviews of servicers this year.

Although the CFPB did note some improvement by servicers, these new updates suggest that the CFPB is not slowing down on holding servicers accountable for compliance with consumer protection laws. Servicers should take an internal audit of their compliance management systems to ensure that they adequately address all of the concerns presented by the CFPB in this latest round of updates to servicing procedures.