

PUBLICATION

CFPB Mortgage Servicing and Origination Examining Procedures

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The beginning of 2014 marked the implementation of new rules for mortgage servicers, lenders and brokers. According to CFPB Director Richard Cordray in his [testimony](#) before the House Financial Services Committee, the goal and purpose of the organization is to take a "back to basics" approach to mortgage lending practices. This is quite evident in the Mortgage Servicing and Origination Examination Procedures recently implemented by the CFPB. For the complete Mortgage Servicing and Origination Examination Procedures, you can visit the CFPB [website](#).

The objectives of the mortgage servicing examination procedures are to: (1) assess the quality of the regulated entity's compliance risk management systems; (2) identify acts that materially increase the risk of violations of federal mortgage servicing laws; (3) gather facts that help determine whether a regulated entity engages in acts or practices that are likely to violate federal mortgage servicing laws; and (4) determine whether a violation of a federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

To carry out these objectives, the examination process will include assessing risks that are not governed by federal laws, which the CFPB terms "UDAAPs" – unfair, deceptive or abusive acts or practices. A representation, omission, act or practice is deceptive when: (1) it misleads or is likely to mislead the consumer; (2) the consumer's interpretation of the representation, omission, act or practice is reasonable under the circumstance; and (3) the misleading representation, omission, act or practice is material. An act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition. An abusive act or practice is defined as one that: (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service, or (2) takes unreasonable advantage of the consumer's lack of understanding of the material risks, costs or conditions of the product or service; the consumer's inability to protect its interest in selecting or using a consumer financial product or service; or the consumer's reasonable reliance on a covered person to act in the interests of the consumer.

The Mortgage Servicing Examinations evaluate servicing transfers, payment processing, consumer inquiries, maintenance of escrow accounts and insurance products, credit reporting, information sharing, collections and bankruptcy accounts practices, loss mitigation, foreclosures and conclusions.

Under the servicing transfer module, examiners have to assess potential federal law violations by reviewing sample servicing records, including the current servicer's records, prior servicer records and records outside of the servicer records. In order to review payment processing, examiners can review servicer records, including monthly payment statements. Most notably, examiners can interview consumers to ensure compliance. To review consumer inquiries, examiners can listen to live and taped calls to assess the quality and training of call center personnel and determine whether complaints were resolved adequately. As far as maintenance of escrow accounts, examiners are to review servicer records to ensure compliance with federal laws and can even conduct interviews with consumers and staff. To ensure proper credit reporting, examiners are to compare the information in the servicer's system with the information reported to credit reporting agencies to

confirm accuracy. Additionally, examiners must verify that servicers are complying with consumer information sharing and privacy rules.

To assess collections and bankruptcy accounts, examiners are to confirm that servicers are complying with bankruptcy laws. Of note, examiners will evaluate whether servicers notified the debtor of the total amount due, including principal, interest and fees, as of the date of the bankruptcy filing. The loss mitigation module focuses on whether there is evidence of disparate treatment. Under the foreclosure module, examiners are to ensure that the borrower is, in fact, in default and that the amounts in the foreclosure affidavits match the amounts recorded in the servicer's records.

The Mortgage Origination Examination Procedures apply to mortgage brokers and mortgage lenders. The examination objectives mirror those of the mortgage servicing examination procedures. The purpose of the examination rules is for examiners to develop a thorough understanding of mortgage brokers' and lenders' practices and operations. To achieve this, examiners should obtain and review each entity's: organizational charts and process flowcharts, loan applications, wholesale and correspondent lending agreements, training programs and materials, service provider contracts and complaints, among other things.

Origination examinations cover the company business model, advertising and marketing, loan disclosures and terms, underwriting, closing, fair lending privacy and examiner conclusions. Examiners are to comprehensively evaluate an entity's business model including the type of mortgage origination channel used by the entity, funding sources and training programs. Examiners are to develop a detailed understanding of the entity's marketing program to determine whether its marketing, policies, procedures and practices are consistent with the applicable laws and regulations. As far as loan disclosures and terms, examiners should identify acts, practices and materials that indicate potential violations of federal laws. Examiners are to review underwriting procedures for mortgage lenders, appraisal policies and procedures, and compensation policies for loan originators. Examiners are to review the way lenders conduct closings to ensure that they are complying with disclosure requirements. The purpose of a fair lending examination is to determine whether the creditor discriminated on a prohibited basis in any aspect of its credit operations. Examiners must ensure consumers' nonpublic information is protected as required by federal law.

Both examination procedures conclude with the examiner summarizing their findings, determining the root cause of the violations noted, identifying the actions needed to correct violation, discussing the findings with the entity's management, recording the violations in the CFPB database, contacting the appropriate agency if enforcement action is appropriate and preparing a memorandum for the CFPB's database.