PUBLICATION

CFPB Cites Violations of Regulation X

July 25, 2016

The CFPB recently cited several loan servicers for violations of Regulation X that stemmed from "outdated and deficient servicing technology." The CFPB announced in its June 2016 Supervisor Highlights: Mortgage Servicing, Special Edition that outdated servicing platforms present a significant consumer risk, and it expects servicers that updated their platforms to not only comply with regulations but also assist in auditing servicing performance and ensuring compliance. The CFPB draws no distinction between in-house and external software platforms and places an affirmative burden squarely on servicers to ensure that servicing platforms are intelligently designed to perform servicing functions and also operate seamlessly in practice. Further, servicers can be required to explain to the CFPB how their servicer platforms are designed to meet the needs of consumers, and if the CFPB finds these platforms outdated, servicers can be required to update them to prevent citation by the CFPB. It is safe to say that technical issues will not excuse servicer error in the eyes of the CFPB.

CFPB Blames Outdated Technology for Servicing Errors

In the June 2016 special edition of Supervisor Highlights, the CFPB identified specific servicing violations that it deemed caused by outdated servicing platforms. The violations arose in two contexts – loss mitigations and service transfer.

Loss Mitigation: The CFPB cited servicers for failing to maintain policies and procedures that were "reasonably designed" to process and respond to loss mitigation applications. For example, several servicers failed to acknowledge loss mitigation applications due to "processing platform malfunction". These servicers were not only directed to compensate affected borrowers but also to "fix and monitor the servicing platform for compliance weaknesses." The CFPB also cited servicers for failing to convert trial modifications to permanent modifications and for failing to provide accurate grounds for denial in modification denial letters.

Service Transfer: The CFPB targeted "incompatibility between servicer platforms" of the new and prior servicers as leading to violations and harmful to consumers. The focus was on the relationship between service transfer and loss mitigation plans in place at the time of transfer. Servicers were cited for failing to honor in-place modifications at transfer and for failing to identify transferring loans with pending trial plans. The CFPB also found a servicer at fault for a delay in obtaining access to an investor's required online workout tool. Another area of concern was the rejection of loan data by a new servicer's platform, again leading to delay in processing modifications. The CFPB considered these delays related to service transfer technology unfair and deceptive servicing practices.

CFPB Strongly Suggests Updates

The June 2016 Supervisor Highlights also contained possible solutions for servicers to avoid the types of errors that led to recent citations. These suggestions are notable because they indicate that the CFPB is beginning to take increased interest in the specific technology choices and software solutions employed by servicers and their vendors. Receiving positive CFPB reviews were the HomeSavers Solutions Network and HAMP Reporting Tool. For the problem of a new servicer's platform rejecting prior servicer loan data, the CFPB commented that waiting on the information technology department to override the rejection was insufficient and servicers should grant their loss mitigation professionals override authority – a very specific request from the CFPB.

How to Avoid the CFPB's New Scrutiny on Technology

Servicers should expect the CFPB to mandate best practices in technology and software across the industry. CFPB complained in Supervisor Highlights that technology innovations have not been "uniform" among servicers. This comment reads like a warning to servicers who skimp on servicing technology platform design, implementation or training. Additionally, servicers should consider negotiating flexible terms with vendors that provide servicing platforms. The CFPB may require more frequent improvements to software platforms and has implied that it will directly oversee the implantation of any software improvements it deems necessary. Without flexibility, servicers could find themselves stuck between the terms of a vendor contract and the demands of the CFPB. In all, the CFPB's new emphasis on technology may be a positive development for consumers, but it will demand that servicers become proactive and aggressive in developing and implementing cutting edge technology solution to their servicing challenges.