

NEW MORTGAGE SERVICING RULES



The Consumer Financial Protection Bureau (CFPB) has issued new regulations on mortgage servicers that took effect January 10, 2014. Specifically, the rule addresses the problems consumers have faced when dealing with billing errors or when a family has made a request for assistance with a modification.

CFPB writes that this rule “addresses servicers’ obligations to establish reasonable policies and procedures to achieve certain delineated objectives; to provide information about mortgage loss mitigation options to delinquent borrowers; to establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of performing certain functions; and to evaluate borrowers’ applications for available loss mitigation options.”

The new rule establishes minimum standards servicers must follow:

Billing: Statements must contain information about payments due, fees, and contact information for the loan servicers as well as housing counselors. While a coupon book can be used with fix rate loans, a regular statement is required with adjustable interest rate loans.

Interest Rate Adjustment Notices: Additional time is provided for notices of a rate adjustment. A notice must be provided four or five months (210-240 days) prior to the first adjustment. A notice of two to four month (60-120 days) is required for additional adjustments.

Prompt payment crediting and payoff statements: Payments must be credited as of the day they are received. A loan servicer can hold a partial payment in a suspense account and must apply a full payment as soon as an additional payment is made to cover a full payment. Servicers have seven business days to provide an accurate payoff balance when this request is made in writing.

Force-placed insurance: When the consumer has not provided proof of homeowner’s insurance, a servicer can purchase insurance. This insurance is usually more expensive. The insurance protects the creditor against loss, and is a common feature of FHA loans or in conventional loans where the consumer owes more than 80% of the value of the house. The servicer must give a consumer a 45 day notice before charging you for force-placed insurance. The servicer must notify you that it has bought insurance.

Error resolution and replies to request for information: The new regulations provide new procedures for how to handle request for information or complaints of errors. Servicers have 5 business days to acknowledge receiving the complaint or request for information.

Servicers have 30-45 days to correct an error or inform the consumer in writing that it found no error. If you request information, the servicer must provide you with information within 30-45 days.

Establish servicing policies: Servicers must set up procedures to comply with the new regulations. Particularly important for consumers is a requirement that servicers retain records related to each mortgage for up to one year after the loan is discharged or transferred. Records must be maintained in a manner that it can be compiled into a file within 5 business days.

Complaints: A consumer will have the right to file a complaint with the Consumer Financial Protection Bureau.

Early intervention with borrowers in need of assistance: Servicers must make an effort to speak with the borrower no later than the 36th day of delinquency and inform borrowers if there is any loss mitigation available. Within 45 days a written notice must be provided. It is important to remember that there is no specific loss mitigation help that must be provided. The servicer of the loan, however, must inform you of any options that are available for your loan. What help is available will depend on the bank or investor, as well as the terms of your original loan documents.

For consumers and advocates one of the most important changes is this: A servicer is now required to assign personnel to assist the borrower.

Changes that will assist borrowers: By the time notice is given to the borrower, the servicer must assign personnel to a delinquent borrower. These personnel must be **accessible by phone** to help the consumer. They must be able to provide the consumer with the status of any loss mitigation application (for example a request for a modification) and timelines. The personnel will have access to all information provided by the consumer and will ensure that this information is available to those responsible for evaluating the request for assistance.

The consumer should only need to send information and an application for assistance once. Often a consumer is told to repeatedly send in the same information that is “lost”. The new regulation requires that the personnel be able to prepare a file within five days and make this available to whatever department is evaluating the request for assistance.

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(Please note: Small servicers are exempt from some of these regulations and assigning dedicated personnel).

Loss Mitigation Procedures: When the borrower submits an application for a modification, the servicer must acknowledge this in writing within five business days and let the consumer know if the application is complete. If it is not complete, they must tell the consumer what other information is needed. They must help you understand what steps you need to take and help you complete the application. If you are not told that you need to provide additional information, the application is considered complete.

Within 30 days, a servicer must evaluate your request for a modification. The servicer must provide the borrower with a written decision and an explanation for a denial. The borrower has a right to appeal.

A servicer may not give you a notice regarding a foreclosure or file until you are delinquent 120 days. Even if the filing has taken place, you may still submit a request for a modification. The servicer must first make a determination on your eligibility for a modification.

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