$1.50 VOL. 37 NO. 17 www.ocbj.com APRIL 28-MAY 4, 2014

ORANGE COUNTY BUSINESS JOURNAL

Snell & Wilmer
LAW OFFICES

# The Dodd-Frank Act Amendments and Creation of the Consumer Financial Protection Bureau: Major Changes to Financial Services Industry

*by Eric Pezold, Partner, and Brett Ramsaur, Associate, Snell & Wilmer*

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) [Pub.L. 111-203], which was signed into law on July 21, 2010, contains some of the most significant reform to financial regulation since the Great Depression. Born of the Dodd-Frank Act was the Consumer Financial Protection Bureau (the Bureau), which supervises banks, credit unions and other financial institutions and enforces compliance with federal consumer financial laws and their implementing regulations. Needless to say, the Bureau is granted wide-ranging rule-making authority.

During 2013, the Bureau issued several final rules concerning the mortgage markets. The rules amend many existing regulations, including Regulations B, X and Z. Because the great majority of the amendments took effect in Jan. 2014, the industry-wide impact and significance of the changes are now at the forefront. This article summarizes the most far-reaching of the rule changes.

**Amendments to Regulation B**

Regulation B implements the Equal Credit Opportunity Act (ECOA).[1] The Bureau made a number of changes to Regulation B that became effective on Jan. 10, 2014. These amendments apply to loans secured by first liens on residential properties. Under the rule changes, lenders must provide loan applicants free copies of all appraisals and any other written valuation materials used in connection with the loan application.[2]

**Amendments to Regulation X**

Regulation X implements the Real Estate Settlement Procedures Act of 1974 (RESPA), which contains the mortgage servicing rules for the industry.[3] The amendments to Regulation X are some of the most sweeping and have the greatest impact on residential mortgage servicers. They became effective Jan. 10, 2014.

**1. Delay on Initiation of Foreclosures**

Under the rule changes, mortgage servicers are prohibited from filing a notice of default or judicial complaint to initiate a foreclosure unless the loan is more than 120 days "delinquent."[4] However, "delinquent" is not defined by the rules. Does "delinquent" refer to the due date of the last installment or some other later date? This is an issue that will be resolved by the courts as litigation arises over the interpretation of the amendments.

**2. Payoff and Other Information Requests**

Mortgage servicers must respond promptly to payoff requests or other information requests from borrowers.[5] They may not charge for the payoff or information request.[6] The payoff must be provided within seven days.[7]

**3. Error Notices**

Mortgage servicers must promptly respond (within 30 days of receipt) to written error notices from borrowers, such as disputes regarding misapplication of payments, failure to credit a payment, failure to pay property taxes, failure to provide loss mitigation options and initiating a wrongful foreclosure.[8] Mortgage servicers may not charge a fee for responding to an error notice.[9] Importantly, servicers may not furnish adverse information to any consumer reporting agency regarding a payment default that is the subject of the error notice for 60 days after receiving the notice.[10]

**4. Early and Continuous Contact with Delinquent Borrowers[11]**

Mortgage servicers must engage delinquent borrowers early on. Live contact must be made with a borrower within 36 days of a delinquency.[12] Within 45 days of the delinquency, the servicer must provide written notice to the borrower of the servicer's contact information, describe loss mitigation options and application instructions, and provide either contact information for the Bureau and the U.S. Department of Housing and Urban Development or their website addresses.[13]

Mortgage servicers must also maintain continuity of contact with delinquent borrowers. In this regard, mortgage servicers must assign personnel to delinquent borrowers to respond to borrowers' inquiries and explain loss mitigation options.[14]

**5. Loss Mitigation Options[15]**

Mortgage servicers must have policies in place to assist borrowers with evaluating potential loss mitigation options (i.e., foreclosure alternatives, loan modification, etc.).[16] There is no duty to provide borrowers with any particular loss mitigation option and no obligation to qualify a borrower for any particular option if the borrower is not eligible for any option.[17] However, once a servicer receives a loss mitigation application[18] from a delinquent borrower, there are very specific requirements imposed on the servicer to evaluate and respond to the application.[19] These requirements vary depending on when the servicer receives the application relative to the foreclosure sale date and whether the application is complete or not.[20] Generally, the foreclosure sale will likely be delayed while the application is being reviewed.[21]

**6. Force-Placed Insurance**

The Bureau placed restrictions on obtaining and renewing force-placed insurance and assessing charges and fees related to the same.[22] Generally, a servicer may not charge for force-placed insurance unless three requirements are met: (1) the servicer must have a reasonable belief that the borrower has failed to maintain hazard insurance, (2) the servicer provides written notice to the borrower of its intent to obtain and charge for force-placed insurance within 45 days and (3) the servicer sends a 30-day reminder notice and a 15-day reminder notice before the lender assesses charges or fees.[23]

**Amendments to Regulation Z**

Regulation Z implements the Truth in Lending Act (TILA).[24] The key changes apply to interest rate adjustment notices for adjustable rate mortgages, timeliness of mortgage payment crediting/requests for payoffs and periodic statements for mortgages. These changes became effective in Jan. 2014.

**1. Interest Rate Adjustment Notices for Adjustable-Rate Mortgages**

The Bureau significantly altered both the timing and content of the interest rate adjustment notices. For most adjustable-rate mortgages, mortgage servicers must now provide a notice to consumers between 60 and 120 days before the first payment is due after an interest rate adjustment causing a corresponding change in payment.[25] In addition, the notice required by § 1026.20(c) must now contain a laundry list of additional information, including a detailed explanation of how the new interest rate was determined and a comprehensive table containing the current and new interest rates, the current and new payments and a breakdown of how those payments are allocated among principal, interest, taxes and insurance for interest-only payments.[26]

**2. Prompt Crediting of Mortgage Payments and Responses to Requests for Payoff Amounts**

Mortgage servicers must credit a mortgage payment to the consumer's account as of the date of receipt, with limited exceptions.[27] Further, under the old TILA standards, mortgage servicers only needed to respond to requests for payoff amounts within a "reasonable time." Not anymore. Now, mortgage servicers are required to provide a payoff statement within seven business days after receiving a written request from the consumer.[28]

**3. Periodic Statements for Mortgage Loans**

The Bureau added new rules requiring mortgage servicers to provide periodic statements that comply with strict timing, form and content requirements.[29] The periodic statements, which must be delivered or placed in the mail within a reasonable timeframe after the payment due date, must clearly and conspicuously state the amount due and include an explanation of the amount due, a past payment breakdown, all transaction activity, partial payment information, contact information, account information and any and all delinquency information.[30]

**Conclusion**

We have highlighted some of the Bureau's most significant and noteworthy changes affecting mortgage market constituents. Without question, many amendments significantly impact the administrative burden on mortgage servicers, which will likely increase various costs to consumers. Because the amendments only recently became operative, these changes should not be taken lightly as the intended — and unintended — effects of the amendments to Regulations B, X and Z are just beginning to surface.

[1] 15 U.S.C. §1691 *et seq.*
[2] 12 CFR § 1002.
[3] 12 U.S.C. § 2601 *et seq.*
[4] 12 CFR § 1024.41(f).
[5] 12 CFR § 1024.36.
[6] *Id.*
[7] 12 CFR § 1026.36(c)(3).
[8] 12 CFR § 1024.35.
[9] *Id.*
[10] *Id.* There are certain exceptions to the 60 day prohibition contained in 12 CFR § 1024.35.
[11] These amendments apply to mortgages secured by principal residences. 12 CFR § 1024.39. However, certain of the amendments do not apply to all mortgage servicers, such as small servicers. *Id.*
[12] *Id.*
[13] *Id.*
[14] 12 CFR § 1024.40.
[15] These amendments apply to mortgages secured by principal residences. 12 CFR § 1024.41. However, certain of the amendments do not apply to all mortgage servicers, such as small servicers. *Id.*
[16] *Id.*
[17] *Id.*
[18] An application can be in the form of an oral inquiry seeking foreclosure alternatives. *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] 12 CFR § 1024.37.
[23] *Id.*
[24] 15 U.S.C. § 1601 *et seq.*
[25] 12 CFR § 1026.20(c)(2).
[26] *Id.*
[27] 12 CFR § 1026.36(c)(1)(i).
[28] 12 CFR § 1026.36(c)(3).
[29] 12 CFR § 1026.41(a)(2).
[30] 12 CFR §§ 1026.41(b), (c) and (d). These amendments do not apply to small servicers. 12 CFR § 1026.41(e)(4).

**Eric Pezold**

Eric Pezold is a partner in the firm's bankruptcy and reorganization practice group. His practice is concentrated primarily in bankruptcy, reorganization, creditor's rights, foreclosure, receivership, ABC, and workout law; federal and state court commercial and business litigation; and real estate tax investments. Reach Pezold at 714.427.7414 or epezold@swlaw.com.

**Brett Ramsaur**

Brett Ramsaur is a member of the firm's bankruptcy and reorganization practice group, where he focuses on creditors' rights, business restructurings and bankruptcy related litigation. His bankruptcy and insolvency practice includes representing secured creditors in all bankruptcies, Chapter 11 debtors and trustees in both Chapter 7 and Chapter 11 cases. Reach Ramsaur at 714.427.7428 or bramsaur@swlaw.com.

*Reprinted with the permission of the Orange County Business Journal*