# What We Know

## ARTICLES & INSIGHTS

# CFPB Continues to Focus on Mortgage Servicing

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The CFPB remains dissatisfied with the advancements the mortgage industry has achieved in the wake of the regulatory upheaval, as evidenced in the recently released special edition of its Supervisory Highlights. Many of the concerns expressed by the CFPB relate to information technology failures. As noted in the Supervisory Highlights, "[t]he magnitude and persistence of compliance challenges since 2014, particularly in the areas of loss mitigation and servicing transfers, show that while the servicing market has made investments in compliance, those investments have not been sufficient across the marketplace." *Supervisory Highlights Mortgage Servicing Special Edition,* p. 3. Notably, the CFPB attributes many of the failings to technology failures.

**The CFPB Approach to Servicer Examinations.** The CFPB readily admits that it uses a prioritization approach to determining which mortgage servicers to examine. Its approach takes into account:

- The size and market presence of the servicer – a relatively large servicer with a dominant market presence will take precedence over comparatively smaller servicers;
- Field and market intelligence including compliance management system strengths, the existence of regulatory actions from prior examinations, servicing transfer activity, and the number, severity, and trends of consumer complaints.

**Lessons to Be Learned from the Supervisory Highlights.** Those involved in the mortgage industry should pay particular attention to this edition of the Supervisory Highlights and adjust their policies, practices, and procedures accordingly. Here are the key takeaways:

**Mortgage Servicers need to carefully review their systems, processes, and contents of their Acknowledgement Notices. Specifically:**

- Some servicers are distributing loss mitigation acknowledgment notices after receiving a loss mitigation application from a consumer;
- Some servicers are not providing the acknowledgments in a timely fashion;

### ABOUT THE AUTHOR

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- Other servicers' notices were deemed deceptive because they:
  - Failed to state the additional documents necessary to complete the loss mitigation application;
  - Requested documents inapplicable to the borrower's circumstances;
  - Requested documents the borrowers had already submitted;
  - Failed to include a reasonable deadline to complete the application;
  - Issued deadlines for borrowers to submit additional documentation but then denied borrowers' applications before the time limit had expired; and
  - "Failed to include a statement that borrowers should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options."

**Mortgage Servicers Need to Carefully Review the Contents of Their Consumer Communications to Ensure Their Accuracy.**

The CFPB noted multiple instances where consumer communications did not accurately reflect the mortgage servicer's actions. Mortgage servicers should carefully review their communications and loss mitigation procedures to ensure they are consistent. For instance,

- One or more servicers sent communications which represented the servicer would defer charges to the maturity date of the loan and the servicer then assessed charges after the consumer signed and returned permanent modifications;
- One or more servicers sent loss mitigation offers with response deadlines that had passed as a result of delays in the servicer mailing the correspondence;
- One or more servicers provided modification agreements that did not match the terms approved by underwriting software;
- One or more servicers provided communications which were not accurate concerning conversion of trial modifications to permanent modifications; and
- "Examiners found one or more servicers required borrowers to sign waivers agreeing that they would have no "defenses, setoffs, or counterclaims to the indebtedness of borrowers pursuant to the Loan Document" in order to enter mortgage repayment and loan modification plans."  As noted by the CFPB, this violated Regulation Z.

**Mortgage Servicers Need to Review their Denial Notices to Ensure These Accurately Reflect the Specific Reason(s) for Denial of Loss Mitigation.**

Here, the CFPB noted:

- One or more servicers failed to accurately state the reason(s) for denial; and
- One or more servicers failed to communicate the borrower's right to appeal a denial of loss mitigation.

**Mortgage Servicers Need to Review Their Policies and Procedures and Ensure They Comply with Regulation X.**

Specifically, the CFPB noted that one or more servicers violated Regulation X because their policies and procedures were not reasonably designed to:

- Provide the borrower with accurate and timely information in response to the borrower's request for information;
- Identify and facilitate communication with a deceased borrower's successor in interest;
- Identify accurately and with specificity all loss mitigation options for which a borrower may be eligible;
- Promptly identify and provide access to all materials submitted by a borrower in support of its loss mitigation application to the appropriate mortgage servicer personnel;
- Properly evaluate loss mitigation applications for all options available to the borrower based upon the loan owner's requirements;
- Ensure accurate and current information regarding the servicer's evaluation of the loss mitigation application and the status of foreclosure is available to all appropriate service personnel, including foreclosure attorneys and similar vendors;
- Accurately identify necessary documents or information that may not have been transferred by a predecessor servicer.

**Servicers Need to Focus on Accurate Transfers of Accounts.**

In this respect, the CFPB noted that one or more servicer incompatibilities between servicer platforms have led to transferees failing to identify and honor in-place loss mitigations.

**The Bottom Line.** Some the concerns raised by the CFPB are the result of system malfunctions and technology deficiencies. As noted by the CFPB, "improvements and investments in servicing technology, staff training, and monitoring can be essential to achieving an adequate compliance position. However, such improvements have not been uniform across market participants. Supervision continued to observe compliance risks, particularly in the areas of loss mitigation and servicing transfers." Mortgage servicers are encouraged to review their compliance management systems to ensure their servicing platforms are accurately servicing their practices and should pay careful note to the concerns raised in the Supervisory Highlights as these are often the precursor to regulatory enforcement actions.


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