

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[Caren Enloe](#) leads Smith Debnam's consumer financial services litigation and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises fintech companies, law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer

CFPB Enters into Consent Orders with Citibank Subsidiaries Over Mortgage Servicing Practices

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The CFPB recently entered into consent orders with several Citibank subsidiaries attacking their mortgage servicing practices during the early days of the Mortgage Servicing Rules despite the CFPB's assurances that early examinations would focus on efforts to comply rather than the technical aspects of compliance. The consent orders require CitiMortgage to pay \$17 million to affected consumers and a \$3 million civil penalty and require CitiFinancial Services to pay \$4.4 million to affected consumers and a \$4.4 million civil penalty.

Mortgage servicers should heed these lessons:

1. **Loss Mitigation is Not a One Size Fits All Solution.** The CitiMortgage Consent Order makes clear there is a right way to handle loss mitigation applications and a wrong way. Specifically, the documentation necessary to complete a loss mitigation application should be tailored to the consumer's specific application and not include a generic list which may or may not take into account documentation already provided.
 - **The Wrong Way.** The Consent Order suggests that in the early days of the Mortgage Servicing Rules (January 10, 2014 through August 19, 2014), CitiMortgage responded to incomplete loss mitigation applications by sending a notice to borrowers which included a laundry list of documents "that may or may not have been applicable to a borrower's loss mitigation application." CitiMortgage Consent Order, ¶ 9. "For example, the...[notice] requested, among other things, the following documents: 'Form 1065 (Partnership Tax Return) with all schedules'; Form 1120S (S-Corporation Tax Return) with all schedules'; 'Social Security Award Letter'; 'Trust Agreement'; 'Broker's Statements at Year-End'; 'Teacher Contract'; 'Pension Statement'; and a "most Current year of Real estate tax bill For Rental.'" at ¶ 11. In some cases, the notice requested documents already received from the consumer. The Consent Order asserts that CitiMortgage's practice violated Reg X as well as the UDAAP provisions of the Consumer Financial Protection Act.
 - **The Right Way.** The Consent Order requires CitiMortgage take corrective action, including:

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

- Remediating their notices of incomplete loss mitigation applications to set forth in “plain language” the purpose of any enclosed forms which the borrower must complete and include a description of any documentation that must be submitted;
- Clearly identifying any missing documentation. To the extent certain applicable income and financial documents are valid for a limited period of time, communications must clearly identify the length of time those documents are valid; and
- Communications should accurately reflect the documentation necessary to complete the loss mitigation application.

2. **Deferments are Loss Mitigation and Should Be Treated as Such.** The CitiFinancial Consent Order alleges that requests for deferments were not treated as requests for loss mitigation. Under Reg X, loss mitigation option means “an alternative to foreclosure offered by the owner or assignee of a mortgage loan that is made available through the servicer to the borrower.” 12 CFR 1024.31. The Consent Order asserts that the deferments offered by CitiFinancial were loss mitigation and as such should have been treated as loss mitigation applications and evaluated as such.

The Consent Order requires that upon requests for deferments, CitiFinancial must:

- Exercise reasonable diligence in obtaining the necessary documents and information to complete loss mitigation applications;
- Acknowledge receipt of loss mitigation applications in a timely manner;
- Identify any documents needed to complete a loss mitigation application; and
- Evaluate borrowers for *all* loss mitigation options.

3. **Deferments Require Full and Complete Disclosure of Impact on Principal and Interest.** The CitiFinancial Consent Order alleges that CitiFinancial sent consumers who applied for deferments authorization forms which disclosed that “the repayment term of the loan will be extended” and that “interest will continue to accrue.” The Consent Order alleges that the disclosures were deceptive because they implied the deferred payments (including interest) would be added to the end of the borrower’s loan when in fact interest continued to accrue during the deferment period and became due on the next payment date. The Consent Order requires CitiFinancial to “clearly and prominently” disclose in plain language all material terms of any deferment, including the effect of deferment on principal and interest, the application between principal and interest when the borrower resumes payment and that deferment may delay repayment of principal resulting in additional interest over the term of the loan.
4. **Credit Reporting Policies Need to be Consistent with Reg X.** The CitiFinancial Order alleges that CitiFinancial furnished adverse information to consumer reporting agencies regarding payments that were subject to a Notice of Error within 60 days of receiving such notice. CitiFinancial Consent Order, ¶ 47. The Consent Order alleges that CitiFinancial’s practice violated Reg X which prohibits servicers from furnishing adverse information to CRAs regarding any payment that is subject to a Notice of Error within 60 days of receipt of the Notice of Error.

Mortgage servicers should take note that examiners, despite contrary earlier indications, are taking a hard look at mortgage servicing practices from the effective date of Reg X forward. Mortgage servicers should continue to review their practices and procedures for compliance with Reg X.

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