

CFPB Mortgage Servicing Standards

An analysis of the Consumer
Financial Protection Bureau's
Real Estate Settlement Procedures
Act (Regulation X) and Truth in
Lending Act (Regulation Z)
servicing final rules

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point of view by PwC's
Consumer Finance Group
and Financial Services
Regulatory Group*



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Overview of the rules

“The goals of the servicing final rules (final rules) are to provide better disclosure to consumers of their mortgage loan obligations and to better inform consumers of, and assist consumers with, options that may be available for consumers having difficulty with their mortgage loan obligations.” (CFPB)

Since August 9, 2012, when the Consumer Financial Protection Bureau (CFPB) first released its proposed national servicing standards for comment¹, the mortgage servicing industry has been anxiously awaiting the release of the final rules. The CFPB released those rules January 17, 2013².

Those final rules change the mortgage servicing standards that apply under both the Real Estate Settlement Procedures Act (RESPA, Regulation X) and the Truth in Lending Act (TILA, Regulation Z), and the CFPB released the final rules under separate rulemaking notices for each. The combined set of final rules covers the following nine mortgage servicing areas:

1. Periodic statements;
2. Interest-rate adjustment notices;
3. Prompt payment crediting and payoff payments;
4. Force-placed insurance;
5. Error resolution and information requests;
6. General servicing policies, procedures, and requirements;
7. Early intervention with delinquent borrowers;
8. Continuity of contact with delinquent borrowers; and
9. Loss mitigation procedures.

Small servicers (i.e., those that service 5,000 or fewer mortgage loans) are exempt from some of these requirements and have reduced requirements relative to larger servicers.

All of the final rules take effect from January 10, 2014, leaving a period of less than one year for mortgage servicers (and other impacted institutions such as creditors or assignees) to become fully compliant with the requirements.

The impact of that effective date will vary across servicers. For example, servicers who were party to the National Mortgage Settlement (NMS) and the Office of the Comptroller of the Currency (OCC) and Federal Reserve consent orders will be in a better position to be fully compliant within a year than those that were not. Much of the extensive servicing system updates and significant level of overhaul to operational processes that servicers accomplished to comply with the NMS and consent orders have also helped prepare those servicers for compliance with the final rules. Those servicers that were not part of the NMS or consent orders, on the other hand, will be starting much further from the finish line.

¹ Proposed rules – 2012 Truth in Lending Act (Regulation Z) Mortgage Servicing Proposal: http://files.consumerfinance.gov/f/201208_cfpb_tila_proposed_rules.pdf
And 2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal: http://files.consumerfinance.gov/f/201208_cfpb_respa_proposed_rules.pdf

² <http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/>

Another challenge worth noting is that servicers will be adapting to these new servicing requirements at the same time they are also compelled to integrate requirements of new and existing state regulations, investor rules, and other CFPB mortgage-reform regulations (e.g., the Ability-to-Repay and “Qualified Mortgage” rule). Not only will this add to the complexity and cost of achieving compliance with the new servicing standards, but it also will require servicers to recognize and resolve potential conflicts among these requirements.

Recognizing this context of significant regulatory change, this Point of View provides our insights into key provisions of the new servicing rules both under RESPA and under TILA, including the relationships between the final rules and the rules as proposed. We also provide our perspectives on the operational impacts servicers face integrating compliance with each new provision into their servicing operations.

How do the final rules differ from the rules proposed in August?

The CFPB requested industry feedback on the proposed rules issued in August 2012. After consideration of the commentary and further investigation, the CFPB issued the final rules³.

The table below summarizes the key differences between the CFPB final rules compared to the rules that were proposed in August 2012.

Areas	Summary of final rules	Change against proposed rules
<i>Periodic billing statements</i>	<ul style="list-style-type: none"> Provide a periodic statement for each billing cycle reflecting fees imposed, transaction activity, application of past payments, contact information for servicer and housing counselors, and information regarding delinquencies, where applicable. 	<ul style="list-style-type: none"> Mostly unchanged from proposed rules. Areas that have changed include: <ul style="list-style-type: none"> Removal of initial statement following first payment date and of requirement to provide state housing finance authority contact; A prepayment penalty amount is no longer required to be included in the statement; final rule requires only disclosure of the existence of the prepayment penalty.
<i>Interest-rate adjustment notices for adjustable-rate mortgages (ARMs)</i>	<ul style="list-style-type: none"> Provide a consumer notice between 210 and 240 days prior to the first payment due after the first rate adjustment. Provide 60 to 120 day advance notice when a rate adjustment causes a payment to change. 	<ul style="list-style-type: none"> Mostly unchanged from proposed rules, but requires the estimate of new rates and payment amounts to be included in the first rate-change notification. Some exemptions have been adopted, for example for all ARMs with terms of one year or less and for interest rate changes that result from loans undergoing loan modification.
<i>Prompt payment crediting and payoff statements</i>	<ul style="list-style-type: none"> Promptly credit periodic payments received from borrowers (principal, interest, and escrow) as of the date of receipt. If payment received is less than the amount due for a periodic payment, payment may be returned to borrower or held in a suspense account. When amount in suspense account covers a periodic payment, the servicer must apply the funds to the consumer's account. Provide an accurate payoff balance to a consumer no later than seven business days after receipt of a written request from the borrower for such information. 	<ul style="list-style-type: none"> Mostly unchanged from proposed rules. CFPB removed the proposed requirement that a full payment must be applied to the oldest outstanding delinquency. For payoff statements, final rule allows servicers more than seven business days to respond to a request for a payoff balance under certain circumstances.

³ <http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/>

Areas	Summary of final rules	Change against proposed rules
<i>Force-Placed Insurance (FPI)</i>	<ul style="list-style-type: none"> Prohibits charging for FPI unless borrower failed to maintain hazard insurance and servicer has provided required. If a borrower provides proof of hazard insurance coverage, servicer must cancel any FPI policy and refund any premiums paid for overlapping periods in which the borrower's coverage was in place. 	<ul style="list-style-type: none"> Mostly unchanged from proposed rules. One noted change relates to the disclosure of the cost of FPI. The final rule does not include this requirement in the first notice, prior to charging the borrower for FPI but does require it for the second notification.
<i>Error resolution and information requests</i>	<ul style="list-style-type: none"> Acknowledge written request or notice of error within five business days of borrower inquiry. Provide written notification of error correction or investigation conducted that determined no error occurred within 30 to 45 business days of borrower's inquiry. 	<ul style="list-style-type: none"> A few significant changes compared to proposed rules, specifically, oral information request and error notices has been removed from final rules so requirement is triggered only by written requests or notices of error. The list of covered errors has increased compared with the proposed rule, including the addition of a "catch-all" provision to expand the coverage for all errors related to servicing of a borrower's mortgage loan. Timeline for correcting errors associated with payoff balances has changed from five to seven business days.
<i>General servicing policies, procedures, and requirements</i>	<ul style="list-style-type: none"> Provide accurate and timely information to borrowers, investors, and courts. Evaluate loss mitigation eligibility using current, established rules. Maintain adequate documents and information to enable a mortgage file compilation within five business days. 	<ul style="list-style-type: none"> Mostly unchanged from the proposed rules. The requirement related to the contents of the servicing file did not change, including "any notes created by servicer personnel reflecting communications with borrowers about the mortgage loan account"⁴ and prescribed data fields. However, servicers have flexibility to determine where information is stored rather than being required to have all data and information stored in one central data repository, as was proposed. Final rules require servicers to maintain a specific defined set of documents and data on each mortgage loan account serviced by the servicer in a manner that facilitates compiling such documents and data into a servicing file within five business days which was not required under the proposed rules.

⁴ Page 687, Section 1024.38(c) (2)(iii) General servicing policies, procedures, and requirements of 2013 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Final Rules at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

Areas***Early intervention with delinquent borrowers***

Summary of final rules

- Make good faith efforts to establish live contact with borrowers by 36th day of their delinquency.
- Provide written notice of loss mitigation options by 45th day of borrower's delinquency.

Change against proposed rules

- There were a few changes from the proposed rules.
- Changed live contact from 30 days after delinquency to the 36th day of delinquency. Servicer does not need to discuss loss mitigation options on first live contact, which was required under the proposed, until servicer learns about circumstances of the delinquency and determines whether it is appropriate to inform borrower of available loss mitigation options.
- The timing of the written notice was changed from the proposed 40 days after delinquency to the 45th day of delinquency. Content requirement has changed to provide servicer with some flexibility around specific content items to accommodate existing practices.

Continuity of contact with delinquent borrowers

- Provide delinquent borrower with direct, easy and continuous access to assigned servicing personnel (commonly referred to as a single point of contact or "SPOC") who can assist with loan issues no later than 45th day of delinquency.
- Assigned servicer personnel must be accessible via telephone for borrower loss mitigation assistance and have access to all borrower data provided.

- This is a slight modification to the proposed rules which had required assignment of personnel no later than five business days after servicer makes live contact or good faith effort, which could have been as early as 35 days delinquency under the proposed rules.
 - Provided clarification that assigned personnel maybe an individual or team, and may have only SPOC responsibilities (single-purpose personnel) or may also have other responsibilities (multi-purpose personnel).
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<i>Areas</i>	Summary of final rules	Change against proposed rules
<i>Loss Mitigation Procedures</i>	<ul style="list-style-type: none"> Prohibits a servicer from making the first notice or filing required for a foreclosure process until a mortgage loan account is more than 120 days delinquent. Prohibits servicer from simultaneously evaluating a mortgage for loan modifications or other alternatives at the same time it prepares to foreclose on mortgage property. 	<ul style="list-style-type: none"> Proposal did not establish specific restrictions based on days in delinquency for referring to foreclosure. Final rule includes majority of the dual tracking provisions prescribed by the NMS servicing standards, which were not included in the proposed rules. Incomplete document notification has been changed to be more like an acknowledgement letter for notifying borrower whether their loss mitigation application received is deemed complete or not. Under the proposed rules, a loss mitigation application received by one servicer would have been required to be forwarded to servicers of other mortgage loan liens on the same property. This was not included in the final rule. As a result, servicers must provide an additional statement in this notice to inform borrowers that they should consider contacting other servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

In-depth analysis – 2013 TILA servicing final rule

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) amended TILA servicing requirements, including those with respect to:

- Periodic statements for residential mortgage loans;
- Interest-rate adjustment notices; and
- Prompt crediting of mortgage payments and responses to requests for payoff amounts.

The final rule makes corresponding amendments to Regulation Z and accompanying official interpretations, which implement TILA, as we describe and analyze below

Periodic statements

The final rule requires servicers of closed-end residential mortgage loans to provide a periodic statement to the borrower each billing cycle, with the exception of fixed-rate loans where coupon books are provided. Periodic statements must be sent no later than four days after the end of the billing period.

The rule also prescribes detailed requirements regarding form and content of periodic statements. The rule specifies that statements must reflect payments currently due, including a breakdown of monthly payment into principal portion, interest, escrow and fee charged. Periodic statements also must reflect the application of past due payments, delinquency information where applicable, due dates, and contact information for servicers and counselors.

The final rule also requires servicers to provide delinquent borrowers (i.e., those who are at least 45 days delinquent) with additional information regarding the borrower's delinquency, date of delinquency, loss mitigation or foreclosure activities and servicer's contact information. This information must be on, or must accompany, each periodic statement sent to such consumer.

Periodic statements can be sent in writing or can be sent electronically if the borrower consents.

Borrowers with fixed-rate loans who are given a coupon book containing substantially the same information as the periodic statement are also exempt from the requirement to send out written periodic statements. However, the CFPB stated that there are certain pieces of information required in the periodic statements (such as monthly payment amount, breakdown between principal, interest and escrow account, total fees

imposed since last payment period, etc.) that are difficult to incorporate into the coupon book. Therefore, as part of the final rules, the CFPB requires this information to be provided at the borrower's request. Also, delinquent borrowers with coupon books must still receive delinquency information, which must be provided in a separate letter.

Evolution of final rules

The final rules as to periodic statements have not changed significantly from the proposed rules. Most notable changes are as follows:

- A proposed requirement to send an initial statement, no later than 10 days before the first payment is due was removed. This change responded to comments received by the CFPB highlighting the minimal benefits to consumers and the extra cost of implementation.
- The prepayment penalty amount is not required to be included in the periodic statement under the final rule, due to concerns of complexity of calculation. However, servicers are required to disclose the existence of the prepayment penalty within the periodic statement.
- The proposed requirement to disclose contact information for the state housing finance authority for the state in which the property is located was removed because the CFPB concluded that information on how to locate the CFPB listing and HUD listing of housing counselors would be adequate.
- Lastly, unlike the proposal, the final rules provide some flexibility around how the 45 day delinquency information can be provided to the borrower, either on the periodic statement, on a separate page included in the periodic statement, or in a separate letter.

Potential impact to servicers

While it is industry practice to provide periodic statements or coupon books, key updates within the CFPB guidelines relate to comprehensive loan detail and include grouping related data on the periodic statement contents.⁵ In addition, given the prescriptive nature of the CFPB periodic statement requirements, particularly around the delinquency information, all servicers will be required to review their current processes and statement templates, to ensure they comply with the final rules. These changes will require technology support to implement and therefore, the amount of time to execute these changes should not be underestimated.

⁵ Sample forms are included in Appendix H-30 as referenced in Section 1026.41(c) Periodic Statements for Residential Mortgage Loans of CFPB final rules available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-tila.pdf

Some examples of potential challenges servicers may face as a result of these requirements include:

- Breakdown of payment amount due between interest and principal for daily simple interest loans and pre-computed loans⁶ where payments do not apply payments to principal or interest, but rather to the entire amount due, which consists of both principal and interest for the length of the loan.
- Breakdown of past payments due. Some servicer systems may not be set up to provide a breakdown of past payments, either for the past month or the year to date. These are particularly difficult for daily simple interest and pre-computed loans, as well as loans transferred or have partial payments made during the period.
- Compliance with the E-Sign Act Compliance. However, given the security concerns related to sending statements electronically, servicers can comply with regulations relating to the periodic statement by sending an email notification to borrowers informing the borrowers when statements are available on the servicer's website. Borrowers are permitted to opt out of receiving these notifications.
- Providing delinquency information, if applicable, due to the volume of loan-specific information that would have to be coded, the dynamic nature of the information, and the fact that such information is often stored on multiple systems. For example, status of loan modification programs may not be stored on servicing platform.

Other areas of consideration include:

- Determining whether to incorporate the delinquency information into periodic statement, or to develop a standalone notification. If the former option is adopted, then a separate template would need to be designed for borrowers with coupon books;
- Managing customer perception of the transition. When these new statements are first sent to borrowers, servicers should consider whether a cover letter will be incorporated explaining the changes to minimize customer confusion. Customer call center scripts should be developed to explain changes in case borrowers call, or explanatory video or other information could be posted on a servicer's website explaining the new statements;

⁶ A precomputed loan is one in which the debt is expressed as a sum comprising the principal and the amount of the finance charge computed in advance. The total amount of each payment is subtracted from the balance which includes the principal and finance charges (interest).

- Developing a formalized process to deal with requests for additional dynamic information from borrowers with coupon books, which may improve efficiency in the long term, even if ad hoc processes exist to prepare this information; and
- For servicers that use a vendor supported system for their servicing platform, considering whether to engage the third party vendor up-front to understand what efforts, if any, they are performing to assist their clients, such as a readiness assessment. In addition, servicers should confirm cut-off dates with vendors to ensure changes are implemented by January 2014.

Interest-rate adjustment notices

The final rule covers two adjustment notices applicable to adjustable-rate mortgage (ARMs). Both notice requirements apply to closed-ended mortgages only. Specifically, those adjustment notices are:

1. A notice informing a borrower of an initial interest rate reset or an adjustment of a hybrid ARM at the end of the introductory period, which needs to occur either (a) between 210 and 240 calendar days prior to such reset, or (b) at establishment of the mortgage if the first reset occurs during the first six months of the mortgage.⁷
2. A notice to provide an ARM borrower with notice of an interest rate change and/or payment change between 60 and 120 calendar days before the first payment at the adjusted level is due. This notice is required each time interest rate and payment changes occur.

Each adjustment notice must be separate and distinct from a periodic statement, but may be provided to borrowers together with the periodic statement and, depending on the delivery method, in the same envelope or as an additional email attachment. Notices must clearly identify upcoming changes to the borrower's interest rate and mortgage payments. This information should be presented in a tabular format.⁸

Notifications must specify the new interest rate, payment amount, and when that payment is due. The disclosure must also include information about alternatives and counselling services. For ARM initial interest rate notices, the servicer may include an estimate of the new rate and payment in the notice sent between 210 and 240 calendar days prior to the first rate adjustment; however, an additional notification must be provided within 60-120 calendar days before the effective date of the new payment if the payment amount changes.

⁷ Page 378, 1026.20 (c) & (d) available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-tila.pdf

⁸ Sample forms are included in Appendix H-4, page 395 available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-tila.pdf

The rule includes some exceptions to these adjustment notice requirements:

- Mortgage loans with a term of one year or less are exempt entirely from the notice requirements; and
- ARMs are exempt from the first interest-rate adjustment notice requirement if the first payment at the adjusted level is due within 210 days after consummation and the new interest rate disclosed at consummation was not an estimate or if the interest rate changes occur in the context of a loan modification executed as a loss mitigation measure.

In addition, borrowers with interest-rate adjustments for ARMs with a uniform schedule of interest-rate adjustments occurring every 60 calendar days or less, servicers are permitted to send out rate change notices between 25 and 120 calendar days before the first payment at the new level is due.

Evolution of final rules

As a result of its analysis and consideration of industry commentary of adjustable-rate mortgage interest-rate adjustment, the CFPB determined that prior requirements regarding minimum interest rate reset notification timeframes did not provide ARM consumers with sufficient time to either adjust their finances or to pursue meaningful alternatives, such as refinancing, home sale, loan modification, forbearance, or deed-in-lieu of foreclosure.

The CFPB expressed the belief⁹ that longer borrower notification periods as well as additional clarity of adjustable-rate mortgage interest-rate adjustment notifications provide benefits to consumers, and that those benefits outweigh the costs to mortgage servicers to implement such changes. As a result, in most instances, the final rules were unchanged from the proposed rules. However, there were a few changes to address commenter's' concerns, specifically:

- Permitting shorter notification periods of between 25 and 120 instead of the proposed 60 and 120 calendar days for ARMs with a uniform schedule of interest- rate adjustments occurring every 60 calendar days or less;
- Establishing the exceptions described above;

⁹ Page 297, VII. Dodd-Frank Act Section 1022(b)(2) Analysis, Section F. Potential Benefits and Costs to Consumers and Covered Persons available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-tila.pdf

- Consistent with the change made to periodic statements, requiring reference to the existence of prepayment penalties rather than disclosure of the actual penalties.
- Changing from a requirement to include both HUD and CFPB telephone numbers to access homeownership counsellor information to requiring disclosure only of HUD telephone number.

In addition, there were industry concerns¹⁰ that the actual interest rate and revised payment amount may not be available if the look-back period was shorter than 45 days, which could create impediments to satisfying the 60 days notification timeline in the proposed rules. To address that situation, the final rule permits the grandfathering rule for ARMs with look-back periods shorter than 45 days, i.e., servicers are allowed to send notifications between 25 to 120 days, rather than the 60 days required under the final rules. However, this is only extended to loans originated prior to 1 January 2015, which implies the need to remove interest adjusted loans with look-back periods shorter than 45 days in the future.

Potential impact to servicers

Similar to the situation with periodic statement requirements described above, the prescriptive nature of these notifications and the lead time required for when these notifications need to be sent out, means that servicers will need technology support to revise their existing notification templates. In particular, servicers may need to develop new approaches to providing a best estimate for the initial interest rate change, since these are required between 210 and 240 calendar days prior to when the first new payment amount is due.

Other implementation issues to consider include:

- Current rules establish a minimum of 25 days for interest rate and payment change notification. As a result, current processes for triggering these notifications will need to be reviewed;
- Potential customer impact as a result of estimated rates and payments provided in the first notice for the initial reset of interest rates will need to be managed. Servicers should be prepared to explain estimated rate calculation, and reasons why this may differ from actual rate;
- Changes may need to be made to existing rate change notification templates as these may differ from the required content prescribed in the final rules; and
- It will be important to coordinate with the mortgage originations areas on product features to ensure that look-back periods are not greater than 45 days for future loans.

¹⁰ Page 85, Section V. Section-by-Section Analysis available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-tila.pdf

Prompt payment crediting and payoff payments

The CFPB's final rules require servicers to process periodic payments for both open and closed-end mortgages. For these purposes, a periodic payment is defined as the receipt of enough funds to cover the amounts due for principal, interest and escrow credited as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency. A periodic payment qualifies even if it does not cover late fees or other fees that have been assessed.

Under the final rule, servicers do not have to process a borrower's partial payment. The rule grants servicers the flexibility of rejecting the payment, crediting it immediately, or holding it in a suspense account. If the partial payment is accrued in a suspense account or unapplied funds account, such funds must be treated as a periodic payment received once there are sufficient funds to cover a periodic payment. If a servicer holds a partial payment in a suspense or unapplied funds account, the servicer must disclose on the periodic statement the amount of funds held in such account.

The final rules also prescribe the treatment of non-conforming payments, which are payments that are not received through the servicer's specific requirements but that are accepted by the servicer, for example, a check mailed to the wrong address that, is eventually diverted back to the correct location. Given these are not received through the authorized channels, and may therefore result in delays from identifying these payments, servicers are not required to credit these at date of receipt, but are permitted to credit the payment up to five days after receipt.

In the event a borrower requests a payoff amount, that is, the total outstanding balance that would be required to pay the borrower's obligation in full as of a specified date, the final rules require servicers to provide the payoff statements within a reasonable time, but in no case more than seven business days after receiving a written request from the consumer or any person acting on behalf of the consumer. The seven-day timeline does not begin until a request is received from the borrower or from a verified party.

Evolution of final rules

The CFPB made some changes from the proposed rules to take into account feedback from the industry. Specifically:

- Given mortgage industry discussion¹¹, the CFPB adopted the term “periodic payment” in place of “full contractual payment” to refer to the

¹¹ Page 192, Section V. Section-by-Section Analysis available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-tila.pdf

amount owed by the consumer for principal, interest, and escrow during any billing cycle. However, this did not result in a material change in the requirements.

- The final rule did not include the proposed requirement for an accumulated periodic payment to be applied to the oldest outstanding delinquency, as the CFPB expressed the view that this may cause some conflict with certain state law requirements¹².
 - In response to comments from the industry that providing payoff statements within seven business days may not always be feasible¹³, the CFPB excepted certain circumstances from the seven-business-day requirement, including where it is not feasible to provide a payoff statement because a loan is in bankruptcy or foreclosure, where the loan is a reverse mortgage or shared appreciation mortgage, or where the ability to meet the seven-business-day requirement is impaired by the occurrence of natural disasters or other similar circumstances. In those cases, the payoff statement must be provided within a reasonable time.

Potential impact to servicers

Most existing servicing requirements such as those stated in NMS and Regulation Z require servicers to credit a payment to the consumer's loan account as of date of receipt, except when a delay in crediting does not result in a charge to the consumer or in the reporting of negative information to a consumer reporting agency, so meeting this portion of the new rule will likely not require any substantial changes. However, the new required treatment of non-conforming payments, partial payments and response to payoff statements do not fall within the scope of the NMS or other existing requirements and so may require servicers to review and enhance their existing processes to ensure compliance. Addressing each of these areas will require a collaborated effort between operations and technology to support relevant system updates.

Other implementation issues to consider include:

- Using suspense accounts for accruing partial payments will require updates to the periodic statement disclosing total balance; and
- It will be important to monitor that payoff statements are being provided to borrowers within seven business days of request, or within a reasonable time, as applicable.

¹² Page 197, Section V. Section-by-Section Analysis available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-tila.pdf

¹³ Page 204, Section V. Section-by-Section Analysis available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-tila.pdf

In-depth analysis – 2013 RESPA servicing final rule

The Dodd-Frank Act amended RESPA¹⁴ servicing requirements. The final CFPB rule makes corresponding amendments to Regulation X and accompanying official interpretations, which implement RESPA. The final rule also amends Regulation X to establish new servicing standards that are not required under the Dodd-Frank Act.

The resulting amendments to Regulation X address the following six servicer obligations:

- Limitations on obtaining force-placed hazard insurance;
- Notices of error or information requests from a borrower;
- Establishing reasonable policies and procedures for maintaining and managing information and documents relating to borrower mortgage loan accounts;
- Early intervention efforts with delinquent borrowers;
- Continuity of contact with delinquent borrowers; and
- Loss mitigation procedures.

Force-placed insurance (FPI)

Implementing a provision of the Dodd-Frank Act, the final rule prohibits a servicer from obtaining FPI unless there is a reasonable basis to believe¹⁵ the borrower has failed to comply with the loan contract requirements to maintain property insurance.¹⁶ The CFPB rule sets forth a process that servicers must follow before imposing any charge on a borrower for FPI and a process for terminating FPI upon receipt from the borrower of evidence confirming borrower-purchased hazard insurance coverage.

Specifically, the final rule requires the servicer to notify a borrower twice before charging for FPI:

- First, at least 45 calendar days before the servicer imposes a charge on the borrower; and
- Again, at least 15 calendar days before the servicer imposes a charge on the borrower.

¹⁴ 2013 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Final Rules available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

¹⁵ Page 723, Official interpretation of rules for “reasonable basis to believe”, available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

¹⁶ Section 1024.37 Force-Placed Insurance 2013 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Final Rules at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

In addition, before a servicer charges a borrower a premium charge or fee related to renewing or replacing existing FPI, the servicer must send a written notice at least 45 calendar days before applying such charge or fee. These renewal notices must be sent before each anniversary of a servicer purchasing FPI.

Furthermore, where the borrower has an escrow account for the payment of the homeowner's insurance premiums, the servicer is prohibited from obtaining FPI where the servicer can continue the borrower's insurance, even if the servicer needs to advance funds to the borrower's escrow account to do so, as long as no cancellation or non-renewal notices have been received.

For FPI terminations, the servicer is required to cancel the insurance within 15 calendar days of receiving evidence that the borrower has the necessary insurance and refund the FPI premiums to the borrower for any periods of overlapping coverage.

Evolution of final rules

These rules have not changed substantially from the proposed rules. One noted change relates to the proposal to require notice of the cost of the FPI. The final rule requires this notice only in the second reminder notice. Also, the final rule provides that the servicer need only provide a "reasonable estimate" of the cost of the FPI, recognizing that the actual cost may not be known at the time of notification.

The CFPB final rule also relaxed the requirement that servicers adopt templates that are "substantially similar" to CFPB templates to a suggestion that servicers "may use" the CFPB templates. However, the CFPB appears to have strengthened the rule's requirement as to what must be included in the notices and the order in which the information must be presented.

Potential impact to servicers

NMS rules for set-up and terminating FPI appear to be consistent with those in the final rule, except for the renewal notices as well as minor formatting updates to the notification notices.

Other implementation areas to consider include:

- Most servicers use third-party vendors to complete these functions. Therefore, because the CFPB rules apply to all servicers, it is possible that solutions are already being developed by those third parties, and the cost of these changes to servicers may effectively be shared across the industry. It is therefore important to reach out to the vendors upfront to conduct readiness assessment, including compliance with all required timelines prescribed in the final rules as these notifications are generally triggered by the vendors; and

- Given the focus around timing of when specific FPI-related activities must occur, updating the monitoring of borrower interaction to adhere to timeframe requirements would reduce risk of non-compliance.

Error resolution and information requests

Implementing provisions of Dodd-Frank, the final rule includes a set of requirements for investigating and correcting errors and for responding to borrower inquiries. Specifically, servicers are required to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, avoiding foreclosures, or other standard servicer’s duties.¹⁷ Servicers also are required to acknowledge the written request or complaint within five business days in writing and generally are required to correct or respond to the borrower with the results of the investigation within 30 business days (subject to exceptions discussed below), with an extension of 15 business days permitted. Alternatively, if the servicer can research, correct, and respond in writing to a notice of error within five business days, it does not have to send the acknowledgement letter and subsequent response letters as the five day letter will satisfy those requirements.

The final rule¹⁸ provides a list of 10 types of covered errors to which specific error resolution provisions would relate as well as a “catch-all” provision:

1. Failure to accept a payment that conforms to the servicer’s written requirements for the borrower to follow in making payments;
2. Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law;
3. Failure to credit a payment to a borrower’s mortgage loan account as of the date of receipt;
4. Failure to pay taxes, insurance premiums, or other charges, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay, in a timely manner, or to refund an escrow account balance;

¹⁷ Section 1024.35 Error Resolution Procedures and 1024.36 Requests for Information of 2013 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Final Rules at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

¹⁸ Section 1024.35 Error Resolution Procedures of 2013 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Final Rules at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

5. Imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower;
6. Failure to provide an accurate payoff balance amount upon a borrower's request;
7. Failure to provide accurate information to a borrower for loss mitigation options and foreclosure;
8. Failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer;
9. Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process;
10. Moving for foreclosure judgment or order sale, or conducting a foreclosure sale; and
11. Any other error relating to the servicing of a borrower's mortgage loan.

The following circumstances are exempt from the general requirement to correct or respond to the borrower with the results of the investigation within 30 business days:

- Notice of error related to the accuracy of payoff balance amounts requested by the borrower, which must be resolved in seven business days.
- Notice of error related to foreclosure (i.e., error type 9 and 10 in the above list), which must be resolved prior to the date of foreclosure sale or within 30 business days after the servicer receives the notice of error, whichever is earlier. In addition, if a servicer receives a notice of error for failure to suspend foreclosure sale within seven days of the foreclosure sale, the servicer is not required to send an acknowledgement or response letter if, prior to the foreclosure sale, the servicer contacts the borrower in writing or orally, and corrects the error or states the reason the servicer has determined that no error has occurred.

Servicer requirements as to information requests under the final rules are consistent with those that apply to notices of errors. That is, servicers must acknowledge requests within five business days and must resolve them within 30 business days. The only exception involves requests that ask for the identity of, an address, or other relevant contact information for the owner or assignee of a mortgage loan, which requires a response within 10 business days. Requests for payoff statements are not treated as requests for information under the rule.

Evolution of final rules

Originally, the CFPB proposed rules aggregated the concept of oral notices of errors and information request, with written notices. Industry comments were unanimously opposed to applying error resolution requirements to errors that were communicated orally due to the complexity of capturing and tracking these items. In response, the CFPB removed the proposal's references to oral notices. However, the CFPB's final rules require servicers to maintain policies and procedures reasonably designed to ensure that borrowers are informed of the written error resolution procedures.

Other areas that have evolved from the proposed rules include the following:

- The CFPB's final rules also broadened the definition of covered errors, by including a "catch-all" provision to capture all other errors relating to the servicing of a borrower's mortgage loan. In addition, the list of errors has broken out the foreclosure error into two different categories.
- One of the comments¹⁹ received by the CFPB suggested allowing servicers to establish an online process for receipt of error notices. The CFPB acknowledged that online processes have significant potential to facilitate faster and cheaper communications between borrowers and servicers. As a consequence, the CFPB is working on finalizing language to permit, but not require, servicers to elect whether to adopt such a process, thus servicers should expect to see further communications in this regard.
- The timeframe for error resolution related to payoff errors expanded from five to seven business days in response to comments received. In addition, the CFPB revised the request for information section to clarify that a request for a payoff balance need not be treated by the servicer as a request for information as borrowers already have a separate mechanism by which to request payoffs balances.
- In addition, there were concerns based on the proposed rules that copies of documentation to be supplied to borrowers could be overly burdensome²⁰. The CFPB revised the final rules to require documents to be provided only if a borrower requests the documentation that was used in determining the servicer's decision on the error, and that documentation then must be provided within 15 business days, unless the information is considered to be confidential, proprietary or privileged information, in which case they must notify borrower of these exclusions.

¹⁹ Page 178, Section V Section-by-Section Analysis of the Final Rule, available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa.pdf

²⁰ Page 101, Section35(e)(4) Copies of Documentation of the Final Rule, available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa.pdf

Potential impact to servicers

Given the need to monitor different response times for specific error types and information requests, it is important to determine if there are changes to the system of record that tracks open requests and complaints, to ensure that tighter resolution timeframes are met.

Other implementation areas to consider include:

- Developing an enhanced information request and complaints case management system to ensure that all written inquiries are logged, especially if there are multiple channels for receipt of written borrower inquiries; considering the need to develop reporting to track appropriate timeline, consistent resolution; and performing root cause analyses on common errors when applicable.
- Ensuring processes can provide copies of documentation used to make a decision on the error within 15 business days of request are tested and monitored.
- Establishing a formalized process, or considering revising internal policies and procedures, to determine which types of documentation used to determine the servicer's decision on the error will be shared with the borrowers, including training material for call center personnel to understand these changes.
- Addressing oral requests. Even if the CFPB is not requiring oral notices of error to be subject to the error resolution rules, the final rule requires servicers to have policies and procedures reasonably implemented to assure that the servicers respond to oral information requests on a more informal basis, without having to comply with all of the required steps for a formal information request. As a result, servicers will still need to address oral requests.
- In the longer term, considering implementing a centralized written error notice and information request submissions, as this may improve customer experience as well as enhance resolution process.

General servicing policies, procedures, and requirements

The final rules²¹ require servicers to establish reasonable policies and procedures for maintaining and managing information and documents relating to: borrower communications, error resolution, information requests, loss mitigation (including, without limitation, loan modification actions), foreclosure, and other servicer operations. Servicers may determine the specific methods by which they will provide reasonable information management policies and procedures to achieve the required objectives. Servicers have the flexibility to create policies and procedures that are appropriate for their servicing businesses in light of the size, nature, and scope of the servicer's operations.

The final rules also require a one-year record retention period after the loan is discharged or is transferred. In addition, the servicer shall maintain a process in which a servicing file can be compiled within five business days containing the following documentation/data:

- Schedule of all transactions credited or debited (including escrow and suspense accounts);
- Copy of the security instruments;
- Any notes created by reflecting communications with the borrower;
- A report of the data fields relating to the mortgage loan account; and
- Copies of any information or documents provided by the borrower to the servicer in regards to loss mitigation or error resolutions.

Evolution of final rules

Overall, the CFPB adopted the proposed rules related to general servicing policies, procedures, and requirements with a few noticeable differences:

- The CFPB restructured the rule so that it does not provide a private borrower right of action for violations of this specific rule nor a safe harbor²² limiting liabilities to situations where there is a pattern or practice of violations.
- In regards to the servicing file requirement, despite comments received²³ regarding the onerous burden for providing the contents

²¹ Section 1024.38 Reasonable information management policies and procedures available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

²² Page 308, http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

²³ Page 331, Section 1024.38 (c)(2) General Servicing Policies, Procedures, and Requirements available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

defined in the servicing file and potential litigation risks associated with the information provided to the borrower, the CFPB made no changes to the proposed content requirements of the servicing file. However, adjustments were made to allow flexibility for the manner in which servicers maintain a servicing file. Under the final rule, servicers are required to maintain a specific defined set of documents and data at the loan level in a manner that facilitates compiling such documents and data into a servicing file within five business days.

- In addition, the final rules clarified that only information created after January 10, 2014 would need to be supplied.

Potential impact to servicers

The CFPB expressed the belief²⁴ that efforts required by servicers to become compliant with the final rules for information management policies and procedures should be minimal, given the enhancements in policies and procedures over the past few years to comply with other servicing requirements (such as NMS and OCC). However, a review of all policies and procedures for the five areas covered by this rule would give servicers a more accurate compliance assessment.

In addition, the CFPB's final rule to retain documents for one year after servicing transfer is less stringent than the requirements under the consent orders, which prescribes a five-year requirement for document retention²⁵. Servicers will be required to comply with the more stringent requirement where both apply. In addition, the CFPB's recent issuance of "Ability-to-Repay" rule²⁶ also establishes a requirement of a three-year document retention period.

As a result, this requirement will likely have little impact on servicers already subject to those consent orders. On the other hand, for the servicing file requirement, servicers may need to develop faster access to some of this information than they currently have, and some may need to document the location and methods of access of this information in a more unified way than they currently do. However, servicers do not have to maintain all of the information on a single system. Furthermore, the CFPB is mitigating the cost of this provision by not requiring servicers to comply with it with respect to information created prior to January 10, 2014. Thus, servicers do not have to improve access to legacy information that may be missing or inaccessible.

²⁴ Page 578, available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

²⁵Page 11, 31 C.F.R. § 103.121(b)(3)(ii) – Retention of records available at http://www.ffiec.gov/bsa_aml_infobase/documents/OCC_DOCS/BUL_2005_16.pdf

²⁶ http://files.consumerfinance.gov/f/201301_cfpb_final-rule_ability-to-repay.pdf

Other implementation areas to consider include:

- Making each borrower’s documents and information available in one centralized location to facilitate providing complete servicing file to borrower upon request or to servicing personnel managing inquiries from delinquent borrowers, if this will result in a more efficient process;
- Ensuring the quality of the imaged documents of imaged borrower documents, as these may currently be stored in two different locations, i.e., stored with the Document Custodian and stored in an image system; and
- Developing or improving automated systems to record or track borrower communications.

Early intervention with delinquent borrowers

The CFPB requirements include rules²⁷ to spur engagement between servicers and borrowers in an attempt to increase borrowers’ ability to avoid foreclosure. Per the CFPB, early intervention may benefit borrowers by reducing avoidable interest costs and by limiting the impact on borrowers’ credit reports.

The final rules require servicers to establish or make good faith efforts²⁸ to establish live contact with borrowers by the 36th day of their delinquency and to promptly inform such borrowers, where appropriate, that loss mitigation options may be available. Day 1 of delinquency is defined as the first day after the payment due date. In addition, a servicer must provide a borrower a written notice with information about loss mitigation options by the 45th day of a borrower’s delinquency. The rule contains model language servicers may use for the written notice. However, servicers can comply with the content requirement by sending borrowers a single mailing that contains separate notices that collectively provide all the model clauses.

Evolution of final rules

A number of changes were made to the final rules following comments received from the industry. These include:

- The live contact requirement changed from the 30th day of delinquency to the 36th day of delinquency. This change also includes changed wording from “contacting orally” to “live contact” which is defined as telephoning or conducting an in-person meeting with the borrower;

²⁷ Section 1024.38 Reasonable information management policies and procedures of 2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal available at http://files.consumerfinance.gov/f/201208_cfpb_respa_proposed_rules.pdf

²⁸ Page 735, Official interpretation of rules for “good faith efforts”, available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

- In the final rules, servicers do not need to discuss loss mitigation options on first live contact and only need to do so once they learn about the circumstances that generated the delinquency and determines whether it is appropriate to inform borrower of available loss mitigation options; and
- The written notice requirement has changed from the proposed 40th day of delinquency to 45th day of delinquency. Written notice content requirements have changed and provide servicers with some flexibility around specific content items to accommodate existing practices. Some of these changes include: requiring servicers to describe only “examples” of loss mitigation options that may be available and not all options; removing requirements to provide application deadlines, notification of foreclosure process, and contact information for the State housing finance authorities based on commentary provided.

Potential impact to servicers

Most servicers already comply with some type of early intervention requirement. Servicers of FHA and VA loans are generally required to take action within the first 20 days of a delinquency, such as making telephone calls and sending written delinquency notifications. Similarly, servicers of loans purchased by the GSEs are encouraged to contact borrowers within several days of a delinquency. One GSE recommends that servicers begin initial call campaigns on the third day of delinquency, and another GSE recommends that servicers take similar actions with respect to borrowers having a high risk of default. Regarding written notification, Federal agencies and the GSEs have established requirements and recommended practices with respect to written notifications that are similar to the CFPB’s final rule. However, the CFPB believes that some GSE servicers may not provide written notifications to certain lower-risk delinquent borrowers until the 65th day of delinquency.

To the extent that servicers already make efforts to establish live contact with borrowers and provide written notices to borrowers regarding loss mitigation options, servicers would likely incur minimal costs and impact to conform to the timelines and content requirements under the final rule.

Some implementation areas to consider include:

- Creating/updating internal policies and procedures to implement the early intervention requirements, training personnel, and possibly modifying existing disclosures or establishing new disclosures. The CFPB has provided sample clauses in the rule²⁹. Servicers who are currently not subject to some type of early intervention requirement would incur greater costs, including setting up policies and procedures, establishing disclosures, and potentially hiring more staff;

²⁹ Page 704, Appendix MS-4, available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

- Revising existing treatment strategies for low risk borrowers, who may not be receiving written notification until 60 day delinquency, to ensure the final rules are complied with for all borrowers;
- Updating written notices templates to incorporate the entire required content prescribed in the final rules such as a statement encouraging the borrower to contact the servicer, along with the servicer’s mailing address and telephone number, language explaining loss mitigation options that may be available, and how borrowers can access housing counseling resources and encouraging the borrower to contact the servicer; and
- Developing or enhancing tracking and exception reporting to monitor timely contact with borrower, including engaging of the fair lending department or representatives to include this requirement as part of their ongoing monitoring processes.

Continuity of contact with delinquent borrowers

Servicers are required to maintain policies and procedures that are reasonably designed to achieve the following objectives:

- Assign personnel to a delinquent borrower by the time a servicer provides such borrower with the written notice required in early intervention, but in any event, not later than the 45th day of a borrower’s delinquency;
- Make available to such borrower, via telephone, the assigned personnel to respond to the borrower’s inquiries and, as applicable, assist the borrower with available loss mitigation options until the borrower has made two consecutive mortgage payments in accordance with the terms of a permanent loss mitigation agreement without incurring a late charge; and
- Ensure that the servicer can provide a live response to a delinquent borrower who contacts the assigned personnel but does not immediately receive a live response.

The servicer’s policies and procedures must also be reasonably designed to ensure that the assigned personnel are accessible to the borrower by phone to assist the borrower in pursuing loss mitigation options, including advising the borrower on the status of any loss mitigation application(s) and applicable timelines. The personnel must also be able to access all of the information provided by the borrower to the servicer and provide that

information, when appropriate, to those responsible for evaluating the borrower for loss mitigation options.

Delinquent-borrower contact “personnel,” also commonly referred to as a Single Point of Contact of “SPOC,” can be an individual or a team under the CFPB’s final rule and interpretations.

Finally, the final rule does not provide borrowers with a private right of action to enforce compliance. As a result, the CFPB and prudential regulators will be able to supervise to assure compliance, but borrowers cannot bring an action against a servicer for non-compliance.

Evolution of final rules

The CFPB proposed rules were changed in response to comments received. For example, after considering industry commenters’ concerns that tying the assignment of contact personnel to the oral notification requirement in the proposed rule might require servicers to devote significant resources to assist borrowers who do not require formal loss mitigation assistance, the CFPB has decided to delay the timing of the assignment of contact personnel to the 45th day of a borrower’s delinquency, unless the servicer provides the written notice beforehand.

The CFPB also received industry comments expressing concern that some servicers do not have the capacity to dedicate staff members to assist borrowers with loss mitigation options to the exclusion of other responsibilities. The CFPB responded in the interpretations that accompanied the final rules, by clarifying that a SPOC may consist of individuals that only have SPOC responsibilities (single-purpose personnel) or may have other responsibilities (multi-purpose personnel)³⁰.

The CFPB also received comments expressing concerns of servicers who already have in place various approaches to providing a SPOC that comply with comparable requirements under the NMS or consent orders, or that are otherwise effective, who wanted a safe harbour or some other means to retain their current processes. The CFPB acknowledged those concerns by crafting the final rule as an objectives-based policies and procedures requirement. This provides servicers with flexibility as to how they determine to comply with this requirement, so long as their policies and procedures are reasonably designed to meet the specified objectives.

³⁰ Page 421, Section 1024.40 (a)(1) Continuity of Contact available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

Potential impact to servicers

Servicers must establish SPOCs under the rule to provide borrowers with an easily accessible and reliable point of contact for borrower to obtain information and otherwise interact with the servicer throughout the loss mitigation and foreclosure process. The SPOC requirement was first introduced in the consent orders and has then evolved to become more prescriptive, as observed in the NMS, and now has evolved into an objectives-based policies and procedures requirement. Due to those prior comparable requirements, and the objectives-based approach the CFPB has taken to the final rule, some servicers may already be compliant.

There are varying SPOC models used by servicers, such as assigning one contact person throughout the loss mitigation process versus the “pod model,” where a team of personnel works the account. The key difference under the final rules³¹ is that the assignment of this SPOC is compulsory rather than only required when loss mitigation packages are requested by the borrower and may occur earlier in the default process compared to current processes. Hence, there is likely to be an increased staffing need due to the compulsory nature of the CFPB rule for allocation of SPOCs personnel to 45 day delinquent borrowers. Other areas of consideration include:

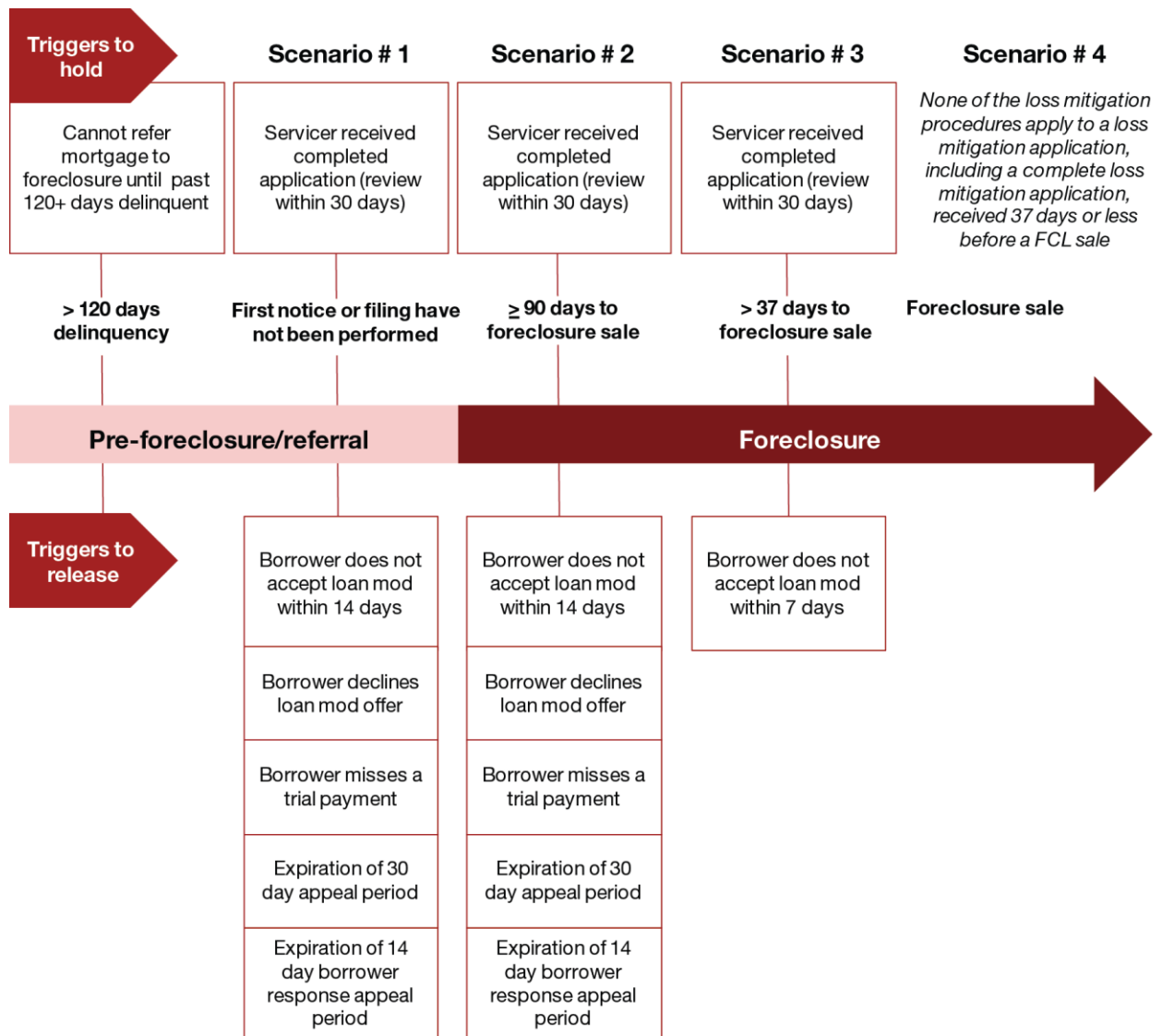
- Borrowers may opt for other short-term options such as repayment plans, which are not generally offered as part of the loss mitigation process, hence it is important for these SPOCs to be equipped with collections knowledge which current SPOCs may lack as they are focused on assisting the borrower with loss mitigation options only; and
- Given the increased volume of borrowers that need to be allocated a SPOC, determine whether current SPOC model is still the most optimal model. Consider whether borrowers that are allocated SPOCs due to request for loss mitigation package should differ from SPOCs due to 45 day delinquency trigger.

³¹ Page 688, Section 1024.40 (a)(1) Continuity of Contact available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

Loss mitigation procedures

Final rules for loss mitigation adopt very specific restrictions for “dual tracking,” prohibiting a servicer from making the first notice or filing required for a foreclosure process until a mortgage loan account is more than 120 days delinquent. The objective of this requirement is to ensure that borrowers are protected from harm in connection with the process of evaluating a borrower for a loss mitigation option and proceeding to foreclosure.

In particular, the final rules include actions that are time sensitive and are illustrated in the following diagram.



If a borrower submits an application for a loss mitigation option, the servicer is required to acknowledge the receipt of the application in writing within five business days and inform the borrower whether the application is complete and, if not, what information is needed to complete the application. The servicer is required to exercise reasonable diligence in obtaining documents and information to complete the application. However, if an incomplete package is received within 45 calendar days of a foreclosure sale, then the servicer is not required to follow up with the borrower to obtain missing documents.

The final rules require completed packages to be evaluated for all loss mitigation options available to the borrower within 30 calendar days. The CFPB believes³² that significant benefits will result from requiring that the borrower is considered for all loss mitigation options, including liquidation options such as short sale and deed in lieu, in a single process. The CFPB understands that borrowers may incur more significant burdens in the current market as evaluations occur sequentially over time and borrower documents and information must be continuously updated to make servicer documents and information current. The final rule is intended to eliminate the need for borrowers to submit multiple applications for consideration of different loss mitigation options.

In addition, the final rule includes a borrower appeal process. If a servicer receives a complete loss mitigation application 90 calendar days or more before a foreclosure sale or prior to when the loan is referred to foreclosure, a servicer shall permit a borrower to appeal the servicer's determination to deny a borrower's loss mitigation application for any trial or permanent loan modification program available to the borrower. The appeals process is limited to denials of loan modification options.

Evolution of final rules

This is an area that CFPB made substantial changes to from the proposed rules. The final rules are more prescriptive and adopt requirements that are already covered by existing standards from other servicing standards. In addition to the detailed provisions described in the section above, the final rules also covers the following areas:

- It defines a loss mitigation application to mean an oral or written request for a loss mitigation option that is accompanied by any information required by a servicer for evaluation for a loss mitigation option;
- A complete loss mitigation application is defined as an application for which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options, even where additional information may be required by a servicer that is not in the control of a borrower;

³² Page 483, available at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa-amendments.pdf

- A servicer’s offer of a non-home retention option may be conditional upon receipt of further information that is not in the borrower’s possession that is necessary to establish the parameters of a servicer’s offer. For example, a servicer complies with the requirement for evaluating the borrower for a short sale option if the servicer offers the borrower the opportunity to enter into a listing or marketing period agreement but indicates that specifics of an acceptable short sale transaction may be subject to further information obtained from an appraisal or title search; and
- A borrower will be able to have an appeal reviewed and receive the servicer’s decision regarding the appeal before a borrower will be required to accept any offer of a loss mitigation option. If an appeal is granted, the borrower will have 14 days to determine whether to accept the loss mitigation option offered as a result of the appeal or any other previous offer made. If an appeal is denied, the borrower will have 14 days to determine whether to accept an offer for another loss mitigation option previously offered.

Potential impact to servicers

The final rules prescribe specific definitions and the requirement to make an evaluation within 30 days against all loss mitigation options available to the borrower, which may be inconsistent with how servicers currently monitor their 30-day decision timelines. As a result, it is important to review existing loss mitigation procedures to ensure compliance.

Some other implementation areas to consider include:

- Some rules differ from other servicer standards. For example, under the CFPB rules, there is no concept of expedited loss mitigation evaluation for servicers as required under GSE and NMS guidelines; however, such evaluations are not barred by the final rules; therefore servicers may be required to comply with certain requirements that are more onerous than the regulations implemented by the CFPB. Therefore, a business decision may need to be made whether expedited reviews would be made available to non-GSE accounts for consistency and efficiency of business processes; and
- The referral to foreclosure process may need to be reviewed given the delay in first notice or filing required for a foreclosure process. Based on the definition of the CFPB rule for “first notice or filing,” these include, for example, a foreclosure complaint, a notice of default, a notice of election and demand, or any other notice that is required by applicable law in order to pursue acceleration of a mortgage loan obligation or sale of a property securing a mortgage loan obligation. This may further delay the referral to foreclosure process after 120 day delinquency restriction.

What can you do now?

In our previous publication on the CFPB proposed rules, we recommended four key actions that the servicer should consider taking to better position themselves for future CFPB scrutiny, and to influence the substance of the final rules. These were specifically:

- Develop an extensive approach – to understand operational process gaps, and create solutions to mitigate these gaps through IT system upgrades, policies and procedures reviews and enhancements, staffing and training etc.;
- Focus early on high-impact areas – focusing on the aspects of the proposed rules that are likely to require the greatest magnitude of change in the servicing system and processes;
- Demonstrate good faith – by taking action to proactively step towards compliance with the new regulations, this can develop good rapport with the CFPB in anticipation of future CFPB examinations; and
- Comment on the CFPB proposed rules.

For servicers that already analyzed the proposed rules, the critical action that should be considered here is to move into execution based on the identified business process gaps against the final rules.

For servicers that have yet to commence analyzing the potential impact on their business, it is important to focus on the following:

- Understanding the detailed requirements of the final rules will be critical to ensuring full compliance;
- Identifying other recent regulatory changes (such as California Homeowner Bill of Rights) to determine if there may be new processes implemented that satisfy the final rules;
- Reaching out to third-party vendors impacted by these changes, to conduct readiness assessment and work with these vendors to determine how changes can be implemented timely. Also, consider revising third-party vendor oversight programs to monitor compliance of these rules; and
- Assessing where the critical gaps are in existing business processes as early as possible will allow more time to implement the changes.

Focus early on high-impact areas

Servicers should consider focusing early on the aspects of the final rules that are likely to require the greatest magnitude of change in the servicing systems and processes, which may include one or more of the following areas described below.

Change	Impact		
	People	Process	Technology
<p>Dual Tracking- Holding/releasing foreclosure sale triggered by the four conditions set forth in the CFPB rules</p> <p><i>(High process and technology impact)</i></p>	<ul style="list-style-type: none"> • Train various departments (i.e., document reviewers, underwriters, appeal agents, etc.) on the triggers for holding/releasing • Train the pre-foreclosure/foreclosure department on managing and monitoring holds/releases 	<ul style="list-style-type: none"> • Adjust different business processes to trigger holds/releases based on the conditions • Develop appropriate controls and reporting to ensure pre-foreclosure and foreclosure holds and releases are being performed adequately and timely 	<ul style="list-style-type: none"> • Develop adequate system support and business triggers to be able to manage pre-foreclosure and foreclosure holds and releases throughout the entire process
<p>Interest-rate adjustment notice- Providing borrower's with an interest-rate adjustment notice</p> <p><i>(High process and technology impact)</i></p>	<ul style="list-style-type: none"> • Train current and new staff on updated processes and requirements, as necessary 	<ul style="list-style-type: none"> • Develop new forms or reformat existing forms to cover additional content requirements (such as an explanation of how the new rate and payment would be determined, including how the index may be adjusted, e.g. by the addition of a margin) 	<ul style="list-style-type: none"> • Require new or updated software to populate information required in the initial interest rate change notification, since the notification is required more than six months prior to first reset of interest rates
<p>Error Resolution & information request- Updating the complaints process to include timelines and additional borrower requests</p> <p><i>(High people and process impact)</i></p>	<ul style="list-style-type: none"> • Capacity analysis related to handling additional borrower requests • Train current and new staff on updated processes and requirements, as necessary 	<ul style="list-style-type: none"> • Establish robust SLAs, enhanced MIS system and reporting to monitor compliance with error resolution timeframes and borrower information requests 	<ul style="list-style-type: none"> • Develop new or update software and hardware in order to access the information required to address notices of error and inquiries

Change	Impact		
	<i>People</i>	<i>Process</i>	<i>Technology</i>
<p>Continuity of contact with delinquent borrowers (SPOC)- Assign personnel to be available to a delinquent borrower by the time a servicer provides such borrower with the written notice required in early intervention</p> <p><i>(High people and process impact)</i></p>	<ul style="list-style-type: none"> • May consider hiring additional staff to be available for borrowers who are 45 days delinquent to respond to inquiries, be available via telephone (among other requirements) • Train current and new staff on updated processes and requirements, as necessary 	<ul style="list-style-type: none"> • Develop a quality program such as call monitoring to ensure the personnel/SPOC is performing their duties as per the requirements. 	<ul style="list-style-type: none"> • Require new or updated software that is able to manage the SPOC process such as: workflow, workload, pipeline reporting, exception reporting, etc.
<p>Servicing files -</p> <ul style="list-style-type: none"> • Maintain adequate documents and information to enable a mortgage file compilation within five days • Content requirement including “any notes created by servicer personnel reflecting communications with borrowers about the mortgage loan account” and prescribed data fields <p><i>(High process and technology impact)</i></p>	<p>Given the solution is unlikely to be fully automated, the compilation of the servicing file will require training of staff to understand where the underlying source is stored</p>	<ul style="list-style-type: none"> • Develop a process to compile the required information for the servicing files • Design servicing file request tracker and monitor five day compliance timeline 	<ul style="list-style-type: none"> • Enhance system of record to ensure required information is easily accessible to meet the five day timeline

Conclusion

The CFPB has delivered final rules implementing new national servicing standards that apply under both TILA and the RESPA, as described above, and servicers are required to fully comply with those new standards by January 10, 2014.

Achieving full compliance in just under a year will be a challenge, particularly for servicers that were not part of the NMS or the consent orders and/or did not begin preparing in response to the proposed rules. That challenge will both be operational, as servicers work to align their servicing operations to compliance with the new requirements, as well as strategic, as servicers and investors consider the long-term impacts the new servicing standards may have on the validity of key assumptions underlying their business models.

Looking to the immediate term, based on the assistance we have provided to mortgage servicing companies in connection with the consent orders, the NMS and preliminary assessments against the CFPB proposed servicing rules, we believe that the firms that will be most successful in meeting these new requirements will be those that can most effectively leverage in-house, company specific expertise, for example, with support from external advisors with broad expertise in identifying gaps, and developing and implementing corrective actions. We find that firms achieve the most effective results when they combine their current strength in what they do well, with access to leading practices or methods that can enhance areas where challenges may be greatest and/or where the challenges may not be well addressed by their strengths.

For more information

PwC Consumer Finance contacts

Martin Touhey

Principal

martin.e.touhey@us.pwc.com

206 790 8751

Roberto Hernandez

Principal

roberto.g.hernandez@us.pwc.com

940 367 2386

Annie Liao

Senior Manager

annie.liao@us.pwc.com

646 256 1825

Maureen Magrann

Senior Manager

maureen.c.magrann@us.pwc.com

610 420 8746

PwC Regulatory contacts

Jeff Lavine

Partner

jeff.lavine@us.pwc.com

703 918 1379

Anthony Ricko

Managing Director

anthony.ricko@us.pwc.com

978 692 1701

Bruce Oliver

Director

bruce.oliver@us.pwc.com

703 918 6990

www.pwc.com/consumerfinance
www.pwcregulatory.com

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