

# ACI's 3rd Bank & Non-Bank Forum on Mortgage Servicing Compliance

November 20-21, 2014

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## Mortgage Servicing Transfers: Meeting the Operational and Regulatory Demands New Legal & Regulatory Framework

November 20, 2014

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Tweeting about this conference?

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# The “Old” Ways

- RESPA requirements for notice of servicing transfers, escrow handling
- TILA application of payments rules
- State laws
- Agency requirements
- Custom and practice – generally accepted servicing practices



# New Federal Framework for Servicers

- Dodd-Frank Act
- National Mortgage Settlement
- CFPB Regulations
- CFPB Guidance
- CFPB Exam Findings
- CFPB Enforcement Actions



# Dodd-Frank Act

- Title XIV Subtitle E - Mortgage Servicing
- Amendments to TILA & RESPA
- For mortgage servicing transfers -
  - No “direct” provisions in Title XIV
  - CFPB granted broad rulemaking authority
  - Section 6 of RESPA amended to add specific servicer prohibitions, including failure to comply with any other obligation imposed by the CFPB in its regulations



# National Mortgage Settlement

- Settlement Term Sheet: “Transfer of Servicing of Loans Pending Permanent Loan Modification”
- Requirements included:
  - Servicer must notify successor servicer of pending mods
  - Successor servicer must continue to process pending mods, including honoring trial and permanent mods agreements
  - Servicer as successor servicer must continue to process trial and permanent loan mod agreements entered into by transferor servicer



# CFPB at the Center

- CFPB: servicing transfers “highest” priority, shown in issuances & statements
  - Cooperation with other regulators in multi-agency settlements
  - Amended RESPA regulations
  - CFPB Guidance
  - Supervisory Highlights
  - CFPB enforcement actions
- Special focus: in-process loss mitigation activity



# CFPB Regulations (Reg X)

- **General Servicing Policies (1024.38)**

- 1024.38(b)(4): facilitating transfer of information during servicing transfers, including timely transfer of all information and documents in form and manner that ensures accuracy ; transferee servicer must identify documents or information that may not have been transferred and obtain from transferor
- 1024.38(c)(2) : servicer must maintain standard documents and data that can be compiled into a “servicing file” within 5 business days; presumably this means that transferor servicer can and will provide at least this document and data set for each loan upon servicing transfer



# CFPB Regs (Reg X) cont'd

- Mortgage servicing transfers (§33 )
  - Req'd servicing disclosure to w/in 3 days of application
  - Notice of ST – 15 (rather than 30) days of transfer (Appendix MS-2 Model Form)
  - For 60 days from effective date of transfer, if transferor receives payment on or before due date, payment may not be treated as late “for any purpose”
  - If on or after ED of transfer, t'or servicer receives payment, t'or servicer must transfer payment to t'ee servicer & applied to borrower's mortgage OR return payment to borrower with notification of proper recipient
  - Federal preemption for transfer notices, but if state requires addt'l notices, may be added to federal form





# CFPB Guidance

- Compliance Bulletin & Policy Guidance – M.S. Transfers [ 79 Fed. Reg. 63295, October 23, 2014]
  - Replaced CFPB Mortgage Servicing Bulletin 2013-1
  - “CFPB advises mortgage servicers that its examiners will be carefully reviewing servicers’ compliance with Federal consumer financial services laws applicable to servicing transfers.” – including TILA, RESPA, FDCPA, FCRA **and** UDAAP
  - Two Sections: A. “General Transfer-Related Policies and Procedures” and B. “Applicability of New Servicing Rules to Transfers” – sections actually overlap
  - CFPB is **very specific**, down to the most granular details of transaction management and execution pre- and post-transfer



# CFPB Guidance – cont'd

- Section A. General P's & P's includes:
  - Development of tailored transfers instructions specific to each deal and conducting meetings, well in advance of servicing transfer date
  - Use of specifically tailored testing protocols to evaluate data transfer compatibility and data mapping
  - Consideration of transfers that cannot be accomplished in single batch and implementing “alternative protocols”
  - Consideration of post-transfer processes for data validation and corrective measures, including regular contact between transferor and transferee post-transfer



# CFPB Guidance – cont'd

- Section A. also covers enhanced transferor & transferee processes & responsibilities to identify, flag & track in-flight mods
  - Examples include requiring data & documentation for in-flight mods to be transferred pre-boarding, transferee servicer attempting to obtain borrower-specific info from transferor before reaching out to borrower, transferee avoiding borrower re-submission requirements, etc.
  - NOYE: CFPB's expectations apply to both transferors **and** transferees, so both have enhanced duties and CFPB expects close cooperation and shared responsibilities



# CFPB Guidance – cont'd

- Section B. covers other parts of new servicing rules, including:
  - Error resolution procedures
  - Force-place insurance
  - Early intervention
  - Continuity of contact
  - Loss mitigation
- Emphasis on transferee compliance, e.g., honoring timeframes for loss mit



# Other Points from Guidance

- As with previous Guidance, CFPB will, in certain cases, require servicers to submit servicing transfer plans to CFPB examination staff
- CFPB reminder: conduct that does not violate regulations still may be UDAAP – compliance alone is not enough



# CFPB Examination Findings

- CFPB issues quarterly “Supervisory Highlights,” describing common exam findings and required remediation
- Mortgage servicing a common refrain:
  - Summer 2013, included servicing transfers
  - Winter 2013, covered mortgage servicing, including unfair practices in servicing transfers
  - Fall 2014, mortgage servicing again, including new mortgage servicing rules



# CFPB Enforcement Actions

- CFPB has authority to take administrative or court action v. “covered persons” & “service providers” to “covered persons”
- Residential mortgage servicers are considered “covered persons” per Dodd-Frank Title X



# CFPB Enforcement – cont'd

- CFPB empowered to enforce compliance with enumerated laws & regulations (TILA/Reg Z, RESPA/Reg X, FDCPA, FCRA, etc.)
- AND for acts or practices that are “unfair, deceptive or abusive”
- BUT compliance with laws & regs ≠ immunity from UDAAP claims





# Recent Case

- In Re: Flagstar Bank, Consent Order dated September 29, 2014
- Consent Order covered default servicing practices of bank
- Strongly-worded allegations
  - Servicer “impeded access to loss mitigation at every stage of the process”; “deprived borrowers of the ability to make an informed choice about how to save or dispose of the home”
  - **BUT NOTE: servicer did not admit allegations or violations**



# Recent Case – cont'd

- CFPB allegations 5-fold, with only last set of allegations under new rules
- Failure to timely review loss mit apps
  - Servicer primarily engaged in third party servicing
  - Investor loss mitigation programs created responsibility on servicer to follow investor rules
  - From 2011 to 2013, servicer engaged a special default subservicer
  - Up to 9 mos delays in evaluating loss mit applications, due to combination of foreclosure crisis and inadequate resources
  - Servicer failed to decision loss mit applications prior to f/c referral
  - Harm to borrowers who “fell out” of loss mit consideration as a result of unfair acts and practices prohibited by Title X



# Recent Case – cont'd

- Second, withholding info that borrowers needed to complete loss mit apps
  - Servicer did not review loss mit apps and failed to follow up with borrowers to obtain addt'l needed information, in part due to print vendor error – missing document letters did not go out on time or in some instances not at all
  - Acts or practices deprived borrowers of ability to make informed choices, causing f/c's, short sales or bankruptcy
  - Such acts and practices constituted unfair acts and practices in violation of Title X UDDAP rule



# Recent Case – cont'd

- Third, improper denial of borrower loan mod requests
  - Based on failure of servicer to have in place a “systematized, controlled process for calculating borrower income”
  - Servicer regularly denied loan mods to qualified borrowers by “regularly and frequently miscalculating borrower income”
  - Again, servicer alleged to have engaged in unfair acts and practices, but not to have violated a specific law or regulation



# Recent Case – cont'd

- Fourth, improper prolonging of trial periods for loan mods
  - Servicer was responsible, under investor guidelines, to convert TPP's to permanent mods based on timely payments
  - Servicer prolonged TPP's beyond investor guidelines “for a substantial number of borrowers”
  - Such acts and practices constituted unfair acts and practices in violation of Title X UDDAP rule (but not specific law or regulation)
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# Recent Case – cont'd

- Violations of new mortgage servicing rules
- Specifically, §1024.41, loss mitigation rule
- Described acts and practices were unlawful as not in conformity with CFPB rule etc.



# Remedies in the Case

- Consent Order established following remedies:
  - Injunction v. violating consumer financial protection laws
  - Prohibition on acquiring servicing rights for any third party loan that is in default
  - Detailed “Home Retention Plan”
  - Third party compliance review and compliance plan (with Board of Directors oversight)
  - Damages of \$27,500,000 to CFPB, to be used primarily as monetary relief to foreclosed customers
  - Civil money penalty of \$10,000,000 to CFPB
  - Ongoing CFPB monitoring and reporting

