

# NAR Issue Brief

## The CFPB's Mortgage Servicing Rules

The Consumer Financial Protection Bureau (CFPB) issued final rules governing mortgage servicing on January 17, 2013, pursuant to the Real Estate Settlement Procedures Act (RESPA)<sup>1</sup> and the Truth in Lending Act (TILA)<sup>2</sup>. The rules take effect on January 10, 2014.

- The RESPA rule implements changes made by the Dodd-Frank Wall Street Reform and Consumer Protection Act to address servicer obligations to correct errors and protect borrowers in connection with force-placed insurance. The rule also requires servicers to establish reasonable policies and procedures governing servicing, to inform and work with borrowers on their mortgage loss mitigation options, to give delinquent borrowers continuity of contact with personnel of the servicer, and to evaluate borrower applications for loss mitigation.
- The TILA rule implements Dodd-Frank Act changes governing notices of initial interest rate adjustments for adjustable rate mortgages (ARMS), prompt crediting of mortgage payments, and deadlines for providing payoff amounts upon request.

While all of these changes are important to servicers, homebuyers, and homeowners, the following have been of particular concern to REALTORS®.

### **Payoff Statements (TILA, section 1026.36(c)(3)).**

Servicers must provide accurate payoff statements to a consumer within seven business days of a written request (with limited exceptions allowing an unspecified “reasonable time” for exceptional situations). In its comment on the proposed rule, NAR strongly supported imposing such a firm deadline on the release of payoff statements to facilitate closings.

### **Periodic Statements for Residential Mortgage Loans (TILA, section 1026.41).**

Servicers must provide a periodic statement for each billing cycle providing information on the amount of the payment due, the deadline for the payment, fees, application of past payments, contact information, current balance and rate (and date of upcoming rate adjustments, where applicable), and other information, in accordance with the timing and format the rule requires. Servicers that provide coupon books containing required information are exempt, as are small servicers.<sup>3</sup> NAR supported the exemption for small servicers, especially seller financiers who typically provide financing for only one or a few properties and for whom monthly statements containing such extensive information would be an undue burden.

### **Force-Placed Insurance (RESPA, section 1024.37).**

A servicer may not charge a borrower for force-placed insurance unless it has a reasonable basis to believe the borrower has failed to maintain required homeowners insurance and it has given the borrower required notices. The servicer must send the borrower an initial notice at least 45 days

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<sup>1</sup> RESPA, Regulation X, 12 CFR Part 1024.

<sup>2</sup> TILA, Regulation Z, 12 CFR Part 1026.

<sup>3</sup> Small servicers are those that service 5,000 or fewer loans that they or an affiliate originated or own.

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before charging the borrower for force-placed insurance and a reminder notice at least 15 days before charging the borrower (but no earlier than 30 days after the first notice). If the borrower provides proof of insurance coverage, the servicer must cancel any force-placed insurance and refund any premiums for overlapping periods. Where the borrower has an escrow account for the payment of insurance premiums, the servicer may not obtain force-placed insurance if the servicer is able to continue the borrower's regular homeowner insurance, even if the servicer needs to advance funds to the escrow account to pay the premium. Small servicers are exempt from the requirement to advance funds to an escrow account if any force-placed insurance is less expensive than the amount of any disbursement the servicer would have made to maintain the borrower's regular homeowner insurance.

NAR warned CFPB about abuses involving force-placed insurance and urged it to adopt reforms to prevent unreasonable costs on borrowers that increase the risk of foreclosure with its negative impacts on the family as well as the entire community.

### **Early Intervention with Delinquent Borrowers (RESPA, section 1024.39).**

Servicers must make a good faith effort to establish a live contact with delinquent borrowers by the 36<sup>th</sup> day of the delinquency. A live contact means a conversation on the telephone or in person. Where a live contact is made, the servicer must inform the delinquent borrower, at least in general, that loss mitigation options may be available. In addition, the servicer must give the delinquent borrower a written notice by the 45<sup>th</sup> day of the delinquency, providing more details about any loss mitigation options. Small servicers are exempt. NAR strongly supported requiring early intervention by servicers in the case of delinquencies. While NAR sought a 30-day deadline, the final rule adopts a 36-day deadline, giving servicers more flexibility.

### **Continuity of Contact with Delinquent Borrowers (RESPA, section 1024.40).**

Servicers must adopt reasonable policies and procedures for providing delinquent borrowers access to personnel (an individual or a team) to help them with loss mitigation options, where applicable. Personnel should be assigned by the 45<sup>th</sup> day of the delinquency (or the date of written notice discussed above in connection with the early intervention requirements, if earlier). Borrowers must be able to contact personnel by phone. Small servicers are exempt. NAR has long urged the industry to adopt single point of contact policies and strongly supported this requirement.

### **Loss Mitigation Procedures and Limits on Dual Tracking (RESPA, section 1024.41).**

Servicers are required to comply with new loss mitigation procedures for loans secured by a borrower's principal residence. If the servicer receives a complete loss mitigation application more than 37 days before a scheduled foreclosure sale, the servicer must evaluate the borrower within 30 days for all loss mitigation options available, including loan modifications and short sales. A borrower may appeal a denial of a loan modification only if the complete application was received 90 days or more before a scheduled foreclosure.

The rule restricts so-called dual tracking, where the foreclosure and loss mitigation processes proceed simultaneously on parallel tracks. A servicer may not make the first notice or filing for a foreclosure process until the loan is more than 120 days delinquent. Even if the loan is more than 120 days delinquent, if a borrower submits a complete application before the servicer makes the first

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notice or filing for foreclosure, the servicer may not start the foreclosure process unless: (1) the servicer informs the borrower the borrower is not eligible for any loss mitigation option and any appeal has been exhausted, (2) the borrower rejects all loss mitigation offers, or (3) a borrower fails to comply with the terms of a loss mitigation option, such as a trial modification. In addition, if the borrower submits a complete application for a loss mitigation option after the servicer has initiated the foreclosure process but more than 37 days before a foreclosure sale, the servicer may not move for a foreclosure judgment or order of sale, or conduct a foreclosure sale, until meeting one of the specified three conditions. Small servicers are required to comply only with two requirements: (1) a small servicer may not make the first foreclosure notice or filing unless the borrower is more than 120 days delinquent, and (2) a small servicer may not proceed to foreclosure judgment or order of sale, or conduct a foreclosure sale, if the borrower is performing under the terms of a loss mitigation agreement.

NAR welcomed rules to standardize loss mitigation requirements and deadlines. It also urged CFPB to minimize dual tracking to avoid the situation where a foreclosure intervenes to cut off the possibility of a nearly final loan modification or short sale.