SUMMARY OF PROPOSED MORTGAGE SERVICING RULES

The Consumer Financial Protection Bureau (CFPB) invites the public to comment on proposed mortgage servicing rules by October 9, 2012. These proposals are designed to protect consumers from wrongful actions by mortgage servicers and to provide consumers with better tools and information when dealing with mortgage servicers.

About The Proposed Rules

The proposed rules cover nine major topics and implement Dodd-Frank Act provisions that relate to mortgage servicing. The CFPB plans to finalize the rules by January 2013. Comments may be submitted at www.regulations.gov. In addition, the Cornell University e-Rulemaking Initiative (CeRI) and the CFPB are working together to create an online environment for people and groups to learn about, discuss, and react to the proposed mortgage servicing rules. Please visit and participate in this project at www.regulationroom.org. Your comments on the site will not become formal public comments on the CFPB's docket, but the CFPB expects comments on Regulation Room will be incorporated into a formal public report which will be prepared by CeRI and submitted as a comment. The CFPB will use these comments as it prepares to finalize the rules.

Background

Even before the financial crisis, significant parts of the servicing industry had experienced problems with bad practices and sloppy recordkeeping. As the number of distressed borrowers skyrocketed, those deficiencies inflicted substantial harm on increasing numbers of borrowers.

The Dodd-Frank Wall Street Reform and Consumer Protection Act imposed new requirements on servicers and gave the CFPB the authority to help fix the market by writing

additional rules. The CFPB is exercising that authority to address a lack of transparency and accountability in key parts of the market.

The CFPB is also proposing to create some exceptions and other adjustments to the proposals for small servicers. These exceptions and adjustments should help reduce burdens for small servicers that have strong consumer service safeguards already built into their business models. The Bureau also seeks comment on whether the proposed exceptions should extend to other requirements.

Summary of Proposed Rules

The proposals cover nine major topics, summarized below. More details can be found in the proposed rules, which are split into two notices issued under the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA), respectively. The CFPB plans to finalize the rules by January 2013.

(1) Periodic billing statements (TILA proposal): The Dodd-Frank Act generally mandates that servicers of closed-end residential mortgage loans (other than reverse mortgages) must send a periodic statement for each billing cycle. These statements must meet the timing, form, and content requirements provided for in the rule. The proposal contains sample forms that servicers could use. The periodic statement requirement generally would not apply for fixed-rate loans if the servicer provides a coupon book, so long as the coupon book contains certain information specified in the rule and certain other information is made available to the consumer. The proposal also includes an exception for small servicers that service 1000 or fewer mortgage loans and service only mortgage loans that they originated or own.

(2) Adjustable-rate mortgage interest-rate adjustment notices (TILA proposal): Servicers would have to provide a consumer whose mortgage has an adjustable rate with a notice 60 to 120

days before an adjustment which causes the payment to change. The servicer would also have to provide an earlier notice 210 to 240 days prior to the first rate adjustment. This first notice may contain an estimate of the rate and payment change. Other than this initial notice, servicers would no longer be required to provide an annual notice if a rate adjustment does not result in an increase in the monthly payment. The proposal contains model and sample forms that servicers could use.

(3) Prompt payment crediting and payoff payments (TILA proposal): As required by the Dodd-Frank Act, servicers must promptly credit payments from borrowers, generally on the day of receipt. If a servicer receives a payment that is less than a full contractual payment, the payment may be held in a suspense account. When the amount in the suspense account covers a full installment of principal, interest, and escrow (if applicable), the proposal would require the servicer to apply the funds to the oldest outstanding payment owed. A servicer also would be required to send 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.

(4) Force-placed insurance (RESPA proposal): As required by the Dodd-Frank Act, servicers would not be permitted to charge a borrower for force-placed insurance coverage unless the servicer has a reasonable basis to believe the borrower has failed to maintain hazard insurance and has provided required notices. One notice to the borrower would be required at least 45 days before charging for forced-place insurance coverage, and a second notice would be required no earlier than 30 days after the first notice. The proposal contains model forms that servicers could use. If a borrower provides proof of hazard insurance coverage, then the servicer would be required to cancel any force-placed insurance policy and refund any premiums paid for periods in which the borrower's policy was in place. In addition, if a servicer makes payments

for hazard insurance from a borrower's escrow account, a servicer would be required to continue those payments rather than force-placing a separate policy, even if there is insufficient money in the escrow account. The rule would also provide that charges related to forced place insurance (other than those subject to State regulation as the business of insurance or authorized by federal law for flood insurance) must relate to a service that was actually performed. Additionally, such charges would have to bear a reasonable relationship to the servicer's cost of providing the service.

(5) Error resolution and information requests (RESPA proposal): Pursuant to the Dodd-Frank Act, servicers would be required to meet certain procedural requirements for responding to information requests or complaints of errors. The proposal defines specific types of claims which constitute an error, such as a claim that the servicer misapplied a payment or assessed an improper fee. A borrower could assert an error either orally or in writing. Servicers could designate a specific phone number and address for borrowers to use. Servicers would be required to acknowledge the request or complaint within five days. The would have to correct or respond to the borrower with the results of the investigation, generally within 30 to 45 days. Further, servicers generally would be required to acknowledge borrower requests for information and either provide the information or explain why the information is not available within a similar amount of time. A servicer would not be required to delay a scheduled foreclosure sale to consider a notice of error unless the error relates to the servicer's improperly proceeding with a foreclosure sale during a borrower's evaluation for alternatives to foreclosure.

(6) Information management policies and procedures (RESPA proposal): Servicers would be required to establish reasonable information management policies and procedures. The reasonableness of a servicer's policies and procedures would take into account the servicer's

size, scope, and nature of its operations. A servicer's policies and procedures would satisfy the rule if the servicer regularly achieves the document retention and servicing file requirements, as well as certain objectives specified in the rule. Examples of such objectives include providing accurate and timely information to borrowers and the courts or enabling service personnel to have prompt access to documents and information submitted in connection with loss mitigation applications. In addition, a servicer must retain records relating to each mortgage until one year after the mortgage is discharged or servicing is transferred and must create a mortgage servicing file for each loan containing certain specified documents and information.

(7) Early intervention with delinquent borrowers (RESPA proposal): Servicers would be required to make good faith efforts to notify delinquent borrowers of loss mitigation options. If a borrower is 30 days late, the proposal would require servicers to make a good faith effort to notify the borrower orally and to let the borrower know that loss mitigations options may be available. If the borrower is 40 days late, the servicer would be required to provide the borrower with a written notice with certain specific information, including examples of loss mitigation options available, if applicable, and information on how to obtain more information about loss mitigation options. The notice would also provide information to the borrower about the foreclosure process. The rule contains model language servicers could use for these notices.

(8) Continuity of contact with delinquent borrowers (RESPA proposal): Servicers would be required to provide delinquent borrowers with access to personnel to assist them with loss mitigation options where applicable. The proposal would require servicers to assign dedicated contact personnel for a borrower no later than five days after providing the early intervention notice. Servicers would be required to establish reasonable policies and procedures designed to ensure that the servicer personnel perform certain specified functions where applicable, such as

access the borrower's records and provide the borrower with information about how and when to apply for a loss mitigation option and about the status of the application.

(9) Loss mitigation procedures (RESPA proposal): Servicers that offer loss mitigation options to borrowers would be required to implement procedures to ensure that complete loss mitigation applications are reasonably evaluated before proceeding with a scheduled foreclosure sale. The proposal would require servicers to exercise reasonable diligence to secure information or documents required to make an incomplete loss mitigation application complete. In certain circumstances, this could include notifying the borrower within five days of receiving an incomplete application. Within 30 days of receiving a borrower's complete application, the servicer would be required to evaluate the borrower for all available options, and, if the denial pertains to a requested loan modification, notify the borrower of the reasons for the servicer's decision, and provide the borrower with at least a 14-day period within which to appeal the decision.

The proposal would require that appeals be decided within 30 days by different personnel than those responsible for the initial decision. A servicer that receives a complete application for a loss mitigation option could not proceed with a foreclosure sale unless (i) the servicer had denied the borrower's application and the time for any appeal had expired; (ii) the servicer had offered a loss mitigation option which the borrower declined or failed to accept within 14 days of the offer; or (iii) the borrower failed to comply with the terms of a loss mitigation agreement. The proposal would require that deadlines for submitting an application for a loss mitigation option be no earlier than 90 days before a scheduled foreclosure sale.

Implementation

The CFPB plans to finalize the rules by January 2013. The Bureau generally believes that the final rules should be made effective as soon as possible, and the Dodd-Frank Act in some cases provides no more than 12 months for implementation. However, the Bureau understands that the final rules will require revisions to software, staff training, and other changes. Some companies may also need to implement other new requirements under other parts of the Dodd-Frank Act. The Bureau requests comments about how long to provide for implementation.