

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

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Error Resolution, Information Requests and Direct Access/Continuity of Contact with Servicer Personnel

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Tweeting about this conference?

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Overview of Dodd-Frank Act Amendments to RESPA

- Shortened response times for QWR process.
- Added new obligations on servicers to take timely action to “correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure or other standard servicer’s duties.”
- Also requires servicers to provide information regarding the owner or assignee of the loan.



Final Mortgage Servicing Rules

- CFPB recognized the competing obligations imposed by the QWR procedures, the new Dodd-Frank requirements and other requirements.
- Attempted to create a unified requirement for servicers to respond to errors and information requests provided by borrowers, without regard to whether the request constitutes a QWR.



Final Mortgage Servicing Rules

- QWRs become just one type of notice of error or information request.
- No benefit to borrower to submit QWR versus other notice of error or information request.
- Same response requirements.
- Same penalty provisions for non-compliance.
- Proposed Rule would have allowed notices of error and information request to be made orally or *in writing*.
- Final Rule rejected that approach (thankfully!)



Final Mortgage Servicing Rules

- Notices of error must be in writing
 1. Identify name of borrower,
 2. Information to identify mortgage loan account, and
 3. The error the borrower believes has occurred.
- Not on lender-supplied payment coupon
- List of covered errors



Covered “Errors”

- (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 as of the date of receipt** that results in a charge or reporting negative information to a consumer reporting agency.

NOTE: If a servicer accepts a payment that does not conform to the specified written requirements, the servicer must credit the payment as of **5 days after receipt**. 12 C.F.R. 1026.36(c).



Covered “Errors”

- (8) Failure to **accurately and timely transfer 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 in violation of § 1024.41(f) or (j).
- (10) Moving for foreclosure judgment or order of sale or conducting a foreclosure sale in violation of § 1024.41(g) or (j).
- (11) **Any other error** relating to the servicing of a borrower’s mortgage loan.



Notices of Error: Timeframes for Responses

- General Timelines
 - 5 business days to acknowledge receipt.
 - 7 business days to provide payoff amount.
 - 30 business days to respond to other errors.
 - Potential 15 day extension.
 - During the 30 day period, the servicer must investigate the error identified by the borrower.



Notices of Error: Required Response

- The servicer must respond to a notice of error by either:
 - (A) **Correcting the error** with notification of the correction, the date of the correction, and contact information for further assistance; or
 - (B) Providing the borrower with a notification that includes a statement that the **servicer determined that no error occurred**, the reason(s) for this determination, the borrower's right to request documents relied upon by the servicer in reaching its determination and how to request such documents, and contact information for further assistance.



Notices of Error: Other Errors

- If during a reasonable investigation of a notice of error, a servicer concludes that errors occurred other than, or in addition to, the error(s) alleged by the borrower, the servicer must correct the error(s) and provide the borrower with a notification that describes the error(s) the servicer identified, the action taken to correct the error(s), the applicable date for the correction, and contact information for further assistance.



Notices of Error: Supporting Documentation

- A servicer may request supporting documentation from a borrower, but **may not**:
 - (i) Require a borrower to provide such information as a condition of investigating the alleged error; or
 - (ii) Determine that no error occurred because the borrower failed to provide any requested information without conducting a reasonable investigation.



Notices of Error: Documentation

- Upon request from the borrower, the servicer must provide (at no charge) copies of all documents and information relied upon by the servicer in making its determination within 15 business days.



Notices of Error: Exceptions

- A servicer is not required to acknowledge or respond to a notice of error if:

- 1. Error asserted 7 or fewer days before a foreclosure sale –**

Instead, the servicer may make a good faith attempt to respond to the borrower, orally or in writing, and either correct the error or state the reason the servicer has determined that no error has occurred.

- CFPB explained that this limited exception reduces “the procedural requirements for servicers to follow for such notices [and] mitigates the concern that borrowers may use error resolution procedures to impede foreclosure, while maintaining protection for consumers.”
- “Good faith attempt” is not defined.



Notices of Error: Exceptions

- A servicer is not required to acknowledge or respond to a notice of error if:
 2. **Duplicative errors** – An asserted error is **substantially the same** as an error previously asserted by the borrower for which the servicer has previously complied, unless the borrower provides new and material information to support the asserted error.
 - New and material information means **information that was not reviewed** by the servicer in connection with investigating a prior notice of error and is **reasonably likely to change a servicer's prior determination** about the error.



Notices of Error: Exceptions

- A servicer is not required to acknowledge or respond to a notice of error if:
 3. **Overbroad notice of error** –
 - Does not allow the servicer to **reasonably determine** the specific alleged covered error.
 - The servicer is still required to acknowledge and respond to a valid assertion of an error in a submission that is otherwise overbroad or unduly burdensome.



Notices of Error: Exceptions and Credit Reporting

- If the servicer determines it is not required to comply with the requirements, the servicer must notify the borrower of its determination in writing not later than 5 business days after making the determination.
- In all instances, servicers are prohibited from furnishing adverse information to consumer reporting agencies regarding any payment that is the subject of a notice of error for 60 days.



Requests for Information

- Requests for information are treated the same as notices of error.
- Must provide the identify of and address of the owner or assignee of the mortgage loan within **10 business days** after the request.
- Otherwise, the **5 business day** acknowledgment and **30 business day** response requirements apply.



Requests for Information: Exceptions

- Servicers are not required to respond to requests for information the request fall into any of these categories:
 1. **Duplicative information** – Request is **substantially the same** as information previously requested by the borrower for which the servicer has previously provided.
 2. **Confidential, proprietary, or general corporate information** – The borrower requests confidential, proprietary, or general corporate information.
 3. **Irrelevant information** – The request is not directly related to the borrower's mortgage loan account.



Requests for Information: Exceptions

- Servicers are not required to respond to requests for information the request fall into any of these categories
 4. **Overbroad or unduly burdensome information request**
 - Requests an **unreasonable volume** of documents or information. An information request is unduly burdensome is a diligent servicer could not respond without either **exceeding the maximum time limit or incurring costs (or dedicating resources)** that would be unreasonable in light of the circumstances.



Requests for Information: Exceptions

- Servicers are not required to respond to requests for information the request fall into any of these categories:

5. **Untimely information request** – More than one year after:

(A) Servicing for the mortgage loan that is the subject of the information request was transferred from the servicer receiving the request for information to a transferee servicer; or

(B) The mortgage loan is discharged.



Requests for Information: Exceptions

- Just like with notices of error, if the servicer determines it is not required to comply with these requirements, the servicer must notify the borrower of its determination in writing not later than 5 business days after making the determination.



Notices of Error and Requests for Information: Addresses

- Allows servicers to establish an address that the borrower must use to submit a notice of error or request for information.
- Similar to current QWR procedure.
- Original rule created confusion about disclosure of the exclusive address for notices of error and information requests.



Notices of Error and Requests for Information: Addresses

- If a servicer establishes an address that a borrower must use to assert an error or to request information, a **servicer must provide that address to the borrower in the following contexts:**
 - The written notice designating the specific address, required pursuant to § 1024.35(c) and § 1024.36(b).
 - Any periodic statement or coupon book required pursuant to § 1026.41.
 - Any website the servicer maintains in connection with the servicing of the loan.
 - Any notice required pursuant to §§ 1024.39 (early intervention) or 1024.41 (loss mitigation) that includes contact information.



Notices of Error and Requests for Information: Addresses

- If a borrower incorrectly submits an assertion of an error to the address for loss mitigation applications or to the continuity of contact, the servicer must **inform the borrower of the procedures for submitting written notices of error**, including the correct address.
- Or the servicer could **redirect** such notices to the correct address.



Notices of Error and Requests for Information: FDCPA Issues

- CFPB issued Bulletin 2013-12
 - deceased borrowers
 - communication with borrowers under the Early Intervention Rule
 - obligation to provide notices/communications to borrowers who exercised cease communications rights under the FDCPA



Notices of Error and Requests for Information: FDCPA Issues

- Bulletin 2013-12 – **Advisory Opinion – Safe Harbor**
 - “The CFPB concludes that the FDCPA “cease communication” option does not generally make servicers that are debt collectors liable under the FDCPA if they comply with certain provisions of **Regulation X (12 CFR 1024.35 (error resolution), 1024.26 (requests for information), 1024.37 (force-placed insurance), and 1024.41 (loss mitigation) and Regulation Z (12 CFR 1026.20(d) (adjustable-rate mortgage (ARM) initial rate adjustment) and 1026.41 (periodic statement)).**”
 - Servicer that provide disclosures to communicate with borrower under these provisions **are not liable under the FDCPA**



Challenges and Practical Issues

- Understanding what constitutes a notice of error or information request.
 - Notices/Requests received during litigation.
 - Notices/Requests received by or from counsel.



Challenges and Practical Issues

- Determining which errors are “covered errors” and which are included in the catch-all provision.
 - Are there any bounds?
 - What are you comfortable excluding?



Challenges and Practical Issues

- Implementing and maintaining reasonable procedures to verify information and correct mistakes.
 - What is “*reasonable*”?
 - A *reasonable* investigation.
 - A *reasonable* determination.
 - *Wilson v. Bank of America*, 2014 WL 4744555 (E.D. Pa. Sept. 24, 2014).



Challenges and Practical Issues

- Knowing the proper response time for acknowledgement of receipt of error or information request.
 - What processes help ensure you satisfy the short timelines?
 - What is your process for invoking the additional 15 days?



Challenges and Practical Issues

- Knowing the requirements to complete and settle an investigation.
 - How do you handle situations in which the borrower disputes your determination?
 - What happens when you receive a complaint related to the determination?



Challenges and Practical Issues

- Determining what the response to the borrower needs to include.
 - How do you balance the use of templates with free form text?
 - What controls are effective in managing responses?



Challenges and Practical Issues

- Understanding what factors determine if the notice of error or information request is not applicable, duplicative, overbroad, or untimely.
 - What internal guidance do you use to make these decisions?
 - What does the training include?



Challenges and Practical Issues

- Can the servicer charge any fees for information requests?
 - Expedited responses?
 - Duplicate requests?



Continuity of Contact

- Rule is meant to correct documented customer service problems.
- Small servicers are exempt.



Continuity of Contact

- Servicers must design policies and procedures that:
 - Assign personnel to delinquent customers by the **45th day of the consumers' delinquency**, or first contact;
 - Allow consumers to reach the assigned personnel by phone and such personnel can respond to consumer inquiries about loss mitigation;
 - Ensure personnel can retrieve, in a timely manner, the complete record of the consumer's payment history and all other information necessary for the loss mitigation app.;
 - Ensure that personnel can provide a timely live response to consumers who call and leave a message.



Continuity of Contact

- Single Point of Contact?
 - Up to the servicer whether to assign a single person or a team of personnel to respond to a delinquent consumer.
 - Personnel may be single purpose or multi-purpose personnel.
 - Can have experience with bankruptcy.
 - Personnel must be made available until consumers have made 2 consecutive on time payments.



Challenges and Practical Issues

- Implementing and maintaining the best system, policies and procedures to effectively ensure direct access and continuity of contact.



Challenges and Practical Issues

- What happens when the consumer re-defaults after he made 2 consecutive on time payments?
 - How do you track this?

