

Enter, Stage Left:

The CFPB Ushers Mortgage Servicing Compliance Into Its Next Act

The wheel is come full circle, I am here.

—Edmund, “King Lear,” Act V, Scene 3

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While the events of 2020 were worthy of a Shakespearian drama, it seems the mortgage industry may have only seen Act I, as 2021 has brought with it fresh challenges on the regulatory front.

Chief among these is the Consumer Financial Protection Bureau’s (CFPB) April 1 bulletin¹, warning mortgage servicers that it would begin increasing its scrutiny of servicer’s handling of forbearance requests and loss-mitigation efforts after those forbearances expire.

Not since 2012 have servicers faced the white-hot glare of regulatory oversight to this degree.

However, as cyclicity is a hallmark of the mortgage industry, the fact that regulatory focus has once again turned to servicing should surprise no one, especially given the looming fears of a foreclosure crisis.

Even though most credit unions with less than \$10 million in assets fall into the CFPB’s “small servicer” category because they service 5,000 or fewer mortgages and, therefore, are not subject to bureau supervisory authority, these organizations should still be cognizant of CFPB directives and guidelines.

Furthermore, where the CFPB leads, other state and federal regulators, including the National Credit Union Administration (NCUA), often follow. Thus, it is critical for credit union mortgage servicers—even those that do not fall directly under the CFPB’s purview—to pay close attention to the bureau’s signals and shore up their servicing quality control (QC) protocols to ensure their policies, procedures, and customer service pass muster with even the most stringent of regulatory exams.

To understand the CFPB’s current

attitude, one only needs to look back at the bureau’s origins. Born out of the regulatory correction (or over-correction, depending on your point of view), the CFPB’s mandate from Day No. 1 has been one of enforcing a “do no harm” standard among financial institutions in their interactions and extension of credit and other services to consumers.

NEW FORECLOSURE CRISIS?

One of the first issues with which the newly-formed bureau was tasked with addressing was the fallout from the foreclosure crisis, which ultimately led to the addition of the Mortgage Servicing Rules under Regulation X.²

Flashing forward to the current market, the CFPB’s concerns that the mortgage industry could be facing a similar crisis are not unfounded. Lots of consumers took advantage of easy access and streamlined mortgage relief, specifically forbearance, provided for under the CARES Act in response to the pandemic—many who truly needed it and some that, perhaps, did not.

With these forbearance periods coming to an end, there are inevitably going

to be consumers who understandably are not able to bring their mortgage current with a year's worth of payments having been forbore, which means mortgage servicers will need to engage in loss mitigation processes and options with these borrowers. As such, phrases that the industry hasn't heard in several years, like "single point of contact" and "dual pathing" among others, are going to come back into the industry lexicon in full force.

Given the nature of options and time frames that servicers are required to extend to borrowers, the loss mitigation process can take several months. If the servicer is ultimately unable to extend an alternate repayment option to the borrower, then the process may ultimately move from loss mitigation to foreclosure, with its own required timelines, and potential fees.

Hence, the CFPB is putting servicers on notice that the Mortgage Servicing Rules still apply and that they should be doing everything in their power to work with borrowers exiting forbearance.

FORBEARANCE BEHAVIOR

The servicing bulletin is not the only directive the CFPB gave servicers about its future supervisory priorities. In addition to scrutinizing how servicers are currently working with distressed borrowers, the bureau will also be taking a closer look at servicers' behavior and activities in extending those forbearances in the first place, as well as the loss mitigation efforts extended to borrowers that have already exited forbearance.

For many, this may seem like being judged on something after the fact. While that is not totally inaccurate, servicers also need not resign themselves to the CFPB's fury if their past behavior is found wanting. Self-identification and self-correction go a long way with all regulatory examiners.

Therefore, even for those credit union mortgage servicers that fall below the CFPB's \$10 million-asset limit for regulatory examination, some self-reflection and proactive course correction will go a long way with the NCUA, state regulators and any other supervisory agency that comes knocking.

First off, credit union servicers should

be examining their existing policies and procedures to ensure compliance with regulatory requirements. If adjustments need to be made to align these with current rules and regulations, those changes need to be documented so that in the event of an examination the credit union can show evidence of self-identification and self-correction.

In addition, it's not just enough to ensure the documented policies and procedures reflect what is required.

Heed the old adage that actions speak louder than words. Credit unions should also audit employee activities against their documented policies and procedures, identify any areas where policies and procedures are not being followed and document both the corrective action taken and plans for follow-up to ensure compliance going forward.

ENGLISH PROFICIENCY

One of the items from the CFPB's servicing guidance that has received less attention is limited English proficiency. In addition to ensuring servicers are providing good customer service to borrowers and adhering to all loss mitigation regulatory requirements, the CFPB will also be examining how servicers are communicating with borrowers for whom English is not their primary language.

This has been a recurring topic over the past several years, most recently with Fannie Mae and Freddie Mac, but now, it's popping back up from a CFPB perspective, so servicers will need to take a closer look at how they are handling both written and verbal communications for non-English-speaking borrowers.

In addition to its April 1 bulletin to mortgage servicers, the CFPB also issued a slew of policy rescissions that same week. Many were Covid-19 policies related to servicing that are less important today than a year ago. Thus, credit unions need to make sure that they're paying attention to the flexibilities

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that were taken away with those policy rescissions to ensure they are in compliance with current requirements.

LOOKING AHEAD

Looking ahead to a potential Act III in the ongoing drama that is mortgage servicing compliance, the CFPB has also issued proposed amendments to the servicing rules.

As the comment period on the notice of proposed rule-making has recently closed, it is unclear what the final revised rules will look like. Therefore, credit union servicers need to pay close attention to how this process progresses to ensure they are prepared to comply when and if a final rule is issued.

Until then, credit union mortgage servicers have plenty to keep them entertained on the compliance front. By paying close attention to signals from the CFPB and engaging in proactive self-examination, servicers can stave off the heartache and strife that could otherwise head their way from examiners.



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Footnotes

¹ https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2021-02_supervision-and-enforcement-priorities-regarding-housing_WHcae8E.pdf

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