



November 17, 2017

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
By electronic delivery to: www.regulations.gov

Re: Docket No. CFPB-2017-0030
Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z)

Dear Ms. Jackson:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed rule amending an important aspect of the CFPB's amendments to the 2013 Mortgage Rules Under the Truth in Lending Act, as implemented in Regulation Z, at 12 CFR Part 1026 (the 2016 Final Rule). The proposed rule relates to the pending requirements under the 2016 Final Rule for when a servicer transitions to sending either a standard periodic billing statement or a periodic billing statement that is modified to account for the borrower's status as a debtor in bankruptcy.

General Comments:

ABA appreciates the Bureau's continued attention to the mortgage servicing rules and its commitment to ensuring that the 2016 Final Rule does not pose unnecessary compliance and operational challenges. ABA shares the CFPB's concerns that the 2016 Final Rule's single-billing-cycle exemption and the associated timing parameters could be difficult for mortgage servicers to successfully operationalize, and were likely subject to different interpretations. Furthermore, ABA believes that the proposed single-statement-exemption alleviates many of the issues that otherwise would have manifested when the billing statement requirements for borrowers in bankruptcy in the 2016 Final Rule go into effect on April 19, 2018. In that sense, ABA is supportive of the Bureau's proposed rule.

In terms of the proposed rule's effective date, ABA requests that the CFPB grant the mortgage servicing industry additional time to implement whatever form the final rule takes. The 2016 Final Rule is currently set to become effective on April 19, 2018, approximately five months from the date of this comment letter. Recognizing that it will take some time for the CFPB to consider the comments it receives in response to the proposed rule and then issue a final rule, ABA is concerned that the industry will not have adequate time to digest the final rulemaking and then successfully implement it.

As the Bureau noted when it released the 2016 Final Rule, "servicers and third-party service providers need sufficient time to coordinate, develop, and test systems required to modify periodic statements for

¹ The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits and extend more than \$9 trillion in loans.

consumers in bankruptcy. They also need sufficient time to train employees regarding the bankruptcy periodic statement requirements.”² ABA agrees with the CFPB’s prior assessment, and requests that the CFPB provide the industry with additional time to implement all provisions of the 2016 Final Rule and any amendments that result from the proposed rule related to periodic billing statements for borrowers in bankruptcy. We believe that providing the industry with an additional three months is reasonable, and would allow the industry sufficient time to continue working through the implementation process, conduct testing, and ensure that the content, timing, and transitions of the periodic billing statements are fully functional and compliant. This approach strikes the right balance between affording the industry sufficient time for implementation and promptly affording consumers the benefits of the rule.

Additional Comments:

ABA understands that the proposed rule would provide for a single-statement-exemption that would apply to the next periodic billing statement that otherwise would be required after a triggering event occurs. As drafted, the single-statement-exemption is triggered immediately upon the occurrence of one of the events set forth in Section 1026.41(e)(5). For instance, upon receipt of a written request from the borrower, a servicer may have to transition from not sending any periodic billing statements to sending a modified periodic billing statement that accounts for the borrower’s status as a debtor in bankruptcy. Alternatively, when a borrower files a bankruptcy case, a servicer could be required to transition from sending standard periodic billing statements to sending modified statements.

ABA is concerned that the proposed rule, like the 2016 Final Rule, could pose operational challenges to mortgage servicers in certain circumstances. ABA maintains that it is impractical to consider many of the triggering events contemplated by the 2016 Final Rule and the proposed rule as instantaneous events or moments in time. Rather, it may take some level of manual review before a servicer may know that a triggering event has taken place. For example, if a borrower submits a written request to a servicer’s designated mailbox for opt-out and opt-in requests, the servicer will inevitably have to review that request before it can determine that the borrower has actually opted in.

Additionally, it may take time before a servicer receives notification or otherwise becomes aware that a triggering event has taken place. Even through the various services that are available to mortgage servicers to track the status of bankruptcy cases, servicers cannot necessarily process the information in real-time. There is always some level of lag time between the actual triggering event and the servicer’s processing of such event. Given this reality, the servicer risks the possibility that it could send a borrower a periodic billing statement that contains inaccurate information or lacks the appropriate disclaimers and bankruptcy-related modifications. For example, if a servicer has not yet received notification of a borrower’s pending bankruptcy case or the servicer finds out without enough time to suppress a periodic statement that is already being generated, the servicer might send a statement that discusses the delinquent status of the loan and the potential for fees and foreclosure proceedings. The CFPB removed those types of content requirements precisely because it understood that the content could be problematic in the bankruptcy context.

If a servicer were to face scrutiny for a periodic billing statement that contained language that was contrary to bankruptcy principles, the servicer would not be able to justify it as being required by Regulation Z. Rather, the servicer technically would have been exempt from that statement requirement. Without some form of cover through the mortgage servicing rules in Regulation Z, the servicer would have a harder time defending itself. As such, ABA requests that the CFPB add language to the final rule that could help insulate a mortgage servicer who isn’t able to suppress a statement that is sent shortly after a triggering event.

² 81 FR 72349 (Oct. 19, 2016).

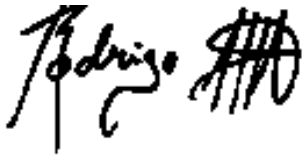
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Conclusion:

ABA members appreciate the Bureau's continued focus on the mortgage servicing rules, and the opportunity to comment on the CFPB's proposed rule. We look forward to working with CFPB staff as it considers comments to this rulemaking. Please contact the undersigned if you have any questions regarding our comments on the proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodrigo" followed by a stylized monogram or set of initials.

Rod. J. Alba

*Senior Vice President, Mortgage Finance
& Senior Regulatory Counsel*