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MORTGAGE BANKERS ASSOCIATION

November 22, 2013

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, D.C. 20552

Re: Docket No. CFPB-2013-0031; RIN 3170-AA37
Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)

The American Bankers Association¹, the Consumer Bankers Association², and the Mortgage Bankers Association³ are pleased to comment on the Consumer Financial Protection Bureau's ("CFPB" or the "Bureau") October 23, 2013 Interim Final Rule that amends certain mortgage servicing-related provisions in Regulation X and Regulation Z as well as the corresponding Commentary to these rules (collectively, the "Servicing Rules").⁴ As described below, the Interim Final Rule improves compliance certainty by creating certain exemptions from the Servicing Rules in situations where the Rules conflict with bankruptcy law and the Fair Debt Collection Practices Act ("FDCPA"). We appreciate the CFPB's responsiveness to servicer concerns regarding the intersection of these requirements.

Our comments also address a subject that, while not included in the Interim Final Rule, is related to the broader issue of mortgage loan debt collection. Specifically, we are concerned that it is not operationally feasible at this time for all servicers to provide periodic statements to borrowers whose loans have been charged off. In charge-off situations, we request that CFPB not require servicers to provide periodic statements that meet all of the content and layout specifications for periodic statements, as set forth in 12 CFR 1026.41(d).

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its two million employees. Learn more at aba.com.

² The Consumer Bankers Association (CBA) is the trade association for today's leaders in retail banking - banking services geared toward consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding two-thirds of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

³ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

⁴ 78 Fed. Reg. 62993 (October 23, 2013).

Background

After the CFPB issued the Servicing Rules in January 2013, our members expressed concern that the Servicing Rules potentially conflicted with bankruptcy law and the FDCPA. Our members also questioned how they could provide CFPB-compliant periodic statements in situations where a bankruptcy court creates a repayment plan. They conducted extensive internal deliberations and engaged legal counsel, consultants, and vendors to determine how to interpret and manage CFPB compliance requirements that are inconsistent with other legal obligations.

CFPB concluded that further analysis and study of the intersection of bankruptcy law, the FDCPA, and CFPB rules is necessary, but cannot be completed before the Servicing Rules take effect in January 2014. For this reason, the Interim Final Rule exempts servicers from the Periodic Statement and Early Intervention requirements while a borrower is in bankruptcy. In addition, the Interim Final Rule exempts servicers from certain ARM Interest Rate Reset Notice requirements as well as the Early Intervention provisions if a borrower has invoked the cease communication provisions under the FDCPA.⁵

Position on Interim Final Rule

We strongly support the exemptions to the Interim Final Rule described above. The Interim Final Rule, in conjunction with CFPB Bulletin 2013-12, has helped to improve servicer certainty with respect to the intersection of the Servicing Rules and other applicable law. We also believe that the Interim Final Rule will help to avoid unnecessary confusion for borrowers who have declared bankruptcy, particularly in situations where a court has created a repayment plan that differs from a borrower's contractual monthly mortgage payment. Accordingly, we request that CFPB finalize the Interim Final Rule as published.

While we strongly support the Interim Final Rule, we note that this is the third set of amendments to the Servicing Rules in 9 months. Servicers of all sizes have identified a large volume of interpretive questions and operational concerns relating to the new servicing requirements. To address these issues, CFPB has been engaged in an ongoing rulemaking process to amend or clarify the Servicing Rules. While these revisions have been helpful, keeping up with the evolving rules has been a significant challenge for many of our members. We are concerned that additional compliance questions and operational hurdles remain and that servicers will identify new issues as they begin to more fully understand regulatory expectations and customize and implement vendor software.⁶ In sum, the implementation period has been too short for a brand-new regulatory structure of this size and complexity. A limited extension of the implementation period would best assure an orderly transition to the new servicing requirements.

⁵ On October 15, 2013, the CFPB also issued Bulletin 2013-12, which addresses additional issues relating to the interplay of the FDCPA and the Servicing Rules. The Bulletin concludes that a borrower's cease communications request pursuant to the FDCPA "should ordinarily be understood to exclude" communications with borrowers that are required by the Error Resolution, Information Requests, and Loss Mitigation provisions of the Servicing Rules. The Bulletin also states that a servicer acting as a debt collector would not be liable under the FDCPA for complying with the Force-Placed Insurance disclosures, ARM Initial Interest Rate Adjustment disclosures, and the Periodic Statement rules.

⁶ We also note that vendor preparedness continues to be an ongoing concern. We have shared these concerns with CFPB in various written communications and during in-person meetings. This week, we learned that some coupon vendors and loan accounting software vendors do not have all of the software updates needed to produce loan coupon books that meet CFPB requirements.

Periodic Statements and Charge Offs

Because this letter addresses debt collections in the mortgage context, we would like to take this opportunity to convey our concerns regarding CFPB's expectation that servicers provide periodic statements to borrowers whose loans have been charged off. During an October 16, 2013 webinar, CFPB provided the following analysis on this issue:

Generally when people ask this question, they're talking about charged-off loans as one in which the entity removes the loan from their books but maintains the lien and in that case, you're still dealing with a closed-end consumer transaction secured by a dwelling, so at that point, periodic statements would still be required.

The CFPB's view does not take into consideration common limitations of existing servicing platforms and collections systems. In addition, many servicers did not interpret the periodic statement requirement to apply to charged-off loans. For these reasons, we are concerned that many servicers will not be prepared to provide periodic statements for such loans by January 10th.

Therefore, we request that CFPB not require servicers to provide periodic statements that meet the content requirements of 12 CFR 1026.41(d) for mortgage loans that have been charged off. These loans are not, and never have been, serviced in the same way that non-charged-off loans are serviced. As explained below, requiring servicers to provide periodic statements for charged-off accounts would require institutions to engage in highly-manual processes that are inefficient and whose production costs would outweigh borrower benefit. If the CFPB continues to maintain its view that periodic statements are required for charge-offs, we request that the Bureau provide a model periodic statement form that identifies the minimum periodic statement information that a servicer is required to provide. Such a model form should include only the outstanding balance of the loan. In many institutions, interest, fees, attorney's fees, etc. will have to be calculated manually.

The following bullets explain the heightened potential for borrower confusion as well as some of the practical problems associated with providing borrowers with periodic statements for charged-off accounts.

- **Systems Constraints.** When an institution charges off a mortgage loan, it commonly transfers the loan from its servicing platform to a separate collection system. In some cases, the loan is removed from the servicing platform and resides solely on the collection system. Many existing collection systems do not have periodic statement capabilities. In other cases, the loan will reside on both systems. However, not all collection systems and servicing platforms exchange information about charged-off loans on an ongoing basis. As a result, in situations where a loan remains on the servicing platform after it has been transferred to the collection system, the balance on the servicing system may not be up-to-date and may not produce an accurate periodic statement. It would be a monumental task for servicers to reconstruct and transfer loan data onto a servicing system for purposes of producing a periodic statement for all existing charged off mortgage loans, particularly this close to the Servicing Rule's effective date.

A related scenario involves situations where a servicer sends charged-off mortgage loan accounts to a collections attorney. In some cases, the attorney's file is the system of record and settlement with the servicer may occur only as the attorney collects funds from the borrower. The attorney may incur new fees on an ongoing basis but may not notify the servicer until a later point in time. In this situation, servicers may have difficulty producing a

timely and accurate periodic statement if a collections attorney is involved. As a result, there is the very real potential that servicers would unintentionally provide incorrect information to borrowers and that the periodic statement would create borrower confusion rather than providing borrowers with helpful information regarding their outstanding debt obligations.

- Additional Fees. A servicer may incur various fees when a loan is charged-off and the servicer pursues a court judgment against the debtor. Examples of such fees include attorney fees, court costs, filing fees, garnishment fees, property maintenance, taxes, and insurance. Often, servicers do not house information regarding these fees on the servicing platform. As a result, the fees would not necessarily be reflected on the periodic statement that could be generated from the existing system. In some situations, customers do not pay these fees (if paid at all) until after the principal balance is satisfied or unless the fees are addressed in a settlement with the borrower.
- Loss of Contact with Customers. Customers whose mortgage loans have been charged off do not normally provide the servicer with a forwarding address. In this situation, some servicers elect to discontinue collection efforts when they cannot reach the customer by mail or phone. Mailing any type of periodic statement would not be beneficial to the servicer or the customer at that point. We request CFPB to clarify that servicers do not have an obligation to continue mailing periodic statements that they know will be returned.

We recommend that CFPB study these issues and become familiar with existing industry capabilities and practices for charged-off loans, particularly with respect to periodic statement production. We reiterate our request that the Regulation Z periodic statement requirements not apply to charged-off loans. Alternatively, CFPB should provide a model periodic statement for charged-off accounts. It is imperative that CFPB communicate its views on this topic in writing as soon as possible. If CFPB declines to revise its position, many institutions will need to create manual work-arounds and new processes in less than two months and will need to begin the process of purchasing or creating the necessary software or interfaces to produce periodic statements for these loans.

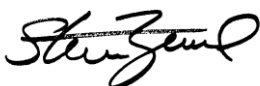
Conclusion

We appreciate CFPB's consideration of the servicing-related questions and concerns that our members have identified in recent months. We also appreciate CFPB's ongoing efforts to craft a Servicing Rule that is beneficial to borrowers and is workable for servicers of all sizes.

Sincerely,



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