CFPB Servicing Regulation

One of the Consumer Financial Protection Bureau's (CFPB's) first major actions under the Dodd-Frank Act was to write and implement nationwide mortgage servicing standards. In addition to promulgating and updating these regulations, the CFPB is also responsible for examining mortgage lenders for compliance with these servicing rules and other laws and regulations pertaining to consumer financial services.

OVERVIEW

- In January 2014, the CFPB implemented its Dodd-Frank mandate to regulate mortgage servicing by enacting a comprehensive rule that covers all parts of the mortgage servicing process and related consumer experience.
- These rules have extensive provisions governing loss mitigation requirements when a consumer is unable to make payments, as well as requirements around responding to consumer inquiries and when a consumer must receive certain notices.
- The CFPB also has the power to define who is a debt collector and is required to give the "mini-Miranda" warnings under the Fair Debt Collection Practices Act (FDCPA).
- Additionally, the CFPB has supervision and enforcement powers over mortgage servicers and can monitor for compliance with its servicing rules and other federal regulations. This authority includes the power to determine what is -- and sanction for -- unfair, deceptive or abusive acts or practices (UDAAP).

IMPACT

- Implementing the requirements of these servicing rules necessitated system changes and staff training that has been time consuming and costly for the industry. There is also an ongoing effort to obtain guidance and clarification in areas where the rules are unclear.
- Responding to CFPB investigations -- often in conjunction with multiple state examinations -- has required a significant resource commitment from servicers.

MBA’S POSITION/NEXT STEPS

- MBA and its members believe every consumer is entitled to quality customer service, timely communication, and a fair hearing if they fall behind on their mortgage payments.

- MBA will continue to work with the CFPB to gain clarity in areas where these rules are unclear, vague, or do not reflect actual market practice.
- The CFPB's supervision activities should take into account possible parallel state investigations and provide more timely feedback to servicers when examinations have concluded.
- The CFPB should clearly define what practices it believes fall under UDAAP and give the industry advance notice of its determinations, rather than defining these provisions through enforcement actions.
- The CFPB should maintain the exemption for mortgage servicers from some FDCPA requirements, as mortgage servicers are not the kind of third party debt collectors Congress was attempting to regulate when it passed the *Act*.
    - If servicers are included, requirements like usage of the "mini-Miranda" warning may negatively impact the customer relationship without providing much useful information or protection - particularly if the borrower is in financial distress and may be eligible for loss mitigation.