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MORTGAGE BANKERS ASSOCIATION

Summary of the CFPB Assessment of the 2013 RESPA Servicing Rule

The CFPB is under statutory obligation to complete reviews of any "significant rule or order"[1] and MBA concurs with the Bureau's judgment that the 2013 Mortgage Servicing Rule is indeed significant. The rule required mortgage servicers to spend millions of dollars and countless staff hours to come into compliance and it is appropriate to conduct an assessment of the rule, its costs and the resultant market outcomes.

Comments on the Assessment

As MBA indicated in comment[2] at the start of the assessment, there were timing issues for the assessment as significant revisions to the rule had yet to come into effect. These amendments came into effect October 19, 2017 and April 19, 2018, and were subsequently excluded from the review process.

The statutory review requires that the Bureau both evaluate a rule against the "specific goals stated by the Bureau" and "the effectiveness of the rule or order in meeting the purposes and objectives" of the portion of Dodd-Frank establishing the Bureau. MBA argued in addition to the specific RESPA objectives identified by the Bureau, the review should focus on evaluating the rule against the Bureau's statutory objectives:

1. "consumers are provided with timely and understandable information to make responsible decisions about financial transactions;
2. consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;
3. outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;
4. Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and
5. markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation."[3]

MBA also argued the rule should evaluate the extent to which its implementation impacted mortgage credit availability in light of the Bureau's general statutory purpose to "ensure that all consumers have access to markets for consumer financial products."[4]

The Bureau addressed comments it received from its Request for Information (RFI) on the 2013 RESPA Servicing Rule assessment. The Bureau indicated that the stated concerns with timing of the assessment given the 2016 mortgage servicing rule amendments were outside the scope of the RFI, or "related to topics beyond those set forth in the notice." The Bureau did note that they may consider such comments in future policy development.[5]

Methodology

The Bureau's findings are based on several assumptions. First, that the data sets used—GSE data, McDash Data from Black Knight and de-identified loan-level data from seven mortgage servicers[6] (Servicing Operations Data)—are representative of the mortgage market as a whole.[7] If the rule had a substantial impact on loans outside of the data collected, its impact is not accounted for here. Second, while the Bureau does describe use of statistical controls designed to account for the effect of congruent factors and compound variables, they also concede that "it is not possible to account for all factors that may affect foreclosure."[8] This is of particular concern in presenting findings of declining foreclosure rates after the rule, as the Bureau concedes that a general market trend of declining foreclosure rates was present around the time of the rule's effective date.

Findings: Impact on Foreclosure and Servicing Costs

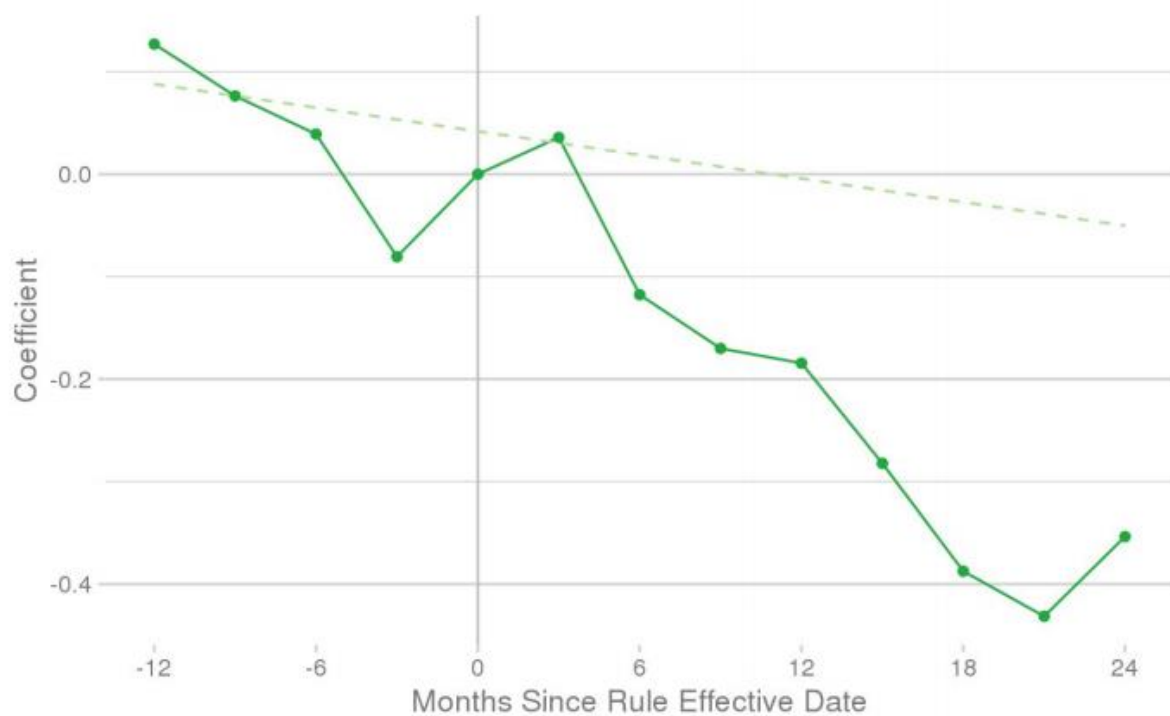
The following is a summary of the Bureau's findings.

First, the Bureau found in the data an increasing ability of borrowers to recover from delinquency and avoid foreclosure after 2010. The Bureau estimates that if the Rule had not gone into effect in 2014:

1. "…at least 26,000 additional borrowers who became delinquent that year would have experienced foreclosure within three years of becoming delinquent."
2. "…at least 127,000 fewer borrowers who became delinquent that year would have recovered from delinquency within three years of becoming delinquent."[9]

The Bureau used data from before the rule's implementation to establish a baseline of projected changes in incidence of foreclosure. A deviation from that trend line at the effective date, the Bureau argues, would indicate an effect from the rule. Figure 7 graphs these two lines. The baseline market trend of foreclosure incidence is represented by the dashed line. Actual incidence of foreclosure maps concurrently, showing a deviation from the trend post-rule.

FIGURE 7: EFFECT OF THE RULE ON THE INCIDENCE OF FORECLOSURE: EVENT STUDY RESULTS FROM A COMPETING RISKS HAZARD MODEL (FANNIE MAE DATA)



The figure shows despite controlling for other factors there is a downward trend in foreclosures represented by the dashed line. The controls used by the researcher do not fully explain the decrease in foreclosures leading up to the effective date of the rule. However, by projecting that trend line forward we can see a larger deviation in actual incidence of foreclosure that may be attributable to the rule. The

Bureau cannot rule out the possibility that another policy change or variable shift in January 2014 effected actual incidence of foreclosure.

Second, the Bureau investigated the rise in cost of servicing.

In interviews, the Bureau heard servicer accounts of costs and the overall effect of the rule. Most servicers had difficulty estimating the specific effects of the rule's provisions on servicing costs, but cited examples of one-time implementation costs and on-going costs. Servicers reported the overall costs of implementation were highest for requirements to evaluate borrowers for all loss mitigation options concurrently, to provide a comprehensive decision letter, and to implement the error resolution and foreclosure provisions.

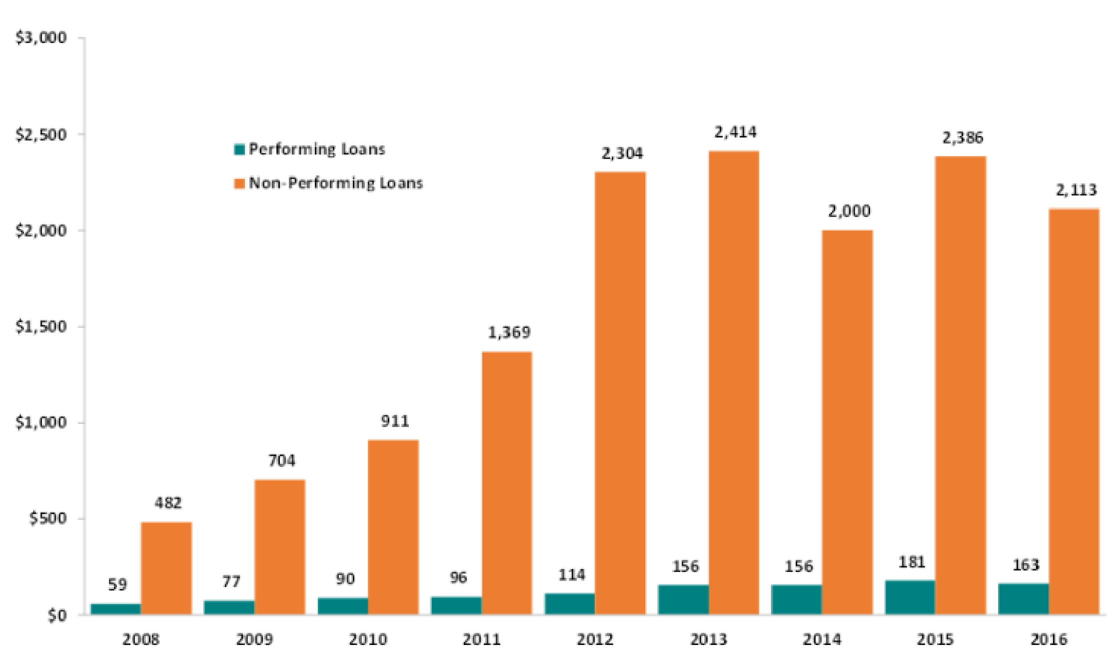
While servicers were generally unable to estimate implementation costs, those who did gave a range of $1-$14 per loan. In 2014, the average annual cost for servicing a loan was $250. At the time there were approximately 53 million mortgage loans being serviced, which would imply an estimated range of one-time implementation cost of $53 million to $742 million dollars to the industry.

Costs associated with implementation were often related to technology and personnel. Information technology changes were reported as necessary, along with investment in staff training to match. Developing new policies and procedures increased workload for legal and compliance staff. Many servicers mentioned the complex nature of updating several integrated systems at once, while working with technology vendors. Often servicers were unable to test the revised programs and processes until updates were delivered by the vendors.

Servicers cited strain on management, as a "significant amount of leadership time was devoted to managing the implementation process."[10] One particular servicer cited a year's worth of weekly meetings for senior staff. Finally, servicers mentioned the opportunity cost associated with the effort. The resources used to implement the changes could have been allocated toward other improvements in their servicing operations that they believe could have helped borrowers.

In considering ongoing costs, the Bureau again encountered issues of confounding variables and establishing causality between the Rule and the rising costs of default servicing. Servicers report an increase in ongoing costs as a result of the rule, but it was often difficult to estimate. When estimates were provided, it was often in a range. Large servicers reported an additional annual cost of $3-$11 per loan. If that range were applied to the 52 million mortgages being serviced in 2014, it would result in a $156 million to $572 million annual cost to the industry.

The Bureau cited figures collected by MBA during its annual Servicing Operations Study. MBA presented the following the following graph in its July 10th comments, illustrating data on the rising cost of servicing non-performing loans:



The Bureau cited figures in its assessment that mirrored MBA data:

> The estimated average annual cost of servicing loans in default increased from about $480 per loan in 2008 to about $2,410 per loan in 2013 and remained between $2,000 and $2,400 from 2014 to 2017.[11]

The Bureau acknowledged the inability to establish causality between the 2013 RESPA Servicing Rule and rising servicing costs. Extraneous variables include new servicing requirements from investors and insurers, costs and requirements arising from legal settlements, and self-imposed policy adjustments.

While the Bureau cannot isolate the proportion of cost increase attributable to the rule, the rising costs have inarguably altered the economics of loan servicing. Additionally, given the extreme costs of servicing loans, it is logical that some lenders will have changed their product offerings or imposed credit overlays to attempt to limit their exposure to these costs.

The Small Servicer Exemption

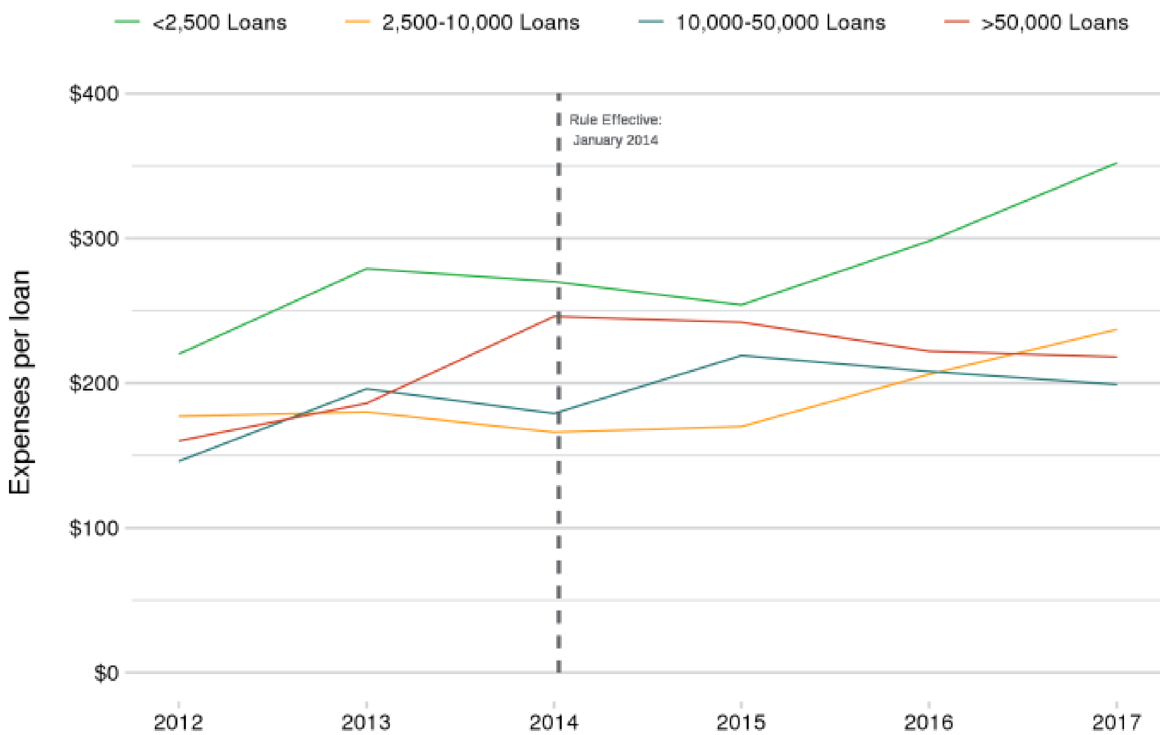
The 2013 Mortgage Servicing Rule exempted small servicers from certain provisions under the assumption that it would help reduce compliance burden for entities less able to shoulder the cost, and who are less likely to harmfully impact US consumers.

Servicers can be exempt from certain parts of the rule if they are considered "small" by one of the following criteria: (1) they service less than 5,000 loans that they themselves originated, (2) the servicer is a Housing Finance Agency.

Small Servicers are exempt from early intervention and continuity of contact provisions, many of the loss mitigation provisions, some requirements related to lender-placed insurance, and some more general provisions. Interviews with community banks and credit unions suggest that these exemptions were helpful in reducing compliance burden.

Using MBA Annual Performance Report Data, the Bureau found that the smallest servicers (under 2,500 loans) had the highest annual direct expenses per loan, and saw the largest increase in cost per loan after the 2013 servicing rule came into effect. All of these servicers would be eligible for the small servicer exemption, provided they had originated the loans they serviced.

FIGURE 6: ANNUAL DIRECT EXPENSES PER LOAN, BY SERVICING VOLUME (NON-DEPOSITORIES) (MBA ANNUAL PERFORMANCE REPORT DATA)



Early Intervention

In the Mortgage Servicing Rule, the Bureau incorporated many standards used by the GSEs, FHA and the VA, and standards created by the National Mortgage Settlement to create a uniform minimum national standard for early intervention. The Bureau outlined requirements regarding written notices and attempts at live contact – communication efforts intended to be used to encourage borrowers to explore options for avoiding foreclosure.

Servicers are required to make good faith efforts to establish live contact by the 36th day of delinquency and provide a written notice by the 45th day of delinquency with a full description of the foreclosure process, list of available housing counselors, information on the borrower's state housing finance authority, and a run-down of all loss mitigation options available to the borrower.

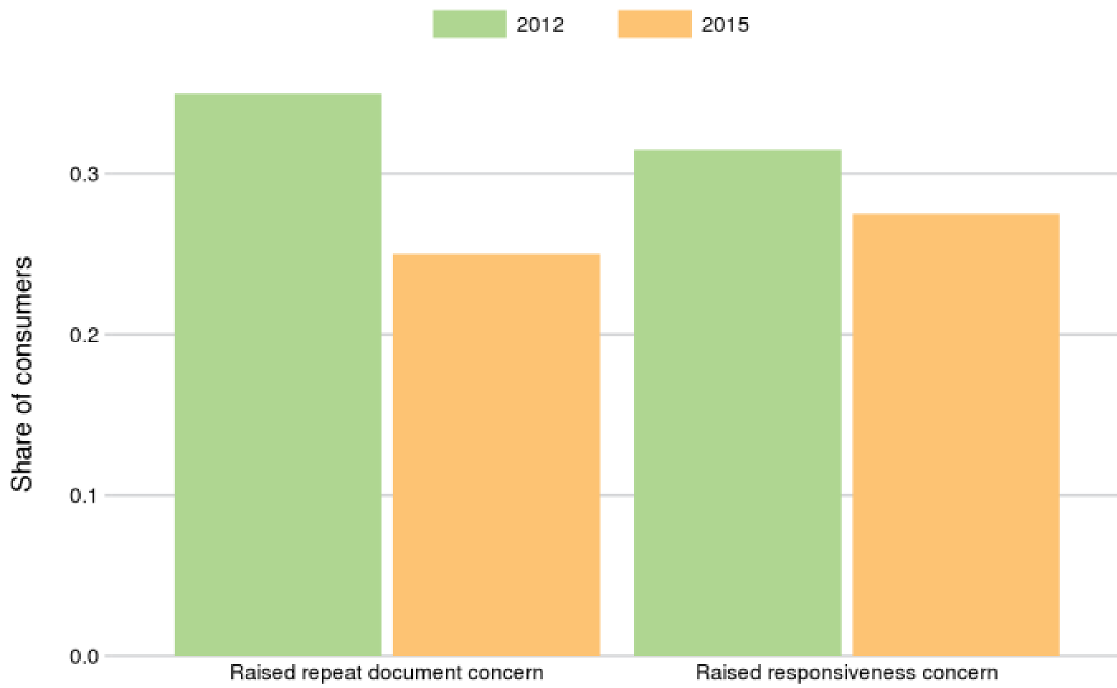
Most servicers involved in the Bureau's interviews for this assessment reported that implementation of the rule did not significantly alter their early intervention policies. Most described attempts at live contact within the first 36 days as a "common practice."[12] Servicers did mention that in the past they may have waited to contact certain borrowers with a history of payment in full without outreach.

Servicers generally said the early intervention requirements were the least costly to implement.

Loss Mitigation Applications

The Bureau found implementation of the 2013 rule lead to increased time periods between initiation of a loss mitigation application and completion of the application by the borrower. However, borrowers tended to start their loss mitigation applications earlier than before the rule, so applications were completed by borrowers at a similar stage of delinquency on average. Despite longer timeframes, from 2012 to 2015 the Bureau found a decrease in reported complaints by borrowers that they were asked to send documents repeatedly, and that servicers were not responsive enough.

FIGURE 1: SHARE OF CONSUMERS WHO DESCRIBED HAVING TO SUBMIT DOCUMENTS MULTIPLE TIMES AND WHO RAISED CONCERNS ABOUT THE LACK OF RESPONSIVENESS BY THEIR SERVICER, 2012 AND 2015 (BUREAU COMPLAINT DATA)



Servicers reported the five day acknowledgement requirement was the most costly change to the loss mitigation application process. Some servicers reported hiring additional processing personnel to ensure compliance with the early intervention requirements.

Evaluations and Appeals

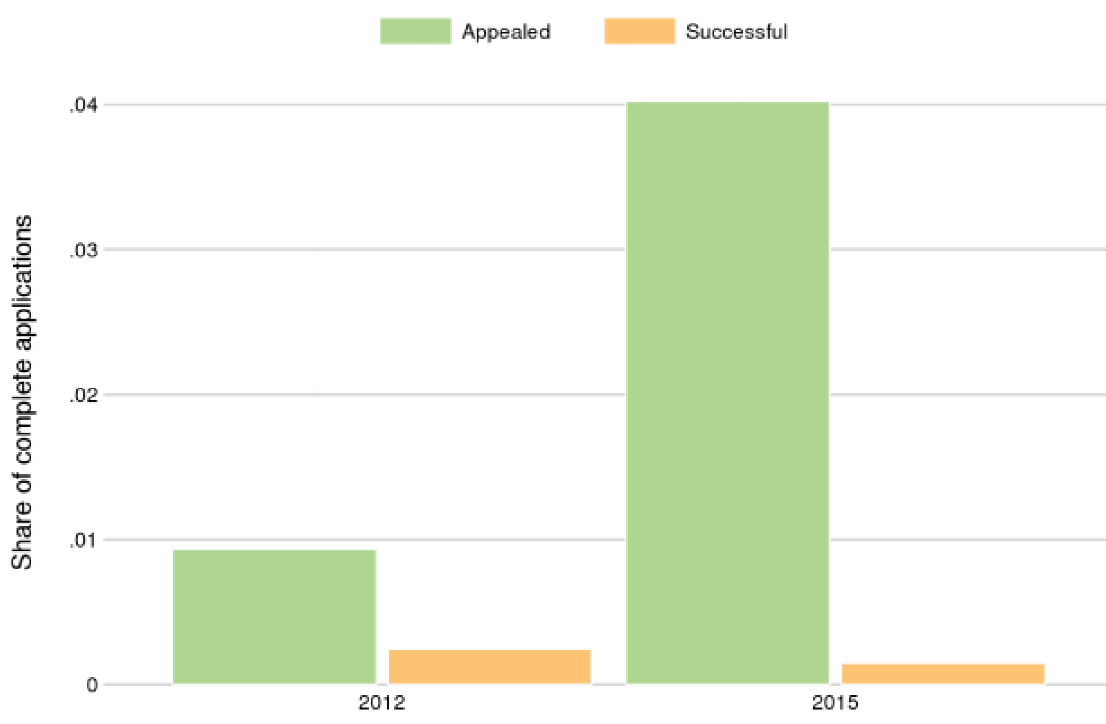
Evaluation and appeal provisions included in the rule resulted in longer processing times for servicers, while ultimately not significantly increasing a borrower's options, and resulted in more appeals in 2015 than in 2012.

First, the rule required servicers to send decisions on loss mitigation applications within 30 days of receipt. The majority of servicers surveyed in this assessment stated they were already meeting this timeline.

Second, the rule required servicers to review the borrower for all possible loss mitigation options at the same time. Servicers asserted this was not a practice they engaged in before the rule, and explained the unintended consequences of imposing it. Many argued it is an unnecessary burden upon servicers, particularly if the borrower is interested in one particular option. Borrowers may become aggravated providing documentation for loan modification options when they are sure of their desire for a short sale. Additionally, the requirement may have made short sale in the case of a loan modification denial a surefire option. Borrowers denied a loan modification in 2015 were more readily offered a short sale than compared to those who were denied a modification in 2012.[13]

Third, the rule required review of borrower appeals of loan modification denials. The Bureau's analysis of appeals is limited to five servicers due to data unavailability. While only a small fraction of borrowers who receive decisions based on a complete application appeal the decision, the rates of appeal have increased post-rule. The rates of success in appeal have decreased.

FIGURE 3: SHARE OF COMPLETE APPLICATION WITH BORROWER APPEAL AND SUCCESSFUL APPEAL (SERVICING OPERATIONS DATA)



Foreclosure Restrictions

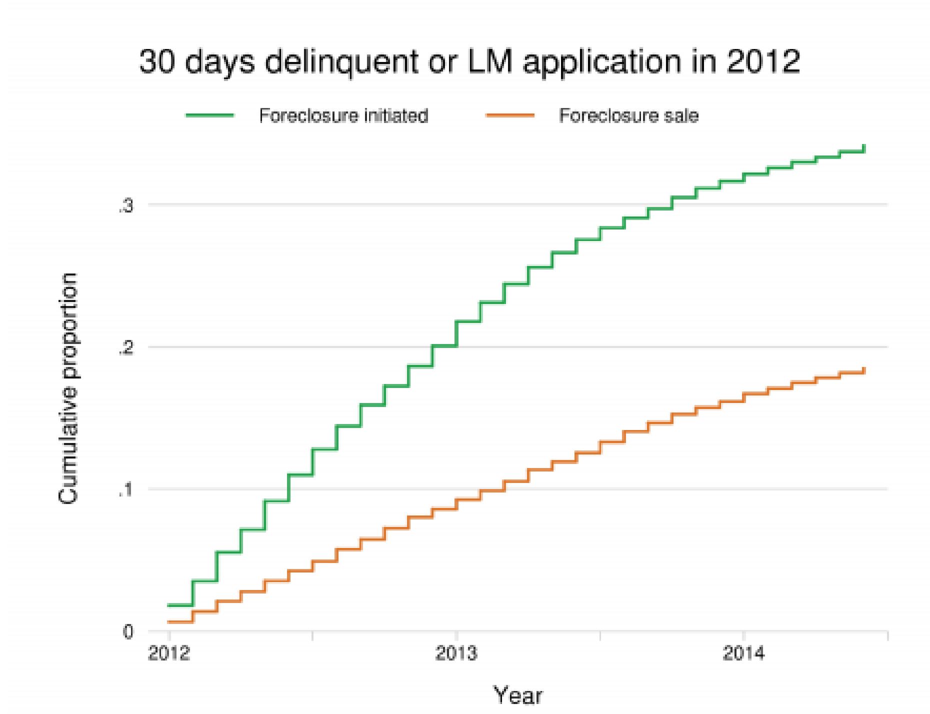
The Bureau assessed the rule's foreclosure restrictions, which are noted by housing counselors as the most important provisions of the rule. Limits were imposed both on when a foreclosure can be initiated, and procedure for its completion.

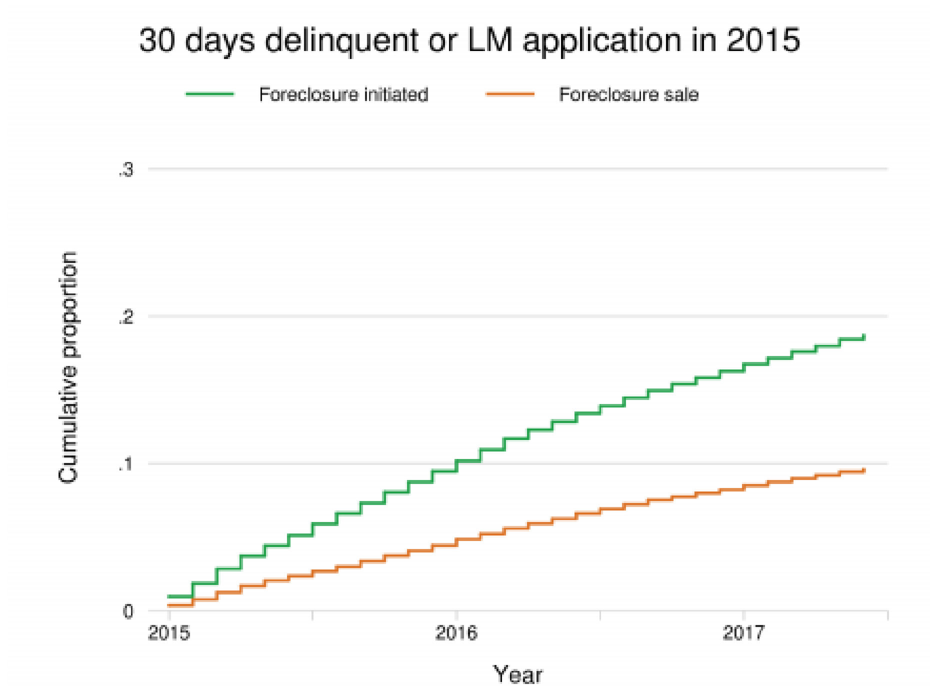
As reviewed earlier, foreclosure rates have declined. According to the report, "borrowers who were between 90 and 120 days delinquent were much less likely to have foreclosure initiated in 2015 compared to 2012."[14] The Bureau asserts that this is a true prevention of foreclosure, rather than delay of foreclosure, as there was not a spike in foreclosures outside of the restricted time, even after controlling for other factors.

Servicers described these restrictions as a significant change. They were also among the most costly to implement. The Bureau did not offer a calculation or estimate as to the cost imposed.

The Servicing Operations data indicates a larger share of borrowers in 2015 were able to avoid foreclosure than those in 2012. Figure 1 shows the cumulative proportion of loans in which foreclosure was (a) initiated and (b) completed in 2012 and 2015.

FIGURE 1: RATE OF INITIATING FORECLOSURE AND FORECLOSURE SALES BY YEAR FOR LOANS (SERVICING OPERATIONS DATA)





Borrowers typically spend more time in delinquency before foreclosure is initiated in 2015. The share of foreclosures between five and eight months also declined, but the share of foreclosure initiations from eight months to two years increased by 10 percentage points.

Error Resolution

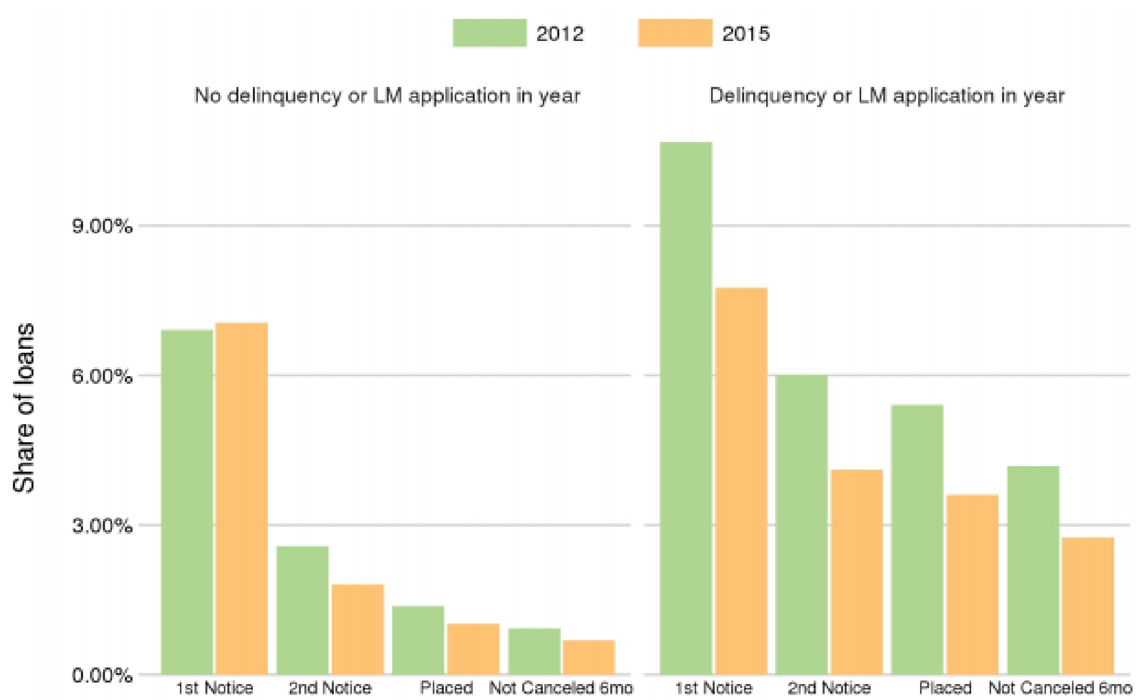
Data suggests post-implementation of the rule the number of written error complaints by borrowers has decreased by roughly half.[15] The assessment finds that servicers are generally more responsive, with faster written acknowledgements of requests and fewer follow-up requests from borrowers. There is not, however, evidence that decisions were increasingly made in the borrower's favor.

Force-Placed Insurance

Under the rule servicers have increased notifications when instituting force-placed insurance, otherwise known as lender-placed insurance. Servicers reported the notification requirements were largely in line with their current policies and procedures, and the Bureau did not assess the average or estimated cost of implementing the rule. Data shows a moderate decrease in the rate of application of lender-placed insurance between 2012 and 2015. Lenders are more likely to have to place insurance for a borrower if the borrower is delinquent.

Figure 2 illustrates the progression of lender-placed insurance compared with delinquency status in 2012 and 2015.

FIGURE 2: SHARE OF BORROWERS REACHING CERTAIN STAGES OF THE FORCE-PLACED INSURANCE PROCESS, ACCORDING TO DELINQUENCY STATUS DURING THE YEAR (SERVICING OPERATIONS DATA)



[1] 12 USC § 5512(d) or Dodd-Frank Section 1022(d).
[2] MBA Letter to CFPB on RESPA Assessment, Docket No. CFPB-2017-0012. July 10, 2017. https://www.mba.org/Documents/Comment%20Letters/Mortgage%20Servicing%20Rules%20Lookback.pdf
[3] 12 USC §5511 (b)
[4] 12 USC §5511 (a)
[5] p. 247. 2013 RESPA Servicing Rule Assessment Report. CFPB. January 2019

[6] p.28. 2013 RESPA Servicing Rule Assessment Report. CFPB. January 2019

[7]The Bureau used data sets from Fannie Mae and Freddie Mac (GSE data) and the commercially available McDash data from Black Knight. The GSE data represents sets of fully amortizing, fixed-rate, single-family mortgages guaranteed by Fannie Mae and Freddie Mac. This data is publically available, and totals approximately 48 million loans serviced between 2000 and 2017. The McDash data represents roughly 60 percent of loans in the market by the end of 2017. It includes loan-level information on over 175 million mortgages and home equity loans. Both sets of data include information regarding loan characteristics, loan performance, repayment rate, foreclosure, and modification. The Bureau pulled random samples from both sources to run the regression models presented in the assessment. The Bureau collected de-identified loan-level data from seven mortgage servicers (Servicing Operations Data). The Bureau also conducted both in-depth and shorter interviews with servicers and vendors. All seven servicers represented in the Servicing Operations Data were interviewed, along with eighteen additional servicers and three vendors.

[8] P.78. 2013 RESPA Servicing Rule Assessment Report. CFPB. January 2019

[9] p.8. 2013 RESPA Servicing Rule Assessment Report CFPB. January 2019

[10] P.102 2013 RESPA Servicing Rule Assessment Report. CFPB. January 2019

[11] p.8. 2013 RESPA Servicing Rule Assessment Report. CFPB. January 2019

[12] p.115. 2013 RESPA Servicing Rule Assessment Report. CFPB. January 2019

[13] p.160. 2013 RESPA Servicing Rule Assessment Report. CFPB. January 2019

[14] p. 166. 2013 RESPA Servicing Rule Assessment Report. CFPB. January 2019

[15] p.198 2013 RESPA Servicing Rule Assessment Report. CFPB. January 2019