

Washington and the Mortgage Business: CFPB Servicing Update and Overview

MMBA's 2nd Annual Servicing &
Secondary Conference

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Presentation Outline

- “ **CFPB Servicing Regulations**
 - “ 16 slides; 20 minutes
- “ **Broader observations of CFPB & mortgages**
 - “ Mission balance, areas of interest, complaints
- “ **Washington’s mortgage agenda**
 - “ 5 minutes
- “ **Discussion/Q&A**

CFPB Servicing Context/Timeline

- “ 2005
 - “ 530,000 f/c filings
- “ 2006
 - “ 717,000 f/c filings
- “ 2007
 - “ 1.3M f/c filings
- “ 2008
 - “ 2.3M f/c filings
- “ 2009
 - “ 2.8M f/c filings
- “ 2010
 - “ Dodd-Frank (July)
 - “ Robo-signing
 - “ 2.9M f/c filings
- “ 2011
 - “ Fed/OCC Enforcement Action (April)
 - “ FHFA/GSE Servicing Alignment (April)
 - “ CFPB established (July)
- “ 2012
 - “ National Mortgage Settlement (Feb)
 - “ CFPB Proposed Servicing Rules (Aug)
- “ 2013
 - “ CFPB Final Servicing Rules (Jan)

CFPB Mission

“ Created by Title X of Dodd-Frank in July 2010

- . **Regulate consumer financial products** and services
- . Make consumer financial markets **fair, transparent, and competitive.**
- . Exclusive authority to **enforce Federal consumer laws** against non-depository institutions of all sizes, and depository institutions with assets over \$10B.
- . RESPA, TILA, ECOA, HMDA, SAFE Act, FCRA, GLB Privacy, MAP Rule

“ Primary responsibilities:

- . Rulemaking
- . Supervision/examination
- . Enforcement
- . Consumer complaints
- . Promote financial education
- . Research consumer behavior
- . Monitor financial markets for risks to consumers

CFPB Observations on Servicing

- “ The financial crisis exposed pervasive consumer protection problems across major segments of the mortgage servicing industry. As millions of borrowers fell behind on their loans, **many servicers failed to provide the level of service necessary** to serve the needs of those borrowers.
- “ **Because borrowers cannot choose their own servicers**, it is particularly difficult for them to protect themselves from shoddy service or harmful practices.
- “ Borrowers were subjected to improper fees that servicers had no reasonable basis to impose on borrowers, improper force-placed insurance practices, and **improper foreclosure** and bankruptcy practices.
- “ Servicers have also misled, or **failed to communicate with**, borrowers, lost or mishandled borrower-provided documents supporting loan modification requests, and generally provided inadequate service to delinquent borrowers
- “ Some servicers have **made it very difficult for delinquent borrowers to explore and take advantage of potential alternatives to foreclosure**. For example, servicers have frequently neglected to reach out or respond to such borrowers to discuss alternatives to foreclosure, lost or misplaced the documents of borrowers who have sought modifications or other relief, failed to keep track of borrower communications, and forced borrowers who have invested substantial time communicating with an employee of the servicer to repeat the process with a different employee.
- “ Servicing industry compensation is not structured to incentivize servicers to engage in loss mitigation efforts. In that regard, “the servicing industry’s combination of two distinct business lines— transaction processing and default management—encourage servicers to **underinvest in default management capabilities**, leaving them with limited ability to mitigate losses.”

CFPB Servicing Regulations

Dodd-Frank Mandates

- ” Error resolution
- ” Force-placed insurance
- ” ARM notices
- ” Billing statements
- ” Processing of payments
- ” Borrower info requests
- ” Pay-off info requests

CFPB Discretion

- ” Early intervention
- ” Continuity of contact
- ” Handling of loss-mit applications
- ” Servicer policies and procedures
- ” Exemptions

Loss Mit--Early Intervention

- “ Live contact by 36th day of delinquency:
 - . Good faith effort (more than one attempt)
 - . Payment is late; check circumstances; encourage contact
- “ Written notice by 45th day:
 - . Encourage borrower to get in touch
 - . Contact info (phone, address)
 - . Brief description of loss-mit options & how to apply
 - . Homeownership counseling information

Loss Mit--Continuity of Contact

- “ **Assign staff to delinquent borrower** by 45th day, in the written notice (individual or team)
- “ Assigned staff to be available (by phone) to assist borrower until two consecutive payments made.
- “ Responses live, or in a timely manner
- “ Assigned staff able to provide accurate info:
 - . Loss mit options, if any
 - . How to apply and deadlines
 - . Status of application
 - . Conditions for f/c referral
- “ Assigned staff access to records, and provide to others
- “ Advise borrowers about error notices and info requests

Loss Mitigation Procedures

- “ **“Dual tracking” prohibited**; no f/c filing before **121st** day of delinquency
- “ **Loss Mitigation Application—foreclosure action depends on when received:**
 - . If received 38 or more days before scheduled f/c, servicer should suspend f/c actions until process is complete.
 - . If received less than 38 days prior to scheduled f/c sale, servicer only required to follow investor requirements.
- “ **Servicer response requirements:**
 - . If application received 45 days prior to f/c sale, send acknowledgement to borrower within 5 days.
 - . If received more than 37 days prior to f/c sale, servicer is to consider borrower for all loss-mit options.
 - . Servicer must complete its review and inform borrower of approval or denial within 30 days.
- “ **Borrower acceptance, rejection or appeal timelines:**
 - . If complete application is received 90 days or more prior to f/c sale—14 days.
 - . If 38-89 days—seven days and no right to appeal.
- “ **If the Loss Mitigation Application is incomplete:**
 - . If received 45 days or more prior to f/c sale, send notice to borrower.
 - . If received 38-44 days prior, reasonable diligence by servicer to make it complete.

Force-Placed Insurance

- “ **Servicer may not purchase FPI unless “unable to disburse”** from escrow. Unable to disburse requires reasonable basis to believe:
 - . Borrower’s coverage has been cancelled (or not renewed) for reasons other than non-payment; or
 - . Property is vacant.
- “ **Otherwise, advance funds to keep borrower’s coverage.**
- “ **Borrower Notice Requirements Before Getting FPI:**
 - . 1st notice at least 45 days before charging
 - . 2nd notice at least 30 days after 1st.
 - . 15 more days with no receipt of proof of insurance
- “ **Notice content requirements:**
 - . 1st notice—about 10 items, including warning on cost & coverage.
 - . 2nd notice—much of the same, plus the cost (or reasonable estimate)

Force-Placed Insurance

- “ **Replacement/Renewal of FPI**—similar requirements for borrower notice (no more than once a year).
- “ **Cancellation/Refunds**—within 15 days of receiving evidence of borrower’s coverage, servicer must:
 - . Cancel the force-placed coverage
 - . Refund charges and fees for any period of overlapping coverage.
- “ **Bonafide and Reasonable Cost**--all FPI costs charged to borrower must represent:
 - . a charge for a service actually performed
 - . bearing a reasonable relationship to servicer’s cost.

Error Resolution/Borrower Complaints

- “ Written notice asserting an error
- “ Servicer can designate contact info/address
- “ 10 specific “covered errors” + one:
 - . Failure to accept payment
 - . Failure to properly apply payment
 - . Failure to credit payment as of date received
 - . Failure to pay escrow items, or refund escrows
 - . Charging a fee without reasonable basis
 - . Failure to provide accurate and timely pay-off info
 - . Failure to provide info on loss-mit options and f/c process
 - . Failure to provide accurate and timely info to new servicer
 - . Starting foreclosure too soon
 - . Conducting foreclosure too soon
 - . Any other error relating to the servicing of a mortgage

Error Resolution/Borrower Complaints

- “ Servicer investigation & response (correct error or no error) times:
 - . Pay-off related: 7 days
 - . Foreclosure related: 30 days or before f/c
 - . Others: within 30 days (+15 with notice to borrower)
- “ No formal response required for f/c related assertions received 7 or fewer days before f/c sale. Must make good faith attempt to respond to borrower verbally or in writing.
- “ No investigation/response required if error notice is duplicative, too broad or too late. Notice to borrower required within 5 days.
- “ No fee may be charged as a condition for responding.
- “ No adverse info reported to credit bureaus for 60 days.

Information Requests

- “ Written request for information
- “ Servicer can designate contact info/address
- “ **Servicer investigation & response** (provide info or explain) timeframes:
 - . 10 days for info on the owner or assignee
 - . 30 days (+ 15 with notice to borrower) for others
- “ **No investigation/response required if** request is duplicative, info is confidential/proprietary, irrelevant, too broad, too burdensome, or too late. Notice to borrower within 5 days.
- “ **No fee may be charged** as a condition for responding, except when providing a beneficiary notice under state law and the fee is permitted.

ARM Rate Adjustment Notices

“ For first rate change:

- . Provide 7-8 months prior notice to borrower
- . Notice to include: current and estimated new rate; current and estimated new payment; explanation of rate and payment calculation; I/O or Neg-am info; prepayment penalty info; **info on borrower’s alternatives (refi, sell, mod, forbearance)**; counseling info.
- . Provide notice 2-4 months before due date of adjusted payment with actual new rate and payment.

“ For subsequent rate changes:

- . Provide notice 2-4 months before due date of adjusted payment. Notice to include actual new rate and payment and **most** of the content noted above.

“ Different provisions for:

- . FHA/VA ARMs with shorter look-back periods and ARMs that adjust every 30-60 days (25-120 days for notice).
- . For future ARM loans (originated after January 1, 2015), look-back periods expected to be at least 45 days. Those loans will be subject to the 2-4 month timeframe.

Periodic Billing Statements

- “ Requires a **monthly statement** containing: the UPB, current rate, date rate could change, any prepayment penalty, late fee info, date and application of last payment received, next payment due date with amount and breakdown, and any other transactions during the month that changed the amount due, and servicer contact information.
- “ **If 45 days or more delinquent:** date loan became delinquent, account history during delinquency, loss mitigation notice, date when f/c can start, total amount to bring the loan current, and homeownership counseling info.
- “ **Timing of statement is challenging**—ideally should arrive after the previous payment has been processed yet before the next payment is due. Required to be sent no later than four days after the grace period expires.
- “ **Not required for FRMs** if (1) coupon books are used; (2) coupon book includes UPB, rate, date rate could change, any prepayment penalty, servicer contact info and counseling info, and (3) servicer provides, at consumer’s request, all of the info required if loan is 45 days or more delinquent.
- “ **Exemption**—servicers handling less than 5,000 loans and retain ownership of loans or servicing rights.

Processing of Payments

- “ Also known as “**Prohibited Acts or Practices**”
- “ **Credit full payment as of date received:**
 - . If payment includes principal, interest, escrow
 - . Need not include late fees, non-escrow payments previously advanced
- “ **If partial payment is retained:**
 - . Disclose to consumer in periodic statement
 - . Once accumulated funds equal full payment, credit on day sufficient funds were received.
- “ **Non-conforming payments**—when payment is submitted contrary to servicer’s specific requirements, credit within five days of receipt.
- “ **Late fee**—can’t charge an additional late fee for failure to pay a late fee.
- “ **Pay-off statement request**—upon receipt of a written request, send within seven business days. Under certain conditions (bankruptcy, foreclosure, reverse mortgage, SAM, natural disaster), must provide within a reasonable time.

Servicer Policies and Procedures

- “ **Policies and procedures that enable servicer to:**
 - . Access and provide timely and accurate info
 - . Properly evaluate loss-mit applications
 - . Monitor performance of service providers
 - . Support servicing transfers
 - . Inform borrowers of error resolution & info request process
- “ **Servicing file that contains:**
 - . All transaction credit and debits
 - . Copy of security instrument
 - . Servicing notes
 - . Report of data fields from servicing system
 - . Copy of documentation from error resolution or loss mitigation application
- “ **Record retention:** one year after pay-off or servicing transfer

CFPB—Beyond Servicing

- “ CFPB has **two fundamental missions**:
 - . Ensure access to credit
 - . Protect the consumer
 - . Understands that tough rules could impair access (QM)

- “ **Areas of interest and scrutiny**:
 - . Deceptive and misleading advertising; review all websites
 - . Market structures/relationships that impair consumer choice; steering
 - . Fair lending; pricing; accurate HMDA reporting (loan file data vs. LAR report)
 - . Third party providers (e.g. lead generators)
 - . Reverse mortgages
 - . Servicing

- “ Approach to **mortgage examinations** and enforcement actions unclear.

- “ **Consumer complaints**

Consumer Complaints

Overall

| | |
|--------------------|-----|
| ” Mortgage | 50% |
| ” Credit card | 20% |
| ” Bank account | 17% |
| ” Student loan | 4% |
| ” Consumer loan | 4% |
| ” Credit reporting | 4% |
| ” Other | 1% |

Mortgages

| | |
|------------------|-----|
| ” Unable to pay | 57% |
| ” Making payment | 25% |
| ” Application | 8% |
| ” Closing | 4% |
| ” Other | 4% |
| ” Credit offer | 2% |

Mortgage Complaint Resolution

| | |
|-------------------------------------|-----|
| ” Closed with explanation | 72% |
| ” Closed with non-monetary relief | 10% |
| ” In process | 8% |
| ” Closed with monetary relief | 5% |
| ” Administrative response | 3% |
| ” Reported closed—no further detail | 2% |

Washington's Mortgage Agenda

Concerns/Issues:

- ” Govt role too big
- ” GSE resolution
- ” FHA share too large
- ” FHA financial condition
- ” Credit availability
- ” QRM final rule
- ” Basel III

“However”:

- ” No consensus for change
- ” Revenue helps Fed budget
- ” Purchase mortgage market
- ” Improving quickly
- ” Enforcement hangover
- ” ?
- ” ?

Thank you!

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“ Potomac Partners – a Washington-based consulting firm specializing in mortgage finance industry representation. The firm, which handles an array of legislative, regulatory and transactional matters for many of the nation’s leading mortgage lenders, was formed in September 1999. The primary mission of the firm is to provide strategic advice and assistance to companies that result in reduced costs, improved profitability and streamlined business practices.