



Credit Union National Association

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Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

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

Dear Ms. Jackson:

This letter represents the views of the Credit Union National Association (CUNA) on the Consumer Financial Protection Bureau's Interim Final Rule to address several issues regarding the agency's Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) (2013 RESPA Servicing Final Rule); Mortgage Servicing Rules under the Truth in Lending Act (Regulation Z) (2013 TILA Servicing Final Rule); and the High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X) (2013 HOEPA Final Rule). By way of background, CUNA is the nation's largest credit union trade organization, representing our nation's state and federal credit unions, which serve more than 97 million members.

In general, CUNA supports the agency's clarifications and supports the agency's willingness to continue considering the implications of a final rule, even after it has been adopted. However, we do have a few concerns about the process the agency has used to address the issues involved in the request for comments.

The CFPB has indicated that it has received a large number of questions from servicers about how the servicing rules relate to bankruptcy law and the Fair Debt Collections Protection Act (FDCPA) on issues such as effectively communicating with borrowers in light of their status in bankruptcy.

The Bureau believes further analysis is needed to resolve some issues and it may be issuing further amendments. CUNA recognizes that the agency should analyze these issues carefully and urges the agency to work closely with servicers and



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other stakeholders to maximize regulatory relief provisions and minimize new requirements for servicers.

In the meantime, the CFPB has addressed several issues regarding the interplay between the FDCPA and bankruptcies in its new bulletin. More specifically the bulletin:

- Confirms that servicers must comply with certain requirements of the Dodd-Frank Act and respond to certain borrower communications in accordance with the Bureau's servicing rules even after a borrower has sent a cease communication request under the FDCPA.
- Provides a safe harbor from liability under the FDCPA with regard to such communications.

These clarifications are positive but they also create a new burden that now rests on servicers to ensure they are current regarding CFPB bulletin provisions as well as the relevant regulations and commentary. We believe it would be more efficient and less burdensome for the agency to collate such clarifications into the servicing rules and related commentaries. Also, our members are concerned that clarifications in the CFPB bulletin do not afford the level of legal protections that they receive when they adhere to regulatory directives and commentary guidance.

In conjunction with the issuance of the bulletin, the Bureau is providing exemptions for other servicing communications that are not specifically required by the Dodd-Frank Act or other statutes.

The exemptions will provide some relief for servicers in connection with the FDCPA and when the borrower has filed for bankruptcy. The exemptions are from:

- The requirement in § 1026.20(c) for a notice of rate change for adjustable-rate mortgages (ARMs) and the early intervention requirements in § 1024.39(d)(II) when a borrower has properly invoked the FDCPA's cease communication protections.
- The early intervention requirements in § 1024.39(d)(2) and from the periodic statement requirements under § 1026.41(a)(5) for borrowers while they are in bankruptcy.

The proposal would also make several commentary changes, which CUNA supports because we feel they would be helpful to servicers in their efforts to deal with borrowers facing bankruptcy. At the same time, these proposed changes would not undermine consumer protections for vulnerable individuals experiencing financial difficulties. The changes include the following:

- Because of the new exemption addressing bankruptcy in § 1024.39(d)(1), the interim final rule removes comment 39(c)–1 and incorporates it into new commentary in § 1024.39(d)(1)–2, which clarifies that the exemption begins once the borrower’s petition has been filed under Title 11 of the U.S. Code. Similar new commentary is added at § 1026.41(e)(5)–1.
- Comment 39(d)(1)–2 clarifies that with respect to any portion of the mortgage debt that is not discharged, a servicer must resume compliance with § 1024.39 after the first delinquency that follows the earliest of any of three potential outcomes in the borrower’s bankruptcy case: (i) the case is dismissed, (ii) the case is closed, or (iii) the borrower receives a discharge under 11 U.S.C. §§ 727, 1141, 1228, or 1328.
- This requirement to resume compliance does not require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case.
- Compliance with § 1024.39 is not required for any portion of the mortgage debt that is discharged under applicable provisions of the U.S. Bankruptcy Code. If the borrower’s bankruptcy case is revived the servicer is again exempt from the requirement in § 1024.39.
- Comment 39(d)(1)–3 clarifies that the exemption applies when any of the borrowers who are joint obligors with primary liability on the mortgage loan is a debtor in bankruptcy.
- Comment 41(e)(5)–2 clarifies that with respect to any portion of the mortgage debt that is not discharged, a servicer must resume sending periodic statements in compliance with § 1026.41 within a reasonably prompt time after the next payment due date that follows the earliest of any of three potential outcomes in the consumer’s bankruptcy case: (i) the case is dismissed, (ii) the case is closed, or (iii) the consumer receives a discharge under 11 U.S.C. §§ 727, 1141, 228, or 1328.
- While we do not have issues with the contents of the comment, we recommend that the CFPB add a provision that reminds institutions to be careful not to transmit other documents that could be construed as an attempt to collect on a debt while a bankruptcy is proceeding.
- However, the requirement to resume sending periodic statements does not require a servicer to communicate with a consumer in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case.
- The periodic statement is not required for any portion of the mortgage debt that is discharged under applicable provisions of the U.S. Bankruptcy

Code. If the consumer's bankruptcy case is revived the servicer is again exempt from the requirement in § 1026.41.

- Comment 41(e)(5)–3 clarifies that the exemption applies when any consumer who is among the joint obligors with primary liability on the transaction is a debtor in bankruptcy.

Home Ownership Equity Protection Act (HOEPA)

The interim final rule also amends the 2013 HOEPA Final Rule by clarifying which federally required disclosures servicers must use prior to providing counseling under § 1026.34(a)(5) for a closed-end HOEPA loan that is not subject to the Real Estate Settlement Procedures Act (RESPA).

More specifically, the rule is intended to clarify that the Good Faith Estimate (GFE) or successor disclosure under RESPA is not required for transactions not covered by RESPA, and that counseling for certain high-cost mortgage loans secured by manufactured housing must occur after the consumer receives the HOEPA disclosure required by § 1026.32(c).

CUNA supports these changes.

Conclusion

In conclusion, in CUNA's views, the proposed changes are positive and provide useful clarifications for servicers and borrowers that will not erode consumer protections. However, we urge the agency to refrain from using bulletins as a vehicle to address issues that would more appropriately be addressed in the rules and commentaries.

On a related note, we also urge the agency, as soon as possible, to consolidate all changes to each lettered rule, such as Regulation Z, and its commentaries into one master document. Credit unions are very concerned that they must consult multiple sources in order to be informed about and understand how to implement the numerous new regulatory requirements they are facing.

Thank you for the opportunity to comment on the proposed changes. Please feel free to contact me if you have any questions about this letter.

Sincerely,



Mary Mitchell Dunn

CUNA Deputy General Counsel and Senior Vice President