

CFPB Servicing Rules in Practice

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Presenter – Tara Twomey

- Tara Twomey is currently Of Counsel to the National Consumer Law Center and the Project Director for the National Consumer Bankruptcy Rights Center. She has previously been a Lecturer in Law at Stanford, Harvard and Boston College Law Schools. Tara is a former Clinical Instructor at the Hale and Dorr Legal Services Center of Harvard Law School where her practice focused, in part, on sustainable homeownership for low- and moderate-income homeowners. She is a contributing author of several books published by the National Consumer Law Center, including [Foreclosures](#) and [Bankruptcy Basics](#).

Presenter – John Rao

- John Rao is an attorney with the National Consumer Law Center, Inc. Mr. Rao focuses on consumer credit and bankruptcy issues and has served as a panelist and instructor at numerous bankruptcy and consumer law trainings and conferences.
- He has served as an expert witness in court cases and has testified in Congress on consumer matters. Mr. Rao is a contributing author and editor of NCLC's [Consumer Bankruptcy Law and Practice](#); and a co-author of NCLC's [Foreclosures](#) and [Bankruptcy Basics](#).

CFPB Mortgage Servicing Rules In Practice



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Servicer's Duties Under RESPA

- Provide Requested Information and Correct Account Errors
- Provide Servicing Transfer Notices
- Comply with Force-Placed Insurance Procedures
- Maintain Escrow Accounts
- Comply with Loss Mitigation Procedures



Servicer's Duties Under TILA

- Promptly Credit Payments
- Provide Periodic Mortgage Statements
- Provide Payment Change Notices
- Provide Payoff Statements
- Provide Transfer of Ownership Notices



1

Investor Denial

- If reason for denial was a requirement set by an owner or assignee of the loan, notice must identify owner or assignee and the specific requirement that was the basis for the denial. OI, Supp. 1 to Part 1024, ¶ 41(d)(1)-1
- Next steps?
 - Does borrower have appeal rights under CFPB rules?
12 C.F.R. § 1024.41(h)



DENIED

Review Rights

Days Application Received Before Foreclosure Sale	≥ 90	≥ 45	≥ 38
Acknowledgment of Application*	Yes, must acknowledge within 5 business days and provide deadline for supplying additional documents		No
Time to Evaluate**	30 days		
Time to Appeal***	14 days	No appeal rights	
Time to Accept Loan Mod Offer****	14 days	7 days	
	*12 C.F.R. § 1024.41(b)(2)(B). **12 C.F.R. § 1024.41(c).	***12 C.F.R. § 1024.41(h).	****12 C.F.R. § 1024(e)(1).



1

Investor Denial

- If reason for denial was a requirement set by an owner or assignee of the loan, notice must identify owner or assignee and the specific requirement that was the basis for the denial. OI, Supp. 1 to Part 1024, ¶ 41(d)(1)-1
- Next steps?
 - Does borrower have appeal rights under CFPB rules?
 - Send RFI seeking identification of the owner; specific requirement (usually from the PSA) that was the basis for denial; waiver request. 12 C.F.R. § 1024.36 (RFIs)
 - Send NOE if PSA contains no applicable restriction or servicer does not identify one. 12 C.F.R § 1024.35(b)(11) (NOE – other).
 - HAMP Handbook 4.3 – Servicer can skip steps in mod waterfall based on investor restrictions. HB 6.5; servicer must request in writing waiver of restriction HB 6.5.



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Lousy Mod Offer

- Servicers may impose time limits for borrowers to accept offer
12 C.F.R. § 1024.41(e)(1).
- Does borrower have appeal rights?
12 C.F.R. § 1024.41(h).



Review Rights

Days Application Received Before Foreclosure Sale	≥ 90	≥ 45	≥ 38
Acknowledgment of Application*	Yes, must acknowledge within 5 business days and provide deadline for supplying additional documents		No
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Time to Accept Loan Mod Offer	14 days	7 days	
	* 12 C.F.R. § 1024.41(b)(2)(B). ** 12 C.F.R. § 1024.41(c).	*** 12 C.F.R. § 1024.41(h).	**** 12 C.F.R. § 1024(e)(1).



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Lousy Mod Offer

- Servicers may impose time limits for borrowers to accept offer.
12 C.F.R. § 1024.41(e)(1).
- Does borrower have appeal rights?
12 C.F.R. § 1024.41(h).
- If a borrower requests an appeal, deadline for accepting option is extended until 14 days after servicer provides the appeal determination notice. 12 C.F.R. § 1024(e)(2)(iii).
- Payments??



3

Are You Authorized?

- Servicer may have reasonable procedures to determine if person who claims to be borrower's agent has authority to act on borrower's behalf and may not treat letter as notice of error or request for information until documentation received.
 - OI, § 1024.35(a)-1 (NOE)
 - OI, § 1024.36(a)-1 (RFI)
- What is reasonable? Proprietary form, notarization, advocate's social security number?



ACCESS
DENIED



4

Flood Insurance

EXCLUDE

- RESPA § 2605 (k), (l), & (m) do not exclude insurance
- 12 C.F.R. § 1024.31 defines hazard insurance to include, “insurance...that protects the property against loss caused by...flood...”

BUT

- 12 C.F.R. § 1024.37(a)(2) says hazard insurance **required** by the Flood Disaster Protection Act of 1973 does not constitute FPI.
- 12 C.F.R. § 208.25(c) “...The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.”



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Mod Post Bankruptcy

- Periodic Statements rule
 - 15 U.S.C. § 1638(f); 12 C.F.R. § 1026.41
 - Statements not required for any borrower in bankruptcy or for any portion of debt discharged in bankruptcy
 - For joint borrowers, exemption applies if any of the borrowers are in bankruptcy
- Modifications post-bankruptcy
 - HAMP Handbook Chapter II, Section 1.2 provides:

Borrowers who have received a Chapter 7 bankruptcy discharge in a case involving the first lien mortgage who did not reaffirm debt under applicable law are eligible

- Reaffirm??



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Force-Placed Insurance

- 12 C.F.R. § 2605(k)(2); 12 C.F.R. § 1024.37(a).
- Definition of “force-placed insurance”
- Procedural provisions – notice requirements
- Substantive provisions
 - Upon proof of coverage, terminate and refund for overlapping coverage
 - For escrowed loans must pay existing insurance policy (with limited exceptions)
 - Charges must be for services actually performed and have reasonable relationship to cost of providing service.



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Is Your Client a “Borrower”?

- “Borrower” is not defined in RESPA and Reg. X
- “Borrower” is defined in the Uniform Security Instrument in the definition section as follows:

(B) “Borrower” is

Borrower is the grantor under this Security Instrument.

- The signature line in the Security Instrument refers to the person signing as the “borrower.”
- Paragraph 1 of the Security Instrument obligates the borrower/grantor to make payments under the note
- Paragraph 13 states borrower/grantor who does not also sign note is not personally obligated to make payments, but a default still results in the loss of the grantor’s property interest.



8

Orozco



What Isn't Subject to an NOE?

Origination of loan

Underwriting of loan

Securitization or transfer of ownership of loan

Duplicative requests

Overbroad requests

NOEs more than one year after loan discharged or no longer servicer

Servicer must notify borrower in writing within 5 business days after making determination not to comply

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Limitations on RFI

- Duplicative
 - Not duplicative if for different time period, if information could change
- Confidential or proprietary
 - Servicer employee compensation or personnel actions
 - Examination reports or audits
- Irrelevant
 - Info on other borrowers
 - Servicer training manuals
 - Investor instructions (!)
- Overbroad or unduly burdensome
- Untimely (more than one year after loan discharged or servicer no longer servicing loan)
- Servicer must notify borrower in writing within 5 business days after deciding not to comply

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Transfer Requirements

- New servicer must obtain loss mitigation documents and information submitted by borrower to former servicer and comply with § 1024.41
- If borrower's complete application is being evaluated when mortgage is transferred, new servicer should "continue the evaluation to the extent practicable"
- Documents in a complete application are received for purposes of timelines as of date they were received by former servicer, not new servicer

12 C.F.R. § 1024.41(i)



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Other Transfer Requirements

- Transfer policies and procedures must be consistent with § 1024.38(b)(4) (no right of action)
 - Transferor must timely and accurately transmit information and documents
 - if transmitted electronically, must ensure that data can be properly boarded by transferee's system
 - Transferee must be able to identify missing information and documents and obtain them from transferor
- Compliance Bulletin 2014-01 (Aug. 19, 2014)



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Facially Complete Application

- If borrower submits all missing documents and information as stated in the 5-day notice, or nothing additional is requested in the notice, the application is considered *facially complete*
- if servicer later discovers more information is needed or 5-day notice was incorrect, servicer must promptly request missing information
- servicer must treat application as complete for purposes of dual tracking provisions until borrower given reasonable opportunity to complete
- if borrower completes application within this period, application is considered complete as of date it was facially complete for most timelines under rule



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RESPA Error Resolution

Potential loss mitigation covered errors:

- failing to provide accurate information regarding loss mitigation options and foreclosure
- failing to transfer accurate and timely information about borrower's mortgage account to a transferee servicer, including loss mitigation information
- making the first notice or filing for any foreclosure process in violation of § 1024.41(f) or (j) - *NOE must be received more than 7 days before a scheduled foreclosure sale*
- moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of § 1024.41(g) or (j) - *NOE must be received more than 7 days before a scheduled foreclosure sale*



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