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MORTGAGE LOAN SERVICING (FOR THE SMALL SERVICER)

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MORTGAGE LOAN SERVICING (FOR THE SMALL SERVICER)

OUTLINE

I. INTRODUCTION

A. Who is a “Small” Servicer?

1. Definition of “small servicer.” Under Regulation X Section 1024.30(b)(1), a small servicer is a servicer that meets either of the following:

a. Is a Housing Finance Agency; or

b. Services (together with any affiliates) 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or an assignee. (Note that Regulation X incorporates the small servicer definition set forth in Regulation Z Section 1026.41(e)(4).)

(1) A servicer should only consider mortgage loans (closed-end consumer credit transactions secured by a dwelling) in calculating the number of loans it services.

(2) Servicers should not include:

(a) Loans it voluntarily services for non-affiliated creditors or assignees and for which it does not receive compensation;

(b) Reverse mortgages; and

(c) Loans on timeshare plans.

2. Small servicer determination.
 - a. The 5,000-loan test is applied as of January 1 for the remainder of the calendar year.
 - b. If a servicer ceases to qualify for the exemption, it will have 6 months or until the next January 1 (whichever is later) to comply with any requirements that it was previously exempt from because it qualified for the small servicer exemption.
3. Servicers that do not qualify for the small servicer exemption.
 - a. Servicers who service any mortgage loan it (or its affiliate) did not originate or does not own.
 - b. It does not matter that the servicer nonetheless services 5,000 or fewer loans overall.

B. Purpose of This Talk.

II. ARM RATE AND PAYMENT CHANGE NOTICES

- A. Effective Date. These notice requirements apply to adjustable rate mortgages whether originated before, on, or after January 10, 2014. However, servicers were not required to comply with these requirements until January 10, 2014. Reg Z Sections 1026.20(c) and (d).
- B. Coverage of ARM Notice Requirements.
 1. Closed-end, variable-rate loan secured by a consumer's principal dwelling with a term greater than one year.

2. Small servicers are not exempt.

C. Initial Rate Adjustment Notice. Section 1026.20(d).

1. General rule. ARM servicers must provide a notice in connection with the initial interest rate adjustment (the “Initial Rate Adjustment Notice”).
 2. Timing.
 - a. The Initial Rate Adjustment Notice must be provided (placed in the mail) at least 210, but not more than 240, days (seven to eight months) before the first payment at the adjusted level is due (excluding any grace or courtesy period).
 - b. If the first payment at the adjusted level is due within the first 210 days after consummation, the Initial Rate Adjustment Notice has to be provided at consummation.
 3. Contents. Must be provided in the form of a table and in the same order as, and with headings and format substantially similar to, model and sample forms H-4(D)(3) and H-4(D)(4).

D. Payment Change Notice. Section 1026.20(c). Applies to any rate and payment adjustment that occurs after the initial rate adjustment.

1. General rule. ARM servicers must provide a notice before an interest rate adjustment under the loan contract occurs that results in a corresponding payment change (the “Payment Change Notice”).

2. Timing. Generally, the servicer must deliver the Payment Change Notice or place it in the mail at least 60, but not more than 120, days before a new payment at an adjusted level is due (excluding any grace or courtesy period).
3. Contents. See model and sample forms H-4(D)(1) and H-4(D)(2).
4. This notice is not required if the Initial Rate Adjustment Notice (see Paragraph C. above) is given at consummation (because the first adjusted payment is due within 210 days) and was not an estimate. Section 1026.20(c)(1)(ii)(B).

III. FAIR DEBT COLLECTION PRACTICES ACT

- A. Debt Collection Practices Are on the Banking Regulators' Radar, Particularly CFPB.
- B. Both the federal Fair Debt Collection Practices Act (FDCPA) and the California Rosenthal Fair Debt Collection Practices Act (California FDCPA) prohibit the use of deceptive and unfair debt collection practices.
 1. Federal FDCPA applies by its own terms mainly to persons who collect debts on behalf of another, but California law makes 95 percent of it applicable to creditors directly.
 2. California FDCPA applies to any person who engages in debt collection on behalf of himself or herself or others.

- C. No Exemption for Small Servicers! Small servicers that engage in collecting on their own consumer loans are covered by California FDCPA (and thus most of federal FDCPA too).

- D. CFPB Supervisory Highlights – Summer 2015.
 - 1. Weaknesses found in compliance management systems (CMS).
 - a. Lack of following progression of required training of debt collection staff.

 - b. Weakness in complaint management associated with collections operations. Complaints and even inquiries need to be timely:
 - (1) Identified;

 - (2) Categorized; and

 - (3) Resolved.

 - c. Lack of comprehensive compliance audits.

 - 2. Unfair and deceptive practices found in connection with loss mitigation and foreclosure processes.
 - a. Regulation X Section 1024.41(j) prohibits proceeding with foreclosure sale if a borrower is performing under a workout agreement.

- b. Small servicers are not exempt from Section 1024.41(j) prohibition.

- c. CFPB found that some servicers sent notices of intent to foreclose to borrowers already approved for a trial modification and before the trial modification's first payment was due without verifying whether borrowers had a pending loss mitigation plan before sending its notice.

IV. FAIR CREDIT REPORTING ACT (FCRA)

A. Duty to Investigate Disputed Information.

- 1. FCRA Section 623 governs how “furnishers” (persons who regularly report information to consumer reporting agencies) are to respond when notice is received that a consumer disputes an item that was provided by the furnisher to consumer reporting agencies.

- 2. When notice is received from a credit bureau, furnishers must:
 - a. Conduct an investigation;

 - b. Review all relevant information provided by the credit bureau;

 - c. Report the results of the investigation to the credit bureau;

 - d. Where it is determined that the information is incomplete or inaccurate, report those results to all other nationwide consumer reporting agencies to which the furnisher furnished the information; and

e. If the information is found to be inaccurate or incomplete or cannot be verified after any reinvestigation, promptly: (i) modify the item of information; (ii) delete the item; or (iii) permanently block the reporting of the item.

3. When notice is received from the consumer directly, similar steps are required.

B. CFPB Bulletins Address FCRA Investigation Duties.

1. CFPB Bulletin 2013-09 sets forth the Bureau's expectations regarding the duty of furnishers to investigate disputed information. It mainly repeats the items above.

2. CFPB Bulletin 2014-01 warns that furnishers must investigate disputed information, not simply instruct the credit bureau to delete the information.

a. A reasonable investigation is required regardless of whether notice of a dispute is received from a credit bureau or directly from the consumer.

(1) "Reasonableness" depends on the particular facts.

(2) Merely deleting the item does not amount to a reasonable investigation.

b. In addition to uncovering inaccurately reported information, the investigation also may expose "systemic problems" concerning the general accuracy of information furnished to consumer reporting agencies.

c. Systemic problems could unveil inaccuracies in credit reports of other consumers who may not have filed a dispute.

- d. Discovery of systemic problems requires additional review of the furnisher's policies and procedures governing the accuracy and integrity of information furnished to consumer reporting agencies.

V. SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

A. Foreclosure Relief and Extension of Servicemembers Act (Pub. L. 113-286), enacted December 2014.

1. The Foreclosure Relief and Extension of Servicemembers Act temporarily extended SCRA foreclosure protections.
2. Currently, the foreclosure protections allow for a stay of court proceedings in an action secured by a mortgage during the servicemember's active duty and for 12 months thereafter.
3. This 12-month foreclosure protection was set to expire December 31, 2014.
4. The Foreclosure Relief Act temporarily extended the SCRA foreclosure protections to December 31, 2015.
5. Note: Come December 31, 2015, barring any other congressional action, the period for servicemember foreclosure protection will revert to just 90 days following the end of a servicemember's military service as originally enacted under SCRA Section 533. *Stay tuned.*

B. HUD SCRA Notice Disclosure. HUD updated its SCRA Notice Disclosure (Form 92070) in late December 2014 to reflect the statutory changes made by the Foreclosure Relief Act.

C. Recent SCRA Enforcement Actions.

1. Bank of America, N.A. In May 2015 the OCC issued a consent order against BofA and \$30 million in CMPs for the following deficiencies in complying with SCRA.
 - a. Failure to have effective policies and procedures in place to ensure compliance with the SCRA.
 - b. Failure to devote sufficient financial, staffing and managerial resources to ensure proper administration of its SCRA compliance processes.
 - c. Failure to devote to its SCRA compliance processes adequate internal controls, compliance risk management, internal audit, third-party management, and training.
 - d. Engaging in identified violations of SCRA.
2. Security National Automotive Acceptance Company. In June 2015 the CFPB filed action against the auto loan company for aggressive debt collection tactics against servicemembers, including:
 - a. Exaggerating potential disciplinary action that servicemembers may face;
 - b. Contacting or threatening to contact commanding officers to pressure servicemembers into repayment;
 - c. Falsely threatening to garnish servicemembers' wages; and

- d. Misleading servicemembers about legal action.

VI. CANCELLATION OF PRIVATE MORTGAGE INSURANCE

- A. Homeowners Protection Act of 1998 (HPA). The HPA requires servicers to cancel private mortgage insurance (PMI) upon a borrower's request and to automatically terminate PMI, each based on reaching specified loan-to-value ratios.

- B. Applies to Residential Mortgages. The HPA generally applies to residential mortgage transactions made on and after July 29, 1999.

- C. CFPB Bulletin 2015-03.
 - 1. Outlines HPA provisions regarding:
 - a. Borrower-requested cancellation of PMI (80% LTV);

 - b. Automatic termination of PMI (78% LTV);

 - c. Final termination of PMI (mid-point in amortization schedule);

 - d. PMI refunds; and

 - e. Annual PMI disclosures.

2. Provides examples from CFPB examinations of servicing practices reflecting noncompliance with HPA.
 - a. Importantly, Bulletin points out that since HPA applies to residential mortgage loans consummated on or after July, 29, 1999, the final termination requirements began to impact standard 30-year loans in August 2014.
 - b. Servicers who have any loans with PMI are reminded to ensure that appropriate policies and procedures are in place to comply with the final termination requirements.

VII. RESPA/REGULATION X MORTGAGE SERVICING REQUIREMENTS

- A. Small Servicer Exemption Under RESPA/Regulation X. Same as Regulation Z. See Section I.A. above.
- B. Exempt Mortgage Servicing Provisions. Small servicers are:
 1. Entirely exempt from the:
 - a. General servicing policies, procedures and requirements of Section 1026.38;
 - b. Early intervention provisions of Section 1024.39; and
 - c. Continuity of contact provisions of Section 1024.40;
 2. Exempt from only one of the force-placed insurance provisions discussed in Paragraph G. below (specifically, the prohibition on purchasing force-placed insurance when a servicer could continue the consumer's existing hazard

insurance coverage by advancing funds to escrow under certain circumstances);
and

3. Exempt from the loss mitigation provisions, except the prohibition on foreclosure referrals, discussed in Paragraph H. below.

VIII. MORTGAGE SERVICING TRANSFERS (SECTION 1024.33)

A. Coverage.

1. Federally related mortgage loans subject to RESPA that are secured by a first lien, excluding HELOCs.

2. Small servicers are not exempt.

B. Exempt Transfers. If the payee, payment address, account number and the payment amount remain the same and the transfer is one of the following, it is exempt:

1. A transfer between affiliates;

2. A transfer that results from mergers or acquisitions of servicers or subservicers;
or

3. A transfer that occurs between master servicers without changing the subservicer.

C. Two Basic Requirements.

1. Send notice of transfer of loan servicing - discussed Paragraph D. below;
2. Proper treatment of payments during the 60-day transfer of servicing period – discussed in Paragraph E. below.

D. Notice of Transfer of Loan Servicing.

1. General rule. The transferor servicer and transferee servicer must each provide to the borrower a notice of transfer for any assignment, sale, or transfer of the servicing of the mortgage loan.
2. Timing.
 - a. Transferor servicer (“goodbye” notice). Unless provided at settlement, the transferor servicer must provide the notice not less than 15 days before the effective date of the transfer of servicing.
 - b. Transferee servicer (“hello” notice). The transferee servicer must provide the notice of transfer not more than 15 days after the effective date of the transfer.
 - c. Single notice. The transferor and transferee may provide a single notice, in which case the notice must be provided not less than 15 days before the effective date of the transfer of the servicing.
3. Contents. The notice of transfer must include certain information. Refer to the Notice of Servicing Transfer in Regulation X Appendix MS-2.

- E. Treatment of Payments During 60-day Transfer of Servicing Period.
1. Late fees prohibited. For the first 60 days after the transfer, if the old servicer receives payment on or before the applicable due date (including any grace period), neither servicer may treat a payment as late for any purpose.
 - Do not report the payment as late either.
 2. Transferor's duty to transfer or return payment. Starting on the effective date of the transfer, if the old servicer incorrectly receives a payment, it must either:
 - a. Transfer the payment to the new servicer; or
 - b. Return the payment to the borrower and notify the borrower of the proper recipient of the payment (the new servicer).
- F. Additional Note Regarding Mortgage Servicing Transfers. In August 2014, the CFPB issued a Compliance Bulletin and Policy Guidance on Mortgage Servicing Transfers. Bulletin 2014-01. In that bulletin, the CFPB address the potential risks to consumers that may arise in connection with mortgage servicing transfers, especially servicers with significant transfer volume. The bulletin may be accessed at: http://files.consumerfinance.gov/f/201408_cfpb_bulletin_mortgage-servicing-transfer.pdf.

IX. GENERAL ESCROW ADMINISTRATION RULES (12 CFR 1024.17)

- A. Limits on Escrowed Accounts.
1. Servicer may require monthly payment of one-twelfth of expected annual escrow disbursements.
 2. Plus, a two-month cushion.

- B. Escrow Analyses Must Be Performed at Loan Origination and Annually Thereafter.
- C. Only “Aggregate Analysis” Method of Accounting May Be Used.
- D. Borrower Must Be Given Certain Amounts of Time to Repay Deficiencies or Shortages.
- E. Surpluses Over \$50 Must Be Refunded.
- F. Required Escrow Accounting Statements.

X. TIMELY ESCROW PAYMENTS AND TREATMENT OF ESCROW BALANCES
(SECTION 1024.34)

- A. Timely Escrow Disbursements Required. The servicer must make payments from the escrow account in a timely manner – that is, on or before the deadline to avoid a penalty (as required by Section 1024.17(k)).
- B. Refund of Escrow Balance. Within 20 days (excluding legal public holidays, Saturdays and Sundays) of a borrower’s payment of a mortgage loan in full, a servicer must return to the borrower any amounts remaining in an escrow account that is within the servicer’s control. However this requirement does not prohibit a servicer from netting any remaining funds in an escrow account against the outstanding balance of the borrower’s mortgage loan. Comment 34(b)(1)-1.
 - 1. Notwithstanding the above, such netting is not recommended without first conducting a thorough legal review of the loan documents.

2. There are also provisions allowing for rollover of an escrow balance to a new loan in connection with a refinancing if the borrower so agrees.

XI. ERROR RESOLUTION PROCEDURES (SECTION 1024.35)

A. Coverage.

1. Federally related mortgage loans subject to RESPA, except for HELOCs.

2. Small servicers are not exempt.

B. General Rule. When a servicer receives a notice of error (as defined in Paragraph C. below), it must:

1. Acknowledge the notice. Within five days (excluding legal public holidays, Saturdays and Sundays), the servicer must acknowledge the notice of error in writing; and
2. Respond to the notice. Two ways in which a servicer may respond to a notice of error:
 - a. Option #1. Correct the error and provide written notification of the correction.
 - b. Option #2. Conduct an investigation and provide written notification that no error occurred.

- C. Notice of Error. These error resolution provisions apply to any written notice from the borrower:
1. That includes the:
 - a. Name of the borrower; and
 - b. Information that enables the servicer to identify the consumer's mortgage loan account; and
 2. In which the borrower asserts the occurrence of one of the following errors:
 - a. Failure to accept a payment that conforms to the servicer's written requirements for the borrower to follow in making payments;
 - b. Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law;
 - c. Failure to credit a payment to a borrower's mortgage loan account as of the date of receipt in violation of the prompt crediting of payments requirement in Regulation Z Section 1026.36(c)(1);
 - d. Failure to pay taxes, insurance premiums, or other charges, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay, in a timely manner or to refund an escrow account balance as required by the escrow account provisions in Sections 1024.34(a) and (b);

- e. Imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower. A servicer lacks a reasonable basis to impose fees that are not *bona fide*, such as:
 - (1) A late fee for a payment that was not late;
 - (2) A charge imposed for a service that was not actually rendered;
 - (3) A default property management fee for borrowers that are not in a delinquency status that would justify the charge; or
 - (4) A charge for force-placed insurance in a circumstance not permitted under the force-placed insurance provisions discussed in Section VI. below. Comment 35(b)-2;
- f. Failure to provide an accurate payoff balance amount upon a borrower's request in violation of the payoff statement provisions in Regulation Z Section 1026.36(c)(3);
- g. Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure, as required by the early intervention requirements in Section 1024.39;
- h. Failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer;

- i. Making the first notice or filing for foreclosure in violation of Section 1024.41(f) or 1024.41(j) (discussed in Paragraph H. below);

- j. Moving for foreclosure judgment or order of sale or conducted a foreclosure sale in violation of Section 1024.41(g) or Section 1024.41(j) (discussed in Section VII. below); or

- k. Any other error (!) relating to the servicing of a borrower's mortgage loan.

D. Examples of Notice of Error.

- 1. A qualified written request (QWR) that asserts an error relating to mortgage servicing is a notice of error.

- 2. A notice on a payment coupon or other payment form supplied by the servicer is not considered a notice of error.

E. Designation of an Address for Notice of Error.

- 1. Servicers may establish an address that borrowers must use to submit a notice of error.

- 2. In order to establish such an address, the servicer must notify the borrower in writing that it must use the established address to assert an error.

- F. Timing of Servicer's Response. All of these timeframes exclude legal public holidays, Saturdays and Sundays.
1. If the servicer failed to provide an accurate payoff balance amount, the servicer must respond to the notice of error within seven days of receiving the notice.
 2. If the servicer has already made the first notice or filing for foreclosure in violation of Section 1024.35(b)(9) or (b)(10), the servicer must respond to the notice of error prior to the date of the foreclosure sale or within 30 days of receiving the notice, whichever is earlier.
 3. All other errors - within 30 days of receiving the notice. (This may be extended to 45 days if certain requirements are met.)
- G. Exceptions. The error resolution requirements do not apply to any of the following:
1. The asserted error is duplicative of a prior notice of error;
 2. The notice is so overbroad that servicer cannot reasonably determine what specific error is asserted (be careful on this);
 3. The notice is received more than one year after:
 - a. Servicing has been transferred to another servicer; or
 - b. The loan has been discharged.

XII. REQUESTS FOR INFORMATION (SECTION 1024.36)

A. Coverage.

1. Federally related mortgage loans subject to RESPA, except for HELOCs.
2. Small servicers are not exempt.

B. Request for Information.

1. A written document from a borrower constitutes a request for information if:
 - a. It includes:
 - (1) The name of the borrower; and
 - (2) Information that enables the servicer to identify the borrower's mortgage loan account; and
 - b. States the information the borrower is requesting with respect to its mortgage loan.
2. The following are not considered a request for information:
 - a. A request on a payment coupon or other payment form supplied by the servicer; or
 - b. A request for a payoff balance (because separate rules under Regulation Z govern those).

- C. General Rule. When a servicer receives a request for information, it must:
1. Acknowledge the request. Within 5 days (excluding legal public holiday, Saturdays and Sundays), the servicer must acknowledge the request for information in writing.
 2. Respond to the request. Two ways in which a servicer may respond to a request for information:
 - a. Option #1. Provide the borrower the following in writing:
 - (1) The requested information; and
 - (2) In case the borrower needs further assistance, the servicer's contact information (including a telephone number).
 - b. Option #2.
 - (1) Conduct a reasonable search for the requested information; and
 - (2) Provide the borrower with a written notification that states:
 - (a) That the servicer has determined that the requested information is not available to the servicer;
 - (b) The basis for the servicer's determination; and
 - (c) In case the borrower needs further assistance, the servicer's contact information (including a telephone number).

3. Timing.

a. The timeframe in which a servicer must respond depends on the type of information requested. All of these timeframes exclude legal public holidays, Saturdays and Sundays.

b. Within 10 days if the information requested is the mortgage loan owner or assignee's:

(1) Identity; and

(2) Address or other relevant contact information.

c. Within 30 days, for all other requests for information. (This may be extended to 45 days if certain requirements are met.)

D. Exemptions. A servicer need not comply with the requirement to acknowledge and respond to a request for information if:

1. The information requested is considered to be:

a. Duplicative;

b. Confidential, proprietary or privileged information; or

c. Irrelevant.

2. The information request is considered to be:
 - a. Overbroad or unduly burdensome; or
 - b. Untimely.

XIII. FORCE-PLACED INSURANCE (SECTION 1024.37)

A. Coverage.

1. Federally related mortgage loans subject to RESPA, except for HELOCs.
2. With one limited exception, small servicers are subject to these provisions. (That one limited exception deals with the purchase of force-placed insurance for consumers with escrow accounts in certain circumstances, discussed in Paragraph B.3. below.)
3. Force-placed insurance.
 - a. Defined. Hazard insurance obtained by the servicer on behalf of the owner or assignee of a mortgage loan that insures the property securing the loan.
 - b. Types of insurance not considered force-placed insurance:
 - (1) Flood insurance that is required by the Flood Disaster Protection Act.
 - (2) For borrowers who have established escrow accounts, hazard insurance:

- (a) The borrower obtains; but

- (b) The servicer renews:
 - (i) Using escrow funds (including funds the servicer advances) per the escrow account provisions in Sections 1024.17(k)(1), (2) or (5) (the general escrow servicing rules); or
 - (ii) At its discretion, if the borrower agrees.

B. Requirements for Charging for Force-placed Insurance (12 CFR 1024.17(k) and 1024.37).

- 1. Escrow account has not been established (Section 1024.37(b)). A servicer may not charge a borrower for force-placed insurance unless:
 - a. Servicer has a reasonable basis to believe that the borrower has failed to maintain required hazard insurance;

 - b. In order to have a “reasonable basis to believe” this, the servicer must send:
 - (1) A 45-day notice.
 - (a) Timing. Delivered to borrower or placed in the mail at least 45 days before the servicer charges for the force-placed insurance premium.

 - (b) Contents. See Model Form MS-3(A).

 - (2) A reminder notice.
 - (a) Timing. Delivered to borrower or placed in the mail:

- (i) At least 15 days before the servicer assesses a premium charge or fee related to force-placed insurance; and
 - (ii) At least 30 days after providing the 45-Day Notice.
 - (b) Contents. The contents will depend on the insurance information the servicer has received from the borrower.
 - (i) If the servicer receives no insurance information, look to Model Form MS-3(B).
 - (ii) If the servicer has received some insurance information, but not evidence of hazard insurance coverage, look to Model Form MS-3(C).
 - (c) Not receive evidence that borrower has continuously had insurance in place that meets the requirements of the loan contract.
- 2. Escrow account has been established (and the mortgage payment is more than 30 days overdue).
 - a. A servicer may not purchase force-placed insurance unless the servicer is unable to disburse funds from the borrower's escrow account to ensure timely payment.
 - (1) This means that the servicer must have a reasonable basis to believe either:

- (a) That the borrower's hazard insurance has been canceled (or was not renewed) for reasons other than nonpayment of premium charges; or
 - (b) That the borrower's property is vacant. Section 1024.17(k)(5)(ii).
 - (2) If either of these apply, then the servicer may obtain force-placed insurance so long as it follows the general rules by sending the 45-Day Notice and the Reminder Notice.
 - (3) What this really means:
 - (a) A servicer is not considered unable to disburse funds because the escrow account has insufficient funds.
 - (b) The servicer will have to advance funds through escrow to maintain coverage.
 - (c) Servicers can add this cost to the escrow balance or otherwise seek reimbursement for the advanced funds.
- 3. Partial small servicer exemption. A small servicer may purchase force-placed insurance and charge the cost to the borrower if:
 - a. The consumer has an escrow account for hazard insurance premiums;

- b. The mortgage loan obligation is more than 30 days overdue; and
- c. The cost of the force-placed insurance is less than the amount the small servicer would need to disburse from the consumer's escrow account to pay the consumer's hazard insurance premium. Section 1024.17(k)(5)(iii).

C. Additional Requirements Exist for Renewing or Replacing Force-placed Insurance.

XIV. PROHIBITION ON FORECLOSURE REFERRAL (SECTION 1024.41(F))

- A. Coverage. Federally related mortgage loans subject to RESPA, except for HELOCs and reverse mortgages.
- B. Small Servicers. Small servicers are exempt from the loss mitigation requirements under Section 1024.41, except for the following:
 - 1. Small servicers may not file the first notice or filing required to initiate the foreclosure process (judicial or nonjudicial) unless:
 - a. The borrower's mortgage loan obligation is more than 120 days delinquent;
 - b. The foreclosure is based on a borrower's violation of a due-on-sale clause; or
 - c. The small servicer is joining the foreclosure action of a subordinate lienholder (not applicable to non-judicial foreclosures in California).

2. If the borrower is performing pursuant to the terms of an agreement on a loss mitigation option, the small servicer may not engage in “dual-tracking.” Specifically, the servicer may not:
 - a. Make the first notice or filing required to initiate the foreclosure process (judicial or nonjudicial);
 - b. Move for foreclosure judgment or order of sale; or
 - c. Conduct a foreclosure sale.

XV. SUPPOSE YOU OUTSOURCE: CFPB EXPECTATIONS FOR MANAGING SERVICE PROVIDERS.

In a Bulletin issued on April 13, 2012, the Bureau set forth its expectations for both banks and nonbanks under its supervision to manage their relationships with third-party service providers. The Bureau expects institutions to manage third-party service providers “in a manner that ensures compliance with federal consumer financial law, which is designed to protect the interests of consumers and avoid consumer harm.”

- A. Ensuring That the Third Party Understands and is Able to Comply With the Federal Consumer Financial Laws.
- B. Ensuring the Service Provider Gives Its Employees Adequate Training and Maintains Adequate Oversight.
- C. Using Contract Terms That Provide Clear Expectations For Compliance and Appropriate, Enforceable Consequences For Compliance Deficiencies.
- D. Monitoring the Third Party’s Performance.

- E. Taking Prompt Action to Remedy Any Problems Uncovered Through Monitoring Including Terminating the Relationship Where Appropriate.

CFPB Bulletin 2012-03 can be found at the Bureau's website at http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf. The CFPB re-emphasized mortgage servicing issues in its Winter 2013 "Supervisory Highlights," available at http://files.consumerfinance.gov/f/201401_cfpb_supervision-highlights.pdf.

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