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March 2013 Banking and Mortgage Regulatory Update

For monthly updates on compliance issues email mortgage@mccathernlaw.com with your request.

The CFPB plans to closely monitor mortgage servicers' compliance with federal laws applicable to servicing. Laws pertaining to notices, payments by consumers, the reporting of consumer credit information, and any activity that could be classified as unfair, deceptive, or abusive acts or practices will be closely monitored for compliance.

The CFPB is especially focused on complaints stemming from service interruptions that occur when loans are transferred during the loss mitigation process. The CFPB notes that sometimes, transferee servicers fail to honor the terms of trial loan modifications provided by the transferor servicer either because relevant documents are not transferred to the transferee servicer, or the transferee servicer fails to take adequate steps to identify mortgages subject to trial loan modifications.

As discussed in last month's update, during CFPB audits, the examiners will assess the policies, procedures, systems and controls that servicers have established to address the risks consumers may face in connection with servicing transfers. Adequate staff and training are key areas of the examiners assessment.

In particular, CFPB examiners will focus on the following areas in connection with servicing transfers:

- How a transferor servicer has prepared for the transfer or servicing rights and/or responsibilities, including:
 - Steps taken before the transfer to ensure that information is transferred in a manner that is compatible with the transferee's servicing system;
 - What procedures are in place, before the transfer, to ensure that it would provide adequate information to the transferee servicer to facilitate that servicer's complying with its obligations without unnecessary interruption in servicing; and
 - In what manner and how timely, after the transfer, the transferor intends to respond to inquiries from the transferee or the consumer about transferred loans.

- How a transferee servicer handles the files transferred to it, including:
 - What due diligence is performed by the transferee to ensure accurate information is conveyed to consumers;
 - What procedures the transferee had in place to identify loss mitigation at the time of the transfer;
 - What due diligence the transferee performs to ensure that the servicing platform accurately reflects all account-level information;
 - What training the transferee conducts for staff to ensure those who have operational access to the servicing platform are able to interpret, operate, manage, access, and utilize the transferred loan information.
 - What post-transfer audits the transferee conducts to confirm that all data was properly transferred, and whether the transferee corrects any identified errors.

- For loans with loss mitigation in process, what policies the transferor and transferee implemented, including what procedures they adopted.

While there is no requirement that servicers seek approval from the CFPB prior to servicing transfers, the CFPB will, in some instances, require servicers engaged in significant servicing transfers to prepare and submit written plans to the CFPB detailing how they will manage the associated consumer risks. The information included in the plan will depend on the circumstances of the particular transfer.

This update is not to be considered an offering of legal advice and does not constitute an attorney-client relationship. If you are interested in a more specific and tailored analysis of the compliance-related issues associated with the Dodd-Frank Act, and how it affects your business, please contact Arnold Shokouhi, McCathern's Managing Partner and head of the Banking & Mortgage Section, at arnolds@mccathernlaw.com or 214.741.2662.