

CFPB Mortgage Servicing Standards

Understanding their impact: Error Notice and Information Request Rules

Introduction

Last month, PwC issued the first in a series of monthly publications offering perspectives on the Consumer Finance Protection Bureau's (CFPB) Mortgage Servicing Standards. This second edition focuses on the standards related to error notices and information requests.¹

Summary of Procedural Standards for Responding to Error Notices and Information Requests

The new procedural standards are built upon existing RESPA rules for responding to Qualified Written Requests (QWRs).² As we describe in the call-out box, the rules define covered error notices and the 10 specific error types covered by the new requirements, plus a catch-all eleventh covering "any other error relating to the servicing of a borrower's mortgage loan." The rules also define information requests for these purposes.

A servicer that receives a written error notice or information request must acknowledge it in writing within 5 days (excluding public holidays, Saturdays, and Sundays), and must generally respond within 30 days. A servicer can extend the 30-day response time by up to 15 days so long as it provides the borrower with written notice of the extension and the reason for the extension, prior to the end of the 30-day period. Exceptions to the normal 30-day requirement are the following:

- Requests or complaints relating to a payoff balance, which must be provided in 7 business days.

- An information request for the identity of and contact information for the owner or assignee of a mortgage, which must be provided within 10 business days.
- If an error notice relates to an account for which a foreclosure sale is imminent, the above specified time requirements do not apply. Instead, if the foreclosure sale is scheduled between 7 and 30 days after the notice is received, the servicer must respond prior to the foreclosure sale date.
- If a notification is received 7 days or fewer ahead of a scheduled foreclosure sale, the servicer must make a good faith attempt to respond to the borrower, orally or in writing, and shall either correct the error or state the reason the servicer has determined that no error has occurred.

Servicers are not permitted to extend the response period for any of the above exceptions to the 30-day requirement.

¹ The CFPB issued new mortgage servicing rules on January 17, 2013, with an effective date of January 10, 2014. Those rules implement Dodd-Frank Act amendments to RESPA that added the new procedural standards for responding to error notices and information requests that are the subject of this publication (see 12 C.F.R. §§ 1024.35 - 1024.36; 78 Fed. Reg. 10695; <https://federalregister.gov/a/2013-01248>).

² QWRs are defined under RESPA as "a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that, (i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower." 12 U.S.C. § 2605(e)(1)(B). Section 1463(c) of the Dodd-Frank Act amends RESPA to mandate that a servicer must acknowledge a QWR within 5 days and must provide a detailed response to the QWR within 30 days.

Servicers are allowed to allocate a single mailing address for all in-scope error notices and information requests (similar to the single address that many servicers use for QWRs). Email addresses may be provided in addition to a physical address but, if this option is chosen, servicers must abide by the same response time requirements as for regular mail. Servicers cannot solely rely on email or utilize an “online intake process” in lieu of receiving the information by mail.

The proposed rules would have required a servicer to provide the single address, if the servicer elected to provide one, to the borrower in *any* communication in which the servicer provides the borrower with contact information for assistance from the servicer. The CFPB responded to comments that had raised concerns raised about the possible application of this requirement to oral communication, by clarifying that the communication of the address would only be required in “*any communication in which the servicer provides the borrower with an address for assistance from the servicer.*”³

Finally, servicers are restricted from reporting adverse information to credit bureaus for payments that are the subject of an error notice for 60 days. This requirement was already part of section 6(e) of RESPA with respect to QWRs containing an error notice and, as such, should not create additional challenges outside of validating existing procedures are compliant.

Key Challenges

- Due to the similarity of the procedural requirements for error notices and information requests, servicers may derive substantial efficiencies from responding to both from a centralized function. This approach would allow customer correspondence and responses to be recorded, monitored and reported more easily, particularly if the centralized function implements a complaints handling system or database. Servicers that do not currently have a centralized model for responding to error notices and information requests should consider implementing one before the standards come into force in January 2014.
- To meet the shorter response periods for the non-standard cases (i.e., those with response deadlines shorter than 30 days), a servicer should evaluate having a process

to correctly identifying such cases immediately upon receipt. For example, where customer correspondence contains multiple requests or complaints, the response should be tracked to the issue with the shortest required response time. Accomplishing this may require significant employee training due to the level of interpretation required.

- In cases where a servicer’s complaints-processing function relies on input from other groups in the organization to respond to correspondence, the procedures and/or Service Level Agreements with those other groups may need to be updated to address the new required response periods. Servicers who have a centralized model have historically found that lack of clarity of ownership or timing of the response can cause substantial delays in response times.
- It will be important to identify which communication channels should include the single address and to determine the language to be used to explain the intended use of the address, to avoid confusing the borrower. Servicers should consider inventorying and reviewing existing notifications from various communication channels to ensure this requirement is applied consistently.
- Servicers should consider reviewing how they monitor and track error notices. Where processes are developed to label an account that is subject of an error notice under investigation, that process will need also to include a process for removing the label after the error is found to be inapplicable or has been resolved and the 60 days has elapsed which, in some cases, will be more challenging.
- Customer correspondence involving an account subject to foreclosure can cause problems for servicers relying on system-generated reminders as the timeline for response varies by the foreclosure sale date. For notifications not impacted by foreclosures, it may be possible to rely on systems-generated required response timelines, based on a specific code related to each type of error notice or information request. For correspondence relating to foreclosure accounts, that may not be feasible unless the system can incorporate information around foreclosure timelines.

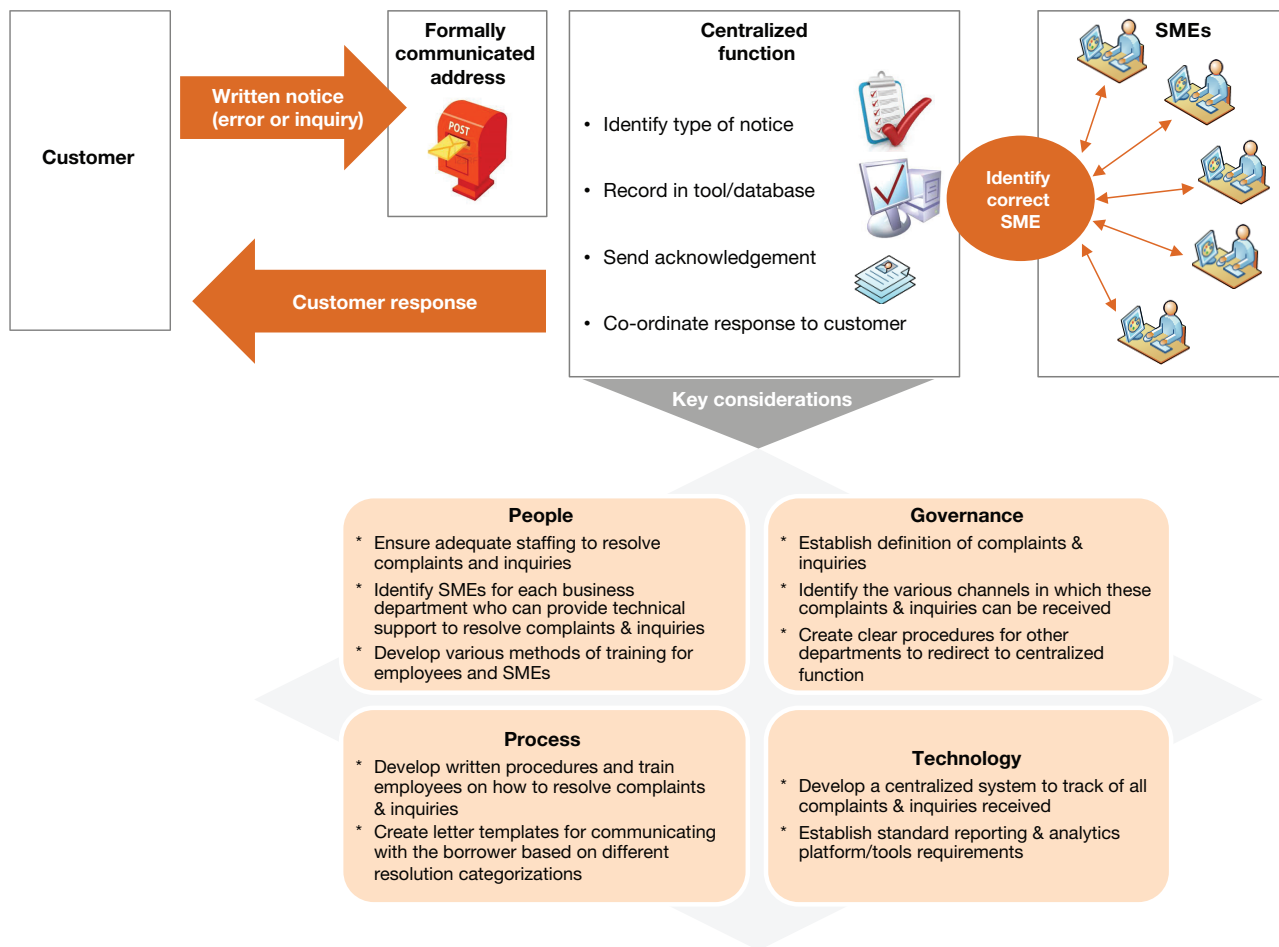
3 <https://www.federalregister.gov/articles/2013/07/02/2013-15466/amendments-to-the-2013-mortgage-rules-under-the-equal-credit-opportunity-act-regulation-b-real#h-33>.

- Servicers may benefit from increasing the level of automation and technology supporting their responses to error notices and information requests. Servicers should review systems, procedures and key performance indicators around tracking customer correspondence, to determine where upgrades may be required to achieve an appropriate level of automation. Of course, automation cannot resolve all of the challenges posed (such as initially identifying the type of information request) so servicers will also need to provide the additional layers of training, communication, and quality control necessary for manual processes.
- Changes to business processes and controls that arise to address the new requirements will require training and communication for successful implementation. The training is likely to involve a variety of methods from including updates in companywide compliance training to creation of job aids to assist with updates to day-to-day business processes.

Conclusion

The new standards for error notices and information requests are expected to have a substantial impact on all mortgage servicers. Implementing the changes will require careful review and possibly significant updates to processes, systems, roles and responsibilities to achieve the desired level of certainty as to compliance. Supporting quality control functions will also need to be modified to incorporate changes made to address those new requirements, including changes to testing methodologies and focus. Finally, these procedural standards are just one area of focus, so implementation efforts should, of course, also continue to address the broader spectrum of new requirements related to the business of mortgage servicing (e.g., the Customer Inquiry and Complaint procedures from their examination manual which was published in October 2012).

Adopting a Centralized Function Model – Complaints and Inquiries



Error Notices (12 C.F.R. § 1024.35)

The new procedural requirements for error notices apply to the following:

- “[A]ny written notice from the borrower that asserts an error and that includes the name of the borrower, information that enables the servicer to identify the borrower’s mortgage loan account, and the error the borrower believes has occurred.”
- “A notice on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a notice of error.”
- “A qualified written request that asserts an error relating to the servicing of a mortgage loan is a notice of error for purposes of this section, and a servicer must comply with all requirements applicable to a notice of error with respect to such qualified written request.”

Errors, for these purposes, include any of the following:

1. Failure to accept a payment that conforms to the servicer’s written requirements for the borrower to follow in making payments.
2. Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law.
3. Failure to credit a payment to a borrower’s mortgage loan account as of the date of receipt in violation of 12 C.F.R. § 1026.36(c)(1).
4. 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 as required by § 1024.34(a), or to refund an escrow account balance as required by § 1024.34(b).
5. Imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower.
6. Failure to provide an accurate payoff balance amount upon a borrower’s request in violation of section 12 C.F.R. § 1026.36(c)(3).
7. Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure, as required by § 1024.39.
8. Failure to transfer accurately and timely information relating to the servicing of a borrower’s mortgage loan account to a transferee servicer.
9. Making the first notice or filing required by applicable law for any judicial or no judicial foreclosure process in violation of § 1024.41(f) or (j).
10. Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of § 1024.41(g) or (j).
11. Any other error relating to the servicing of a borrower’s mortgage loan.

Information Requests (12 C.F.R. § 1024.36)

The new procedural requirements for information requests apply to the following:

- “[A]ny written request for information from a borrower that includes the name of the borrower, information that enables the servicer to identify the borrower’s mortgage loan account, and states the information the borrower is requesting with respect to the borrower’s mortgage loan.”
- “A request on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a request for information. A request for a payoff balance need not be treated by the servicer as a request for information.”
- “A qualified written request that requests information relating to the servicing of the mortgage loan is a request for information for purposes of this section, and a servicer must comply with all requirements applicable to a request for information with respect to such qualified written request.”

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