Volume 1 | Issue 15 | April 25, 2012

Mortgageorb
Required Content for Real Estate Finance Professionals

Weighing The Impact Of The CFPB's Proposed Servicing Rules

Industry reaction ranges from cautiously positive to skeptical.

By Phil Hall

Earlier this month, the Consumer Financial Protection Bureau (CFPB) announced that it was considering new rules that would govern mortgage servicing practices. The CFPB offered its proposal under the banner of "no surprises, no runarounds."

"The rules under consideration by the bureau are aimed at tackling two underlying servicing problems: lack of transparency and lack of accountability," the CFPB said in a statement announcing the proposal. "In recent years, many borrowers have complained that they did not receive the information they needed to help them avoid foreclosure. Other borrowers' troubles worsened because they found it difficult to get answers from their servicers. The rules under consideration are designed to make servicer mistakes rare and quickly fixed, and to ensure that struggling homeowners get the information they need to find alternatives to unnecessary foreclosures."

Within the mortgage banking industry, few people were surprised by the CFPB's announcement. "New rules were inevitable," says John Vella, chief operating officer at Los Angeles-based Equator LLC. "After 2006 and considering the scrutiny placed on the mortgage industry, especially the servicing business, there was going to be an attempt to standardize rules across the board."

"Some of this is really important," says Thomas J. Pinkowish, president of Community Lending Associates in Essex, Conn. "Consumers have been hurt by what most will agree is neglectful servicing. But these are very complicated issues. If the CFPB rules focus on situations where servicer neglect exacerbated the delinquency problem and caused more fees and problems for borrowers, that's where it is of value."

But are these problems happening today? According to the CFPB, the rules being proposed would include the creation of "clear monthly mortgage statements" for borrowers; advance warnings to borrowers of interest-rate adjustments; the option for avoiding "costly force-placed insurance"; "good-faith attempts" by servicers to contact delinquent borrowers who are on the road to foreclosure; and "direct and ongoing access" to a "foreclosure prevention team."

On the whole, industry experts do not question the bureau's intentions.

"It is really difficult to say that anything here is a bad idea," says Marcy Ford, executive vice president and managing partner at the Farmington Hills, Mich., office of Trott & Trott. "It could have a lot of benefits - not only for consumers, but also for helping to restore faith in mortgage servicers as a whole."

Yet Ford adds that many servicers are a few steps ahead of the CFPB. "A lot of mortgage servicers probably already moved in this direction," she says. "For a lot of them, these are not a surprise."

Adam Leitman Bailey, a New York real estate attorney and law professor at New York University, concurs.

"This would have been a fantastic idea five years ago, when banks were giving out more mortgages than they could handle," he says. "But most of these things are not real problems today. Take inaccurate statements, for example - I'm not seeing it. We have thousands of clients, and we're not seeing anyone having problems with what their bills say. These people know what they're getting before buying - we're not seeing banks taking advantage of buyers." "Servicers do not want delinquent

"Servicers do not want delinquent loans," says Pinkowish. "I think there is a bias in here. Servicers don't try to create foreclosures."

Indeed, Vella wonders if the CFPB is cognizant of the situation facing servicers in regard to uncooperative or hostile borrowers.

"It takes two people to do a deal," he says. "This is a two-way street: Borrowers also have to be responsive to servicers. It is in the servicers' best interest to contact borrowers, because servicers and investors do not profit if there is a foreclosure."

Ann Rutledge, founding principal at New York-based R&R Consulting, observes that the consumer plays a more profound role in this environment.

"The CFPB really should think of 'consumer' as a consumer of financial services, in

general, and not just as a consumer of financing," she says. "In today's world, it's hard to find a borrower who isn't also a lender in some related sense - buying a house on credit means creating a loan asset for someone to invest in for retirement. To properly assess the attributes of the mortgage-backed securities they're investing in, investors have a compelling need for standardization of servicer data that the Big Four trustees provide. It's the other side of the coin in consumer protection that, right now, does not exist and, as far as I know, has not been raised as an issue."

And speaking of the other side of the coin, there is the apprehension that the proposed new rules might also require plenty of coins out of the borrowers' pockets.

"This may increase costs," says Dr. Gregory Price, chairman of the department of economics at Morehouse College in Atlanta. "It may reduce abuses, but it will increase the cost of servicing."

"Ultimately, the borrowers will have to pay higher fees to obtain credit," predicts Annamaria Allen, president and CEO of The Compliance Group, based in San Marcos, Calif. "This will impact the affordability of a loan. Whenever you have increased disclosure requirements, you have increased compliance costs. In many cases, it may prevent loans. Our box has already shrunk so much that lenders, investors and servicers don't want to deal with high-risk loans."

The CFPB expects to pursue the conversation on new servicing rules when it publishes a notice of proposed rulemaking this summer, which will be followed by a public comment period. The CFPB expects the rules to be finalized by Jan. 21, 2013.