



Independent Bankers Association of Texas

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Compliance Overview

CFPB Mortgage Reforms: Mortgage Loan Servicing Requirements

Reg Z Servicing Requirements: §1026.41; RESPA Servicing Requirements: §1024.37-.40

These rules are effective January 10, 2014.

Specifically, the Regulation X final rule implements Dodd-Frank Act sections addressing servicers' obligations to correct errors asserted by mortgage loan borrowers; to provide certain information requested by such borrowers; and to provide protections to such borrowers in connection with force-placed insurance. Additionally, this final rule addresses servicers' obligations to establish reasonable policies and procedures to achieve certain delineated objectives; to provide information about mortgage loss mitigation options to delinquent borrowers; to establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of performing certain functions; and to evaluate borrowers' applications for available loss mitigation options. Further, this final rule modifies and streamlines certain existing servicing-related provisions of Regulation X.

The Regulation Z final rule implements Dodd-Frank Act sections addressing initial rate adjustment notices for adjustable-rate mortgages, periodic statements for residential mortgage loans, prompt crediting of mortgage payments, and responses to requests for payoff amounts. This final rule also amends current rules governing the scope, timing, content, and format of disclosures to consumers regarding the interest rate adjustments of their variable-rate transactions.

Source: [Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act \(Regulation X\)](#)

IBAT's Summary

Coverage:

The servicing rules can be divided up between those issued under the Truth in Lending Act or the Real Estate Settlement Procedures Act. The servicing rules issued under TILA generally apply to all closed-end consumer loans secured by a "dwelling". The exception that general rule of thumb is §1026.20 (c) and (d) that provide notification requirements for adjustable rate mortgages and in that case it must be a consumer's "principal dwelling." The servicing rules issued under RESPA apply to all "RESPA-covered loans" with the exception of home equity lines of credit and reverse mortgages.

"Small Creditor" / "Small Servicer " Exemption



A "small servicer" is exempt from the mortgage servicing exemptions (noted above) under both TILA and RESPA. A "small servicer" is defined as the servicing of less than 5,000 mortgage loans annually by the creditor and its affiliates. The threshold is determined by the number of loans subject to the periodic statement in §1026.41.

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(4) *Small servicers.* (i) *Exemption.* A creditor, assignee, or servicer is exempt from the requirements of this section for mortgage loans serviced by a small servicer.

(ii) *Small servicer defined.* A small servicer is a servicer that either:

(A) Services 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; or

(B) Is a Housing Finance Agency, as defined in 24 CFR 266.5.

(iii) *Small servicer determination.* In determining whether a small servicer services 5,000 or fewer mortgage loans, a servicer is evaluated based on the number of mortgage loans serviced by the servicer and any affiliates as of January 1 for the remainder of the calendar year. A servicer that crosses the threshold will have six months after crossing the threshold or until the next January 1, whichever is later, to comply with any requirements for which a servicer is no longer exempt as a small servicer.

Source: [§ 1026.41 Periodic statements for residential mortgage loans](#)

General Requirements:

Truth in Lending Act Servicing Requirements

1. **Periodic Billing Statements §1026.41*** - Must be provided for each billing statement cycle and must contain information on current payment due and payments previously made, fees imposed, other transaction activity; and contact information specific to the servicer and specific to housing counselors.

* "Small Servicers" exemption applies.

2. **Interest Rate Adjustment §1026.20 (c) and (d)*** - Requires a notice be provided to a borrower between 210 to 240 days prior to the first adjustment event. Subsequent adjustment events require a notice to be provided 60 to 120 days prior to adjustment of the payment. Model language is provided in forms H-4(D) (1-4).

* "Small Servicers" exemption does not apply.

3. **Prompt Payment Crediting and Payoff Statements §1026.36(c)*** - Requires the crediting of payments the day they are received. If a payment for less than the amount due may be held in suspense until it is sufficient to cover the amount due. A servicer must also provide an accurate payoff statement within 7 business days after receipt of a written request from the borrower.



* "Small Servicers" exemption does not apply.

Real Estate Settlement Procedures Act Servicing Requirements

1. Forced Placed Insurance §1024.37* - Servicers are prohibited from charging a borrower for insurance coverage that is forced placed unless the servicer has a "reasonable" basis to believe the borrower has failed to maintain necessary coverage. The servicer must send a notice to the borrower 45 days prior to charging the borrower, and a second notice not sooner than 30 days and not later than 15 days before charging the borrower for forced-placed insurance coverage. Additionally, the servicer must refund to the borrower any charges paid for overlapping coverage if the borrower can provide proof of coverage. Finally, if the borrower has an escrow account, the servicer may not force place when they may continue the policy by advancing funds to the borrower's escrow.

* "Small Servicers" exemption applies if insurance is maintained through an escrow and any forced placed insurance is less expensive to the borrower than the amount of any disbursements the servicer would have made to maintain hazard insurance coverage.

These rules preempt state law (chapter 307 Texas Finance Code), which would permit the placement sooner, subject to refund.

2. Error Resolution and Information Requests §1024.35 - .36* - Servicers are required to acknowledge a request for information or notice of error within 5 days of receipt for certain types of errors. Servicers must investigate and correct any error and notify the borrower of the results of the investigation within 30 to 45 days.

* "Small Servicers" exemption does not apply.

3. General Servicing Policies, Procedures, and Requirements §1024.38 - .40* - Servicers are required to establish policies and procedures to meet the following objectives:
 - a. A means to provide accurate and timely information to borrowers, owners, and assignees of mortgage loans.
 - b. A means to provide accurate and timely information to borrowers, owners, and assignees of mortgage loans regarding loan modifications.
 - c. A means to provide prompt correcting of errors resulting from actions of service providers.
 - d. A means of dealing with loss mitigation applications received from the borrower.
 - e. A means to identify and evaluate all available loss mitigation options available to the borrower and consistent with the owner or assignee of the loan.
 - f. A means to monitor compliance of service providers.
 - g. A means to compile an accurate servicing file within 5 days.

* "Small Servicers" exemption applies.

4. Early Intervention with Delinquent Borrowers §1026.39* - A servicer must make a good faith effort to establish and maintain contact with borrowers not later than the 36th day of the loan becoming delinquent and to notify the borrower of potential loss mitigation options. Additionally, by the 45 day of a loan becoming delinquent a servicer shall provide a written notice of loss mitigation options. This section contains model language for the notice of loss mitigation options.



* "Small Servicers" exemption applies.

5. Continuity of Contact with Delinquent Borrowers §1024.40* - Servicers are required to establish and maintain policies and procedures that provide access to delinquent borrowers. At a minimum the policies and procedures should provide:
- a. The assignment of knowledgeable personnel to a delinquent borrower within 45 days of the delinquency.
 - b. The accessibility of knowledgeable personnel assigned to a borrower by phone.
 - c. The ability to assist the borrower with any loss mitigation options that may be available to them.
 - d. The availability of all information to the person assigned to assist the borrower.
 - e. The assignment of an different person in the event a "look back" is conducted in connection with a loss mitigation denial.

* "Small Servicers" exemption applies.

6. Adequate Loss Mitigation Procedures §1024.41* - Servicers are required to establish and follow specified loss mitigation procedures for mortgage loans secured by a borrower's principle dwelling. At a minimum those procedures should address the following:
- a. Acknowledgement of a loss mitigation application by a borrower within 5 days of receipt.
 - b. Confirmation to the borrower regarding the completeness of a loss mitigation application.
 - c. Information requests to the borrower regarding an incomplete loss mitigation application.
 - d. For complete loss mitigation applications received 37 or more days prior to a foreclosure sale, the servicer must evaluate the loss mitigation application within 30 days.
 - e. Providing the borrower with a written decision including an explanation for all loss mitigation applications received.
 - f. Providing borrower with net present value information if loss mitigation application denied for value.
 - g. Provide for an appeal process within 90 days if a modification in connection with a loss mitigation application is denied.
 - h. Prohibitions against "dual tracking" where a servicer is evaluating a loss mitigation application while at the same time perusing foreclosure of the property.

* "Small Servicers" exemption applies but does have two requirements. The first prohibits a small servicer from making a first notice of foreclosure filing unless the borrower is 120 days or more delinquent; and a small servicer may not proceed to foreclosure judgment or order of sale, or conduct an order of sale, if a borrower is performing under the terms of a loss mitigation agreement.

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