

# Proposed Rule Summary

*Prepared by the NASCUS State Regulatory Affairs Department  
November 14, 2013*

## **Consumer Financial Protection Bureau**

## **12 CFR 1024; 12 CFR 1026** Amendments to the 2013 Mortgage Rules RESPA (Reg X); TILA (Reg Z)

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The Consumer Financial Protection Bureau (CFPB) has issued a notice of proposed rulemaking amending certain provisions of the 2013 Mortgage Rules. The amendments focus on clarifying the relationship between disclosure requirements under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) in relation to bankruptcy law and the Fair Debt Collection Practices Act (FDCPA).

### **Background**

Early in 2013, the CFPB issued three final mortgage rules pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act):<sup>1</sup> the 2013 RESPA Servicing Final Rule;<sup>2</sup> the 2013 TILA Servicing Final Rule;<sup>3</sup> and the 2013 HOEPA Final Rule.<sup>4</sup> These rules detailed various disclosure and other requirements for mortgages servicers, and are effective on January 10, 2014.

After promulgation of the final rules, mortgage servicers reported confusion surrounding disclosure requirements under the rules when the borrower has declared bankruptcy or is in default. In particular, servicers were concerned about confusing borrowers under the protection of bankruptcy law with regard to their status in bankruptcy, and exposing themselves to legal liability for failing to properly navigate the complex relationship between the servicing rules and bankruptcy law.

In addition, the rules were unclear regarding when a borrower's "cease communication" request under the FDCPA would override disclosure requirements under the rule. Under the FDCPA, a debtor can prohibit debt collectors from contacting them regarding the debt by sending a written "cease communication" request to the collector.<sup>5</sup> This proposed rulemaking was issued contemporaneously with a compliance bulletin,<sup>6</sup> which indicated that the servicing rules take precedence over an FDCPA cease communication request if the communication is mandated by statute or in response to certain borrower-initiated communications in accordance with the 2013

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<sup>1</sup> [Public Law 111-203](#), 124 Stat. 1376 (2010).

<sup>2</sup> [78 FR 10695](#) (Feb. 14, 2013).

<sup>3</sup> [78 FR 10901](#) (Feb. 14, 2013).

<sup>4</sup> [78 FR 6855](#) (Jan. 31, 2013).

<sup>5</sup> [15 U.S.C. 1692c\(c\)](#).

<sup>6</sup> See CFPB Bulletin 2013-12, available at [http://files.consumerfinance.gov/f/201310\\_cfpb\\_mortgage-servicing\\_bulletin.pdf](http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf).

Mortgage Servicing Final Rules. The bulletin provides a safe harbor for communications sent to a borrower under those circumstances. This proposed rulemaking carves out exemptions for narrow sets of circumstances where the CFPB believes further analysis of how the laws interact is necessary, but not feasible before the rules become effective on January 10, 2014. The CFPB notes that these exemptions may be changed or eliminated in future rulemakings, once the issue has been thoroughly analyzed.

*Comments are due to the CFPB on November 22, 2013.*

### **Rule at-a-Glance:**

- Amends the 2013 RESPA Servicing Final Rule (Reg X), the 2013 TILA Servicing Final Rule (Reg Z), and the 2013 HOEPA Final Rule (Reg X & Reg Z).
- Amends Reg X to exempt a servicer from the early intervention requirements of §1024.39 if the borrower is in bankruptcy or has invoked the cease communication provisions under the FDCPA. The original rule contained commentary in the preamble and a general “conflicts of law” provision that indicated servicers could take a “flexible approach” in complying with the early intervention requirements to the extent permitted by bankruptcy law. This amendment replaces that language with a straight-forward exemption in order to alleviate the substantial legal burden of determining how the laws interact in different factual scenarios. The exemption is triggered when the borrower files a petition under Title II of the U.S. Code, and early intervention requirements resume when the case is dismissed, closed, or the borrower receives a discharge.
- Adds a new exemption from sending periodic statements for residential mortgage loans when the borrower is in bankruptcy to §1026.41(e)(5). The exemption is triggered when the borrower files a petition under Title II of the U.S. Code, and early intervention requirements resume when the case is dismissed, closed, or the borrower receives a discharge.
- Exempts a mortgage servicer that is considered a debt collector under the FDCPA from the early intervention requirements if the borrower has exercised her “cease communication” right.
- Exempts servicers of defaulted mortgage loans who qualify as debt collectors under FDCPA from providing required disclosures under Reg Z §1026.20(c) to consumers with Adjustable Rate Mortgages (ARMs) each time an interest rate adjustment causes a change in payment, if the borrower exercises her “cease communication” right.
- Clarifies that statutory disclosure requirements and certain responses to borrower initiated contacts override the FDCPA “cease communication” provision, but creates the exemption for other contacts in order to allow time for further study of the relationship between the rules.

- Notes that FDCPA exemptions may be altered or eliminated when the Bureau undertakes debt collection rulemaking.
- Amends the 2013 HOEPA Final Rule to require pre-loan counseling for borrowers obtaining high-cost mortgages on closed-end transactions secured by manufactured housing but not tied to residential real property. This narrow category of transactions is not covered under RESPA or TILA, and therefore was not directly addressed in the original rulemaking. The amendment clarifies that counseling is required after the consumer receives the HOEPA disclosure required under Reg Z §1026.32(c), but the disclosures for open-ended transactions under RESPA are not required.
- Makes technical corrections to §1026.32 regarding the definitions for high cost mortgages.

**The proposed rule may be read [here](#).**

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