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To: Clients and Friends

From: David F. Dulock

Subject: CFPB Supervisory Highlights, Summer 2018

The following excerpts are taken from the CFPB’s Summer 2018 edition of its Supervisory Highlights published in the October 18, 2018, *Federal Register* (83 FR 52816, [click here](#)), which reports CFPB examination findings in the areas of automobile loan servicing, credit cards, debt collection, mortgage servicing, payday lending, and small business lending for examinations that were generally completed between December 2017 and May 2018. These excerpts focus only on the examination findings for mortgage servicing and are redacted and modified for clarity and length.

Mortgage Servicing

Examinations continue to focus on the loss mitigation process and, in particular, on how servicers handle trial modifications where consumers are paying as agreed. One or more recent mortgage servicing examinations observed unfair acts or practices relating to conversion of trial modifications to permanent status and initiation of foreclosures after consumers accepted loss mitigation offers. Recent examinations also identified unfair acts or practices when institutions charged consumers amounts not authorized by modification agreements or by mortgage notes.

Converting Trial Modifications to Permanent Status: One or more recent examinations reviewed the practices of servicers with policies providing for permanent modifications of loans if consumers made four timely trial modification payments. However, for nearly 300 consumers who successfully completed the trial modification, the servicers delayed processing the permanent modification for more than 30 days. During these delays, consumers accrued interest and fees that would not have been accrued if the permanent modification had been processed. The servicers did not remediate all of the affected consumers nor did they have policies or procedures for remediating consumers in such circumstances. As a result, one or more examinations identified this as an unfair act or practice.

In response to examination findings, the servicers are fully remediating affected consumers and developing and implementing policies and procedures to timely convert trial modifications to permanent modifications where the consumers have met the trial modification conditions.

Representations Regarding Initiation of Foreclosure: When one or more mortgage servicers approved borrowers for a loss mitigation option on a non-primary residence, the servicers represented to borrowers that the servicers would not initiate foreclosure if the borrower accepted loss mitigation offers in writing or by phone by a specified date. However, the servicers then initiated foreclosure even if borrowers had called or written to accept the loss mitigation offers by that date. Examinations identified this as a deceptive act or practice.

Representations Regarding Foreclosure Sales: Examinations observed that when borrowers submitted complete loss mitigation applications less than 37 days from a

scheduled foreclosure sale date, one or more servicers sent the borrowers notices indicating that the applications were complete and stating that the servicer(s) would notify the borrowers of the decision on the applications in writing within 30 days. After sending these notices, the servicer(s) proceeded to conduct the scheduled foreclosure sales without making a decision on the borrowers' loss mitigation applications. The examinations did not find that this conduct amounted to a legal violation but observed that it could pose a risk of a deceptive practice.

Charging Consumers Unauthorized Amounts: One or more examinations found instances in which mortgage servicers charged consumers more than the amounts authorized by their loan modification agreements. The overcharges were caused by data errors affecting the modified loan's starting balance, step-rate and interest-rate changes, deferred interest, and amortization maturity date when the loan was entered into the servicing system. The overcharges resulted in substantial injury to consumers when consumers made payments higher than those stipulated in the modification agreements or when they made payments for a term longer than stipulated in the modification agreements. In response to the examination findings, which identified this as an unfair practice, the servicers are remediating affected consumers and correcting loan modification terms in their systems.

In addition to the mortgage servicing examination findings noted above, the Summer 2018 Supervisory Highlights also briefly addresses (1) the CFPB's March 8, 2018, Mortgage Servicing Final Rule regarding mortgage servicer communication with borrowers in bankruptcy; (2) the CFPB's August 11, 2017, amendments to TILA-RESPA Integrated Disclosure Rule; (3) the CFPB's May 2, 2018, final rule eliminating the timing restriction that limited the use of a Closing Disclosure to reset tolerances (the "Black Hole" problem); (4) the CFPB's December 21, 2017, statement regarding HMDA implementation; (4) the CFPB's July 5, 2018, statement regarding HMDA amendments in the May 24, 2018, Economic Growth, Regulatory Relief, and Consumer Protection Act, which provides partial exemptions for some insured depository institutions and insured credit unions from the collection, recording, and reporting requirements for some, but not all, of the data points specified in current Regulation C; and (5) the August 22, 2017, Federal Financial Institutions Examination Council's HMDA Examiner Transaction Testing Guidelines for all financial institutions that report HMDA data that apply to the examination of HMDA data collected beginning in 2018.

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