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To: Clients and Friends

From: David F. Dulock

Subject: CFPB Supervisory Highlights of Examination Findings for Mortgage Servicing Examinations Completed between June 2018 and November 2018

In the March 18, 2019, issue of the *Federal Register* (84 FR 9762, [click here](#)) the CFPB published the eighteenth edition of its Supervisory Highlights that reports examination findings in the areas of automobile loan servicing, deposits, mortgage servicing, and remittances that were generally completed between June 2018 and November 2018. The Supervisory Highlights do not impose any new or different legal requirements, and all violations described are based only on those specific facts and circumstances noted during those examinations.

This memorandum focuses only on that part of the Supervisory Highlights relating to mortgage servicing. The reported examinations identified unfair acts or practices for charging consumers unauthorized amounts, deceptive acts or practices for misrepresenting aspects of private mortgage insurance cancellation, and violation(s) of Regulation X loss mitigation requirements.

Charging Consumers Unauthorized Amounts. According to the reported examinations, servicers charged consumers late fees greater than the amount permitted by mortgage notes. Examiners identified several types of affected mortgage notes. For example, certain FHA mortgage notes permit servicers to collect late fees in the amount of 4.00% of the overdue principal and interest. However, on large numbers of loans, the servicers charged late fees on 4.00% of the overdue principal, interest, taxes and insurance, rather than on only the principal and interest. Examiners also identified mortgage notes containing provisions that limit the late fee amount. For example, certain West Virginia mortgage notes permit servicers to collect “5.00% of that portion of the installment of principal and interest that is overdue, but not more than U.S. \$15.00.” However, on large numbers of loans, the servicers charged a late fee greater than \$15. Programming errors in the servicing platform and lapses in service provider oversight caused the overcharges. The examinations found that the servicers engaged in an unfair practice. In response to the examination findings, the servicers conducted a review to identify and remediate affected borrowers. The servicers also changed policies and procedures to assist in charging the late fee amount authorized by the mortgage note.

Misrepresenting Private Mortgage Insurance Cancellation Denial Reasons. The Homeowners Protection Act (HPA) requires servicers to cancel PMI in connection with a residential mortgage transaction if certain conditions are met. Among other conditions, the principal balance of the mortgage must have reached 80% of the original value of the property (LTV) based solely on actual payments or the mortgage must have reached the applicable amortization schedule date on which the LTV was first scheduled to fall to 80% of the original value of the property regardless of the outstanding balance.

At one or more servicers, borrowers who verbally requested PMI cancellation were informed that they were declined because they had not reached 80% LTV. Although the

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relevant amortization schedules did not yet provide for 80% LTV, examiners found that these borrowers had in fact reached 80% LTV based on actual payments because they had made extra principal payments. Although the borrowers did not satisfy other HPA criteria necessary to trigger borrower-initiated cancellation rights under the HPA, such as certifying that the property is unencumbered by subordinate liens or submitting the requests in writing, the servicers did not provide these as reasons to borrowers for denying the requests. One or more examinations identified servicer representations as deceptive because they misrepresented the conditions for PMI removal, but because the HPA does not require servicers to respond to verbal requests for PMI cancellation, they did not violate the HPA. Also, the servicers' misrepresentations were material because they were likely to affect a borrower's choice as to whether to continue to request PMI cancellation, including whether to address the actual, uncommunicated reasons for ineligibility. In response to examiners' findings, the servicers changed templates, as well as policies and procedures, to ensure that PMI cancellation notices state accurate denial reasons.

Failing To Exercise Reasonable Diligence To Complete Loss Mitigation Applications. Regulation X §1024.41(b)(1) requires servicers to exercise "reasonable diligence in obtaining documents and information to complete a loss mitigation application." The actions that would satisfy this requirement depend on the facts and circumstances (*see* comment 41(b)(1)–4.i–iii). In examinations covering 2016 activity, examiners found servicers did not meet the "reasonable diligence" requirements. These servicers offered short-term payment forbearance programs during collection calls to delinquent borrowers who expressed interest in loss mitigation and submitted financial information that the servicer would consider in evaluating them for loss mitigation. The short-term payment forbearance programs deferred some or all of the borrowers' past due payments to the end of the loan, thereby extending its maturity. However, the servicers did not notify the borrowers that such short-term payment forbearance programs were based on an incomplete application evaluation. And near the end of the forbearance period, the servicers did not contact the borrowers as to whether they wished to complete the applications to receive a full loss mitigation evaluation. As a result, examinations found that the servicers violated §1024.41(b)(1) requirements to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application. The examinations did not review currently applicable §1024.41(c)(2) requirements, as those requirements went into effect on October 19, 2017. In response to these findings, the servicers used enhanced processes, such as a centralized queue, to track borrowers receiving short-term forbearance programs and subsequently notify them that additional loss mitigation options may be available and that they could apply for such options over the phone or in writing.

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