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To: Clients and Friends

From: David F. Dulock

Subject: CFPB Examiners Find Mortgage Servicing Problems at Banks and Nonbanks

In a July 21, 2013, press release the Consumer Financial Protection Bureau (CFPB) stated it issued a report of even date detailing mortgage servicing problems at banks and nonbanks, which also found that many nonbanks lack robust systems for ensuring they are following federal laws. Below are redacted excerpts from the CFPB press release:

1. The report is available at: http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.

2. The CFPB has authority to supervise nonbanks regardless of size in certain specific markets, including mortgage companies including originators, brokers, and servicers.

3. The report highlights examination work completed between November 2012 and June 2013, which uncovered the following mortgage servicing problems:

   - **Sloppy account transfers:** The rights to manage a loan are frequently bought and sold among servicers. With these transfers among institutions, the CFPB discovered the following risks:
     ◦Disorganized and unlabeled paperwork, including loss mitigation documents;
     ◦Failures by mortgage servicers to tell consumers when the servicing of the loan is transferred to another company; and
     ◦A lack of protocols related to the handling of key documents, such as trial modification agreements.

   - **Poor payment processing:** In regard to processing loan payments and handling tax and insurance payments through escrow accounts, the CFPB found:
     ◦Inadequate notice to borrowers of a change in address to send payments, resulting in late payments;
     ◦Excessive delays in handling the cancellation of private mortgage insurance payments, resulting in late fees; and
     ◦Property taxes being paid later than expected, resulting in borrowers' inability to claim a tax deduction for the year they planned.

   - **Loss mitigation mistakes:** CFPB discovered several problems, including:
     ◦Inconsistent communications with borrowers, giving them conflicting instructions for loss mitigation processes;
     ◦Inconsistent loss mitigation underwriting, waiving certain fees and interest charges for some borrowers but not others;
     ◦Long application review periods, making the loss mitigation process especially hard on consumers whose accounts are dual-tracked for foreclosure;

◦Incomplete loan files, making it challenging for consumers to find out about their loan modification applications;

◦Poor procedures for requesting missing or incomplete information from consumers, making it difficult for consumers to provide the correct documentation; and

◦Deceptive communications to borrowers about the status of loan modification applications, leading some consumers to faster foreclosure.

4. In appropriate cases where the CFPB found mortgage servicing problems, it opened investigations for potential enforcement actions. The CFPB also directed servicers to engage in specific corrective actions appropriate to the circumstances, such as: reviewing loss mitigation decisions and related fees or charges to borrowers to determine whether any reimbursement was appropriate; conducting periodic testing to monitor areas of concern; and providing reports to the CFPB on their progress completing the corrective actions.

5. The CFPB expects the companies it supervises – regardless of size – to have fully developed compliance management systems to ensure all federal consumer financial protection laws are followed.

6. The CFPB found that many nonbanks are more likely to lack robust compliance management systems. The Bureau found that many nonbank institutions are:

   - **Missing a comprehensive consumer compliance program:** The CFPB found that often individual branches of a business were looking out for relevant federal laws without an overarching system in place at the company, which creates a lack of consistency in following the laws across products and across locations resulting in an erratic treatment of consumer problems and the root causes of regulatory violations going undetected.

   - **Lacking formal policies and procedures:** Not having formal, written documents that both detail consumer compliance responsibilities and instruct employees on the appropriate methods for executing these responsibilities can lead to inconsistencies, sloppy recordkeeping, and ultimately, consumer harm because nobody at the institution is clearly responsible to make sure laws are being followed.

   - **Forgoing independent consumer compliance audits:** Independent audits are a good way for a company to routinely conduct quality-control checks on its operations. A compliance audit program provides a board of directors or its designated committees with information about whether policies and standards are being implemented. Without such a program, it is difficult to recognize any significant deficiencies in an institution's compliance management system.