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September 17, 2012

**To:** Clients and Friends

**From:** Regina M. Uhl

**Subject:** Proposed Rule Amending Regulation Z Affecting Mortgage Servicing

On September 17, 2012, the Consumer Financial Protection Bureau (CFPB) published in the *Federal Register* (77 FR 57318) the following proposed rule: "2012 Truth in Lending Act (Regulation Z) Mortgage Servicing". The proposed rule's comment period ends on October 9, 2012.

Specifically, this proposed rule adds provisions to Regulation Z that would address three servicer obligations, as follows:

- revise provisions relating to initial rate adjustment notices for adjustable-rate mortgages (ARMs);
- add provisions relating to periodic statements for residential mortgage loans,
- revise provisions relating to prompt crediting of mortgage payments and response to requests for payoff amounts; and
- revise provisions relating to the scope, timing, content, and format of current disclosures to consumers occasioned by the interest rate adjustments of their variable-rate transactions

Those clients wishing to comment must submit comments, and refer to Docket No. CFPB-2012-0033 or RIN 3170-AA14, by any of the following methods:

1. *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
2. *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552.

The specific matters for which the CFPB is requesting comment by October 9, 2012, are set out in the *Federal Register* on pages 57318, et al, and may be found [here](#).

The proposed rules generally apply to closed-end mortgage loans, with certain exceptions. Under the proposed amendments to Regulation Z, the periodic statement and ARM disclosure provisions apply only to closed-end mortgage loans, but the prompt crediting and payoff statement provisions apply both to open-end and closed-end mortgage loans. In addition, reverse mortgages and timeshares are excluded from the periodic statement requirement, and certain construction loans are excluded from the ARM disclosure requirements. As discussed below, the Bureau is seeking comment on whether to exempt small servicers from certain requirements or modify certain requirements for small servicers.

The following brief summary of the proposed rule is taken from the CFPB's preamble to the proposed rule:

*1. Periodic billing statements.* The Dodd-Frank Act generally mandates that servicers of closed-end residential mortgage loans (other than reverse mortgages) must send a periodic statement for each billing cycle. These statements must meet the timing, form, and content requirements provided for in the proposed rule. The proposed rule contains sample forms that servicers could use. The periodic statement requirement generally would not apply for fixed-rate loans if the servicer provides a coupon book, so long as the coupon book contains certain information specified in the proposed rule and certain other information is made available to the consumer. The proposed rule also includes an exception for small servicers that service 1,000 or fewer mortgage loans and service only mortgage loans that they originated or own.

*2. Adjustable-rate mortgage interest rate adjustment notices.* Servicers would have to provide a consumer whose mortgage has an adjustable rate with a notice 60 to 120 days before an adjustment which causes the payment to change. The servicer would also have to provide an earlier notice 210 to 240 days prior to the first rate adjustment. This first notice may contain an estimate of the rate and payment change. Other than this initial notice, servicers would no longer be required to provide an annual notice if a rate adjustment does not result in an increase in the monthly payment. The proposed rule contains model and sample forms that servicers could use.

*3. Prompt payment crediting and payoff payments.* As required by the Dodd-Frank Act, servicers must promptly credit payments from borrowers, generally on the day of receipt. If a servicer receives a payment that is less than a full contractual payment, the payment may be held in a suspense account. When the amount in the suspense account covers a full installment of principal, interest, and escrow (if applicable), the proposal would require the servicer to apply the funds to the oldest outstanding payment owed. A servicer also would be required to send an accurate payoff balance to a consumer no later than seven business days after receipt of a written request from the borrower or any person acting on behalf of the borrower for such information.

The CFPB also published in today's *Federal Register* a companion proposed rule that would amend Regulation X (RESPA) to implement the Dodd-Frank Act provisions regarding mortgage loan servicing under Regulation X. The proposed mortgage loan servicing amendments to Regulation X will be the subject of a separate memorandum to be issued by the firm.

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