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CFPB Reports on Recent Mortgage Servicing Examination Findings, Continues to Highlight 'Junk' Fees

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On April 24, 2024, the Consumer Financial Protection Bureau (CFPB) published a new edition of its Supervisory Highlights focused on findings from recent mortgage servicing examinations. Although the report's publication emphasizes continued instances in which servicers are assessing "junk fees," the report actually details what appear to be operational issues that may result in the assessment of fees, or other technical violations of the Regulation X servicing requirements. The report also indicates that the CFPB continues to utilize noncompliance with investor guidelines as the basis for findings related to unfair, deceptive, or abusive acts or practices (UDAAP), or technical Regulation X violations.

Regulatory violations stemming from operational errors

The Supervisory Highlights detail a host of operational errors that examiners determined led to violations of Regulation X's loss mitigation rules. These errors included failing to waive fees and charges for borrowers under COVID-19 hardship loan modifications, failing to include the required verbiage on acknowledgment and evaluation letters, failing to make outreach to delinquent borrowers in violation of the early intervention live contact and written outreach requirements, and failing to retain records demonstrating compliance with these requirements.

In addition, the CFPB found that a servicer failed to maintain reasonable policies and procedures when it neglected to follow investor guidelines for evaluating loss mitigation applications by automatically denying certain consumers for particular loss mitigation options.

Other findings noted in the Supervisory Highlights relate to fees charged to borrowers, escrow disbursement and adequacy of notices to borrowers.

Fees charged to borrowers

Examiners found a number of regulatory and UDAAP violations related to fees that servicers charged to borrowers. In particular:

- Property inspection fees: It was unfair to charge property inspection fees where prohibited by investors.
- Late fees: It was unfair to charge late fees exceeding the amount permitted by the note or in connection with a loss mitigation agreement that should have prevented the assessment.
- Periodic statements: It was a violation of Regulation Z's periodic statement requirements to have inadequate fee descriptions – such as using the term "service fee" to cover 18 different fee types, with no additional information.

Escrow disbursement

Examiners noted one Regulation X violation related to escrow disbursements:

- Late disbursements: Servicers violated Regulation X when escrow disbursements failed to reach the intended payee, and the payments were resent only after borrowers complained and fees incurred.

Adequacy of notices

Examiners noted several categories of deficiencies and violations related to how servicers engaged with delinquent borrowers and borrowers entering the loss mitigation process:

- Evaluation notices: Certain streamlined loss mitigation option offers were deceptive because they misinformed borrowers they were approved for the option (when in fact some were later denied). The conclusion was based on the fact that consumers could have made budgeting decisions on the false assumption they had been approved, or were discouraged from taking additional steps to complete a loss mitigation application or cure their delinquency.
- Delinquency notices: It was deceptive to send a delinquency notice informing customers they had missed a payment when they were in fact current, in a trial modification or had an inactive loan.

What's next?

This report is only the latest in a series of issuances promoting the CFPB's "junk fees" initiatives – most recently evidenced in its final rule to reduce credit card late fees, a proposed rule regarding overdraft fees and a circular on junk fees charged on international money transfers.

In comments released with the Supervisory Highlights, CFPB Director Rohit Chopra noted that servicing is an area of particular concern because "homeowners cannot just simply switch providers if their mortgage servicer charges them illegal junk fees," and that "since mortgage borrowers are captive to a company they never chose to do business with, we are working hard to detect and deter violations of the law." Servicers should take particular note of the fact that the CFPB continues to incorporate an assessment of compliance with investor requirements into its reviews and has claimed that noncompliance with investor requirements can be the basis for a UDAAP finding.

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