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CFPB's New Regulations Will Affect Local Banks and Small Servicers

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While the new regulations implemented by the Consumer Financial Protection Bureau (CFBP) are designed to apply primarily to big banks and loan servicers, the regulatory environment for small and community banks will also be transformed. Since many of these new rules are currently set to go into effect on January 10, 2014, and revisions are still being issued, small and community banks around the country should already be studying them and establishing policies and procedures for immediate compliance.

This is an area of particular concern for small banks, as they often lack the regulatory compliance resources of their larger cousins. This likely means that small banks will be more reliant on third party vendors, as they have less ability to craft in-house solutions. Since small and community banks also tend to have less control over third party vendors, the potential for trouble meeting CFPB deadlines and ultimately for increased attention from the CFPB itself is substantial. The CFPB has indicated that it expects all loan servicers to comply with the new rules as they go into effect. No servicer should expect a grace period or special consideration.

Many of the new CFPB regulations contain an exemption for small loan servicers, however. Generally, the exemption applies when a loan servicer, including any affiliates, services 5,000 or fewer mortgage loans, as of January 1st of each year. If a servicer grows and no longer qualifies, it is given 6 months or until the following January 1, whichever occurs later, to comply with the full panoply of CFPB regulations. The exemption does not apply if the servicer services any loans it neither originated nor owns, however, even if the total number of loans serviced is fewer than 5,000.

If the small servicer exemption applies, what is the effect?

Some of the mortgage servicing rules effective January 10, 2014, will simply not apply to small servicers.

- One example is the periodic statement rule, which requires very specific account and payment information to be included in each monthly periodic statement.
- Another example is the continuity of contact provision, which requires servicers to establish procedures assigning specific personnel to be available to communicate with delinquent borrowers.
- A third example is the early intervention rule which requires a servicer to establish or make good faith efforts to establish live contact with a delinquent consumer by the 36th day of his or her delinquency, and to provide the consumer with written information about any available loss mitigation options by the 45th day of delinquency.

Other rules apply to small servicers but in a limited fashion. For example, early intervention and loss mitigation provisions which require a very specific schedule of notices once a borrower defaults on a mortgage loan and which further bar dual tracking generally do not apply. However, small servicers are required to comply with two loss mitigation requirements: (1) they may not make the first notice or filing required for a foreclosure process unless a borrower is more than 120 days delinquent, and (2) a small servicer may not proceed to foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a loss mitigation agreement.

Small servicers are also exempt from the rule against obtaining force-placed insurance in cases in which hazard insurance may be maintained through an escrow account, so long as any force-placed insurance purchased by the small servicer is less expensive to a borrower than the amount of any disbursement the servicer would have made to maintain hazard insurance coverage.

Other rules do not include an exemption for small servicers. For example, there is no exemption for the adjustable rate mortgage provision that requires disclosures in connection with the initial reset of an adjustable-rate mortgage and each time an interest rate adjustment results in a payment change. Another provision lacking the exemption is the requirement for prompt crediting and payoff statements that mandates all servicers have to credit payment on the day the payment is received and further requires payoff statements be provided within seven days of a written request. Finally, there is no exemption for the error resolution and information request provisions which require acknowledgment of a request for information within five days and a detailed response either correcting the error or providing the information sought within 45 days. Small and community banks will have to comply with each of these provisions.