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March 4, 2013

The Honorable Tim Johnson
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Bureau of Consumer Financial Protection: Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Bureau of Consumer Financial Protection (Bureau), entitled "Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)" (RIN: 3170-AA14). We received the rule on February 15, 2013. It was published in the *Federal Register* as a final rule; official interpretations on February 14, 2013. 78 Fed. Reg. 10,696.

The final rule by the Bureau of Consumer Financial Protection amends Regulation X, which implements the Real Estate Settlement Procedures Act of 1974, and implements a commentary that sets forth an official interpretation to the regulation. It implements provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) regarding mortgage loan servicing. Specifically, this final rule implements Dodd-Frank Act sections addressing servicers' obligations to correct errors asserted by mortgage loan borrowers; to provide certain information requested by such borrowers; and to provide protections to such borrowers in connection with force-placed insurance. Additionally, this final rule addresses servicers' obligations to establish reasonable policies and procedures to achieve certain delineated objectives; to provide information about mortgage loss mitigation options to delinquent borrowers; to establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of

performing certain functions; and to evaluate borrowers' applications for available loss mitigation options. Further, this final rule modifies and streamlines certain existing servicing-related provisions of Regulation X. For instance, this final rule revises provisions relating to mortgage servicers' obligation to provide disclosures to borrowers in connection with transfers of mortgage servicing, and mortgage servicers' obligation to manage escrow accounts, including restrictions on purchasing force-placed insurance for certain borrowers with escrow accounts and requirements to return amounts in an escrow account to a borrower upon payment in full of a mortgage loan. Concurrently with the issuance of this final rule, the Bureau issued a rule implementing amendments relating to mortgage servicing to the Truth in Lending Act in Regulation Z. The rule has an effective date of January 10, 2014.

Enclosed is our assessment of the Bureau's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Bureau complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Lea Mosena
Attorney, Legal Division
Consumer Financial Protection Bureau

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
BUREAU OF CONSUMER FINANCIAL PROTECTION
ENTITLED
"MORTGAGE SERVICING RULES UNDER THE
REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)"
(RIN: 3170-AA14)

(i) Cost-benefit analysis

The Bureau performed a cost-benefit analysis as required by section 1022(b)(2)(A) of the Dodd-Frank Act which requires that the Bureau consider potential benefits and costs to consumers and covered persons resulting from the rule, including the potential reduction of access by consumers to consumer financial products or services resulting from the rule. The Bureau states, however, that potential benefits and costs, and the impacts, are not generally susceptible to particularized or definitive calculation in connection with this rule. Further, the incidence and scope of such potential benefits and costs, and such impacts, will be influenced very substantially by economic cycles, market developments, and business and consumer choices, which are substantially independent from adoption of the rule.

The Bureau stated the potential benefits of the rule on consumers and covered persons (e.g., notices of error and requests for information, requirements regarding early intervention, and loss mitigation procedures) are especially hard to quantify. The Bureau stated that based on the data limitations, the analysis provided a qualitative discussion of the benefits, costs, and impacts of the final rule, and used general economic principles to provide insight into the benefits, costs, and impacts. Where possible, the Bureau made quantitative estimates based on these principles and the data that are available.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Bureau did not certify that the rule would not have a significant economic impact on a substantial number of small entities due to limited data with which to compute the remaining compliance burden on small servicers (as defined by the Regulatory Flexibility Act (RFA)). Thus, the Bureau included the information required for its final regulatory flexibility analysis and convened a Small Business Review Panel to obtain advice and recommendations of representatives of the regulated small entities and solicited comment on alternative means of compliance for small servicers. Several recommendations were incorporated into the proposed rule. For example, the rule exempts servicers that service 5,000 mortgage loans or

less, all of which the servicer or an affiliate owns or originated, from most of the requirement in 12 C.F.R. Part 1024.38-.41. The rule also exempts small servicers in other particular and certain circumstances. The Bureau believes that these exemptions remove a significant amount of the total compliance burden of the final rule that would otherwise fall on small servicers (as defined by the RFA). The Bureau believes that the small fraction of insured depositories and credit unions that must comply with all provisions of the final rule will most likely be the relatively larger servicers that have substantial experience servicing loans for Fannie Mae, Freddie Mac, FHA, or the VA. Thus, they should already have policies and procedures and resources dedicated to complying with their requirements, and there is substantial overlap between those requirements and the requirements of the rule. The Bureau believes that the effect of the mortgage servicing rule on the cost of credit for small businesses is likely to be small. It also believes that this cost is likely to be especially small for the small business relying on a small business loan or consumer credit apart from a closed-end mortgage loan.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Unfunded Mandates Reform Act does not apply to independent regulatory agencies, such as the Bureau of Consumer Financial Protection.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The Bureau issued a proposed rule on August 10, 2012, which was published in the *Federal Register* on September 17, 2012. 77 Fed. Reg. 57200. The Bureau received approximately 300 comments on the proposed Servicing Rules from individual consumers, consumer advocates, community banks, large bank holding companies, secondary market participants, credit unions, non-bank servicers, state and national trade associations for financial institutions in the mortgage business, local and national community groups, federal and state regulators, academics, and others. The Bureau responded to those comments in the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collection requirements under the Paperwork Reduction Act. Using the Bureau's burden estimation methodology, the Bureau believes the total estimated one-time industry burden for the approximately 12,643 respondents subject to the proposed rule would be approximately 37,000 hours for one time changes and 1.1 million hours annually. The estimated burdens in this PRA analysis represent averages for all respondents. The Bureau expects that the amount of time required to implement each of the changes for a given institution may vary based on the size, complexity, and practices of the respondent. For

purposes of this PRA analysis, the Bureau estimates that there are 11,255 depository institutions and credit unions subject to the proposed rule, and an additional 1,388 non-depository institutions. Based on discussions with industry, the Bureau assumes that all depository respondents except for one large entity and 95 percent of nondepository respondents (and 100 percent of small non-depository respondents) use third-party software and information technology vendors. Under existing contracts, vendors would absorb the one-time software and information technology costs associated with complying with the proposal for large- and medium-sized respondents but not for small respondents.

Statutory authorization for the rule

The final rule is authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. No. 111-203, 124 Stat. 1376 (2010), as it relates to the implementation of the Real Estate Settlement Procedures Act of 1974, as codified at 12 U.S.C. 2603-2605, 2607, 2609, 2617, 5512, 5532, 5581.

Executive Order No. 12,866 (Regulatory Planning and Review)

The Executive Order does not apply to independent regulatory agencies, such as the Bureau of Consumer Financial Protection.

Executive Order No. 13,132 (Federalism)

The Executive Order does not apply to independent regulatory agencies, such as the Bureau of Consumer Financial Protection.