CFPB Dodd-Frank Mortgage Rules
Rule Implementation Tracking Project Discussion Guide
Discussion-Focused, Point-in-Time Approach

Background:

Supervision and Research, Markets, and Regulations (RMR) are working to identify and assess challenges arising as industry prepares for implementation of the rules by providing for early communication which will allow for a timely exchange of information. This work will help Supervision and RMR decide whether to amend rule text, issue additional guidance or provide other support to the industry as a whole.

This guide will prepare you to discuss this set of issues with supervised mortgage lenders and servicers. Entity responses about potential compliance issues with the January 2014 rules will not result in negative findings in connection with any examination work to encourage a free flow of information.

Please see Appendix A for a list of frequently asked questions.

Implementation Discussion:

Step 1: Inform the lead compliance professional and key business people at the organization that the CFPB would like to discuss the entity's implementation plans for the new mortgage **[origination/servicing]** rules. The CFPB's compliance contact should be able to determine who the CFPB mortgage rule implementation leads are within the company. Set up a meeting time.

> Draft email: As you are aware, a majority of the CFPB's new mortgage **[origination/servicing]** rules will become effective January 10, 2014. We would like to set up a meeting to discuss your implementation plans for those rules **[insert a time to hold the meeting, for example, next week]**. **[If an exam is ongoing or planned for the near future include:** This discussion is separate from the **[ongoing/upcoming] [servicing/origination]** examination.] During the meeting, we plan to ask questions such as:
>
> - Who is accountable for the CFPB mortgage rule implementation effort? Who are other key contributors to the implementation effort?
> - What plans do you have for implementing the mortgage **[servicing/origination]** regulations (including identifying affected business processes, products, departments, staff and technology upgrades)?
> - How far along are you in these plans?
> - Have you developed an implementation budget for full-time employees and third party service providers? What do you expect these plans to cost, including staff time?

- What do you expect to be most difficult about implementing the regulations?
- Which regulation(s) in particular are likely to be the most challenging for you, and why?
- Which regulations are the least challenging to implement, and why?
- Do you have contracts with any third parties related to mortgage processing activities? If so, have you discussed the relevant implementation plans with them?
- **[If you don't have this information from prior work]** What is your mortgage business like today (*e.g.,* overall marketing strategy; sourcing of originations; servicing model, etc.)?
- How, if at all, do you plan to change your business model in response to the regulations?

Your responses to our questions are completed voluntary and will not result in any findings in connection with any examination work conducted by the Bureau. We encourage you to be forthcoming with information so that we can best help answer your questions and you can help us determine if there are broad questions or support needs that we should consider addressing.

Please let us know when you and/or your colleagues working on the CFPB mortgage rule implementation effort would be available to have this discussion.

If you have technical questions on the meaning or intent of any of the mortgage rules, please send them to the Regulations team at (202) 435-7700 or email questions to CFPB_reginquiries@cfpb.gov. In response to your inquiry, oral guidance will be provided via phone by a subject matter expert attorney from the Office of Regulations.

In addition, in connection with the new rules, the CFPB has issued or will be issuing new examination procedures, compliance guides, readiness guides, and even additional regulation commentary. I recommend you sign up for email updates on the regulations page of our website www.consumerfinance.gov/regulations to ensure you are aware when we publish these items.

I look forward to meeting with you.

[Your name]

completing and reviewing the collection of information. Comments regarding this collection of information, including the estimated response time, suggestions for improving the usefulness of the information, or suggestions for reducing the burden to respond to this collection should be submitted to Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by email to CFPB_Public_PRA@cfpb.gov.

***

Step 2: Meet with the entity to discuss rule implementation work. Think about the entity's responses in terms of whether the rules affect the **[servicer/originator]** people, processes, technology, or business model (**see Step 3**).

Talking Points:

- Thank you very much for taking the time to meet with us today to discuss your rule implementation work. We are hoping to use this meeting to learn about your implementation strategy, challenges and any other comments you would like to provide.
- I will be taking notes during the discussion to provide the information and feedback to CFPB's Research, Markets and Regulations, the office that drafts the rules, and Supervision Headquarters staff. I am not an expert on all of the mortgage rules and will not be able to provide technical advice at this time; however, I will do my best to get you responses timely if you have not already directed your questions to our Office of Regulations.
- As a reminder, your responses to our questions on this topic will not result in any findings in connection with any examination work.
- We encourage you to be forthcoming with information so that we can best help answer your questions and you can help us determine if there are broad issues that we should consider addressing for the benefit of industry implementation efforts.
- I sent you a list of questions I was hoping we could discuss during this meeting. Let us begin with the first question [the questions from the initial email are bolded below]…

    - **Who is accountable for the CFPB mortgage rule implementation effort? Who are other key contributors to the implementation effort?**

    - **What plans do you have for implementing the mortgage regulations (including identifying affected business processes, products, departments, staff and any technology upgrades)?**
        - Examiner follow-up question if information is not covered:
            - How was the plan developed?
            - Gap analysis performed?
            - Was it in consultation with or reviewed by key stakeholders, such as legal, compliance, and information technology?

            - Has the plan been approved by senior management and the board?
            - Does it contain key milestones, targeted dates, and progress reports?
            - How are you tracking progress?
            - Who reviews progress reports?
            - Does the plan include an audit review to ensure the rules were implemented correctly?
            - Around what date do you plan to conduct staff training on the new rules?

- **How far along are you in these plans?**
    - Examiner follow-up question if information is not covered:
        - Is your plan on schedule? If not, what are you doing to ensure you meet the next milestone or target date timely?
        - Which aspects of your plan are scheduled to be completed prior to the rule effective date? What contingency plans do you have if the systems changes you have identified are not ready on time?

- **Have you developed an implementation budget for full-time employees and third party service providers? What do you expect these plans to cost, including staff time?**

- **What do you expect to be most difficult about implementing the regulations?**
    - For each issue that the entity raises as being difficult, ask follow-up questions. For example, do the concerns primarily relate to staffing challenges? Process challenges? Technology challenges?

- **Which regulation(s) in particular are likely to be the most challenging for you, and why?**
    - For each regulation that the entity raises as being challenging, ask follow-up questions. For example, do the concerns primarily relate to staffing challenges? Process challenges? Technology challenges?

- **Which regulations are the least challenging to implement, and why?**

- **Do you have contracts with any third parties related to mortgage processing activities? If so, have you discussed the relevant implementation plans with them?**
    - Examiner follow-up question if information is not covered:

            - Do you have changes planned for the review and oversight of third party practices?

    - **What is your mortgage business like today (*e.g.,* overall marketing strategy; sourcing of originations; servicing model, etc.)?**

    - **How, if at all, do you plan to change your business model in response to the regulations?**

<u>Servicing-specific questions:</u> If the entity has not raised these in the open-ended question section of the discussion. **[Reviewers, please add questions of particular interest to you OR that follow-up on responses provided by the entity.]**

- Periodic statement to be sent each billing cycle
    - Do you send monthly statements already? How significant are the format changes that you will be making to your monthly statements?
- Provisions addressing general servicing policies, procedures and requirements
    - How do you plan to assess whether your policies and procedures are achieving the objectives outlined in Section 1024.38 of the new mortgage servicing rules?
    - What changes will you be making to your servicing technology, people, and processes in order to come into compliance with Section 1024.38, which lists a series of objectives for your policies and procedures as a servicer?
    - **Reviewers: the objectives in the rule include:**
        - **Assessing and providing timely and accurate information;**
        - **Properly evaluating loss mitigation applications;**
            - What is your plan to identify all the loss mitigation options available for the mortgage loans you service? How do you plan to evaluate the borrower for all the available options?
        - **Facilitating oversight of, and compliance by, service providers;**
        - **Facilitating transfer of information during servicing transfers; and**
            - What changes are you making to your policies and procedures to ensure that borrowers are not harmed during the servicing transfer process?
            - How are you planning to identify and retrieve necessary documents or information that the transferor servicer should have, but did not, transfer?
        - **Informing consumers of the written error resolution and information request procedures.**
    - What changes will you be making to your servicing technology, people, and processes in order to maintain the required documents and data on each mortgage loan account serviced in a manner that facilitates compiling such documents and data into a servicing file within five days?
        - **Reviewers: the required documents in the rule include:**

        - A schedule of all transactions credited or debited to the mortgage loan account, including any escrow account and any suspense account;
        - A copy of the security instrument that establishes the lien securing the mortgage loan;
        - Any notes created by servicer personnel reflecting communications with the borrower about the mortgage loan account;
        - To the extent applicable, a report of the data fields relating to the borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices; and
        - Copies of any information or documents provided by the borrower to the servicer in accordance with the procedures set forth in the error resolution (§ 1024.35) or loss mitigation (§ 1024.41) sections of the rule.

- Protections regarding force-placed insurance
    - Are you making any changes to your force-placed insurance practices because of the rules? If so, what are they?
    - How do you intend to ensure that you have a reasonable basis to believe that the borrower has failed to comply with the requirement to maintain hazard insurance?
    - How will you ensure that, where the borrower has an escrow account for the payment of the homeowner's insurance premiums, you do not obtain force-place insurance where you can continue the borrower's insurance (even if you need to advance funds to the borrower's escrow account to do so)?
- Requirements to correct errors and provide requested information
    - Are you going to be changing your complaint and inquiry processes in response to the rule requirements? If so, how?
- Required procedures for evaluating loss mitigation applications
    - What changes will you be making to the loss mitigation people, process, and technology because of the rules?
    - How will you ensure that you do not make the first notice or filing required for the foreclosure process until a mortgage loan account is more than 120 days delinquent?
    - Do you have an appeal process for loan modification denials now?
        - If not, how are you going about creating one?
        - If so, are you making any changes in response to the rules?
    - How are you considering determining when a loss mitigation application is complete, meaning you have received all the information you need from the borrower to evaluate the borrower for all loss mitigation options available from the owner or investor of the mortgage?

- What process changes are you making to ensure borrowers are evaluated for all available loss mitigation options before sending a denial letter?

Origination-specific questions: If the entity has not raised these in the open-ended question section of the discussion. **[Reviewers, please add questions of particular interest to you OR that follow-up on responses provided by the entity.]**

- Please refer to the Readiness Guide for additional specific questions.
- How do you plan to ensure that your policies and procedures address the key components of
    - the ability-to-pay provision?
    - the qualified mortgage provisions?
    - the higher-priced mortgage loan escrow provisions?
    - the high-cost mortgage provisions?
    - the Homeownership Counseling provisions?
    - the ECOA appraisal provisions?
    - the higher-priced mortgage loan appraisal provisions?
    - the loan originator compensation provisions?
- Does your institution plan to use the model disclosure forms instead of institution-developed disclosure forms?
- Do you anticipate the development of "new" product offerings in light of the mortgage rule changes?
- What have been your training plans around updating your staff about the mortgage rule changes for:
    - the ability-to-pay provision?
    - the qualified mortgage provisions?
    - the higher-priced mortgage loan escrow provisions?
    - the high-cost mortgage provisions?
    - the Homeownership Counseling provisions?
    - the ECOA appraisal provisions?
    - the higher-priced mortgage loan appraisal provisions?
    - the loan originator compensation provision?

Step 3: Collecting the information and reporting to Supervision and RMR.

In order to maximize the value of the entity's input to the Bureau, we would like it to be as consistently presented and categorized as possible. The majority of the input related to rule implementation can likely be sorted into the classic buckets of "people, process, and technology," and we would ask that you organize the information summary in this manner. We recommend another category to summarize input that relates to business model decisions the originator or servicer made prior to launching into implementation activities.

The feedback categories are as follows:

- **Implementation – People**: Include comments and data about human resources or budget for human resources; including such topics as needs for new (or different mix of) skills and expertise; staff or third party training, etc.
- **Implementation – Process**: Include comments and data provided regarding internal and external business and operational processes and workflow, including anticipated changes, projected costs of change, etc.
- **Implementation – Technology**: Include comments and data provided that relate to transaction system updates that the lender or servicer regards as essential to rule compliance, including third-party vendor information, scope of anticipated changes, timeframes for availability of compliant versions, projected costs of change, etc.
- **Business Model**: Include any information shared regarding how the lender or servicer may or may not expect to make changes to how they participate in the origination or servicing business (*e.g,.* they plan to only make QM loans, they plan to expand or contract their servicing footprint, etc.)
- **Other**: Catch all for information and data that does not align with one of the other four feedback categories.

Appendix A: Frequently Asked Questions
(For use in response to entity questions)

How do I contact the CFPB about the new mortgage rules?

If you have technical questions on the meaning or intent of any of the mortgage rules, please send them to the Regulations team at (202) 435-7700 or email questions to CFPB_reginquiries@cfpb.gov. In response to your inquiry, oral guidance will be provided via phone by a subject matter expert attorney from the Office of Regulations.

Who must comply with the rules?

Specific requirements vary for each rule. Please review the details of the new requirements to determine coverage. Additional information about coverage and exemptions can also be found in small entity compliance guides, although the guides are not a substitute for the rules themselves.

Why did you set January 2014 as the effective date for the majority of the Title XIV Rules?

The Dodd-Frank Act specifically limits the implementation period to one year for certain of the mortgage rules, including servicers' periodic statements and certain elements of the qualified mortgage rule. We sought comment on whether to try to stagger implementation dates but ultimately concluded that that would add a lot of complexity for industry, as well as delaying important benefits for consumers. That said, we chose earlier effective dates for a few rules that do not present significant implementation burdens for industry, such as the escrow rule.

Do you believe January 2014 gives industry enough time to implement the rules both accurately and efficiently?

Yes. We believe the industry is up to it. It is not easy, we know. But we believe that both consumers and industry will benefit from expeditious implementation of the new standards. And we will be engaged with and helping industry through a number of channels. We have committed to publish plain language guides for the regulations and to update official interpretations to provide industry clarity on critical legal questions that impact implementation.

On the remittance rule you said you would not move the effective date, and then you moved the effective date. Will you consider delaying the effective date for the mortgage rules?

No. The remittances rule involved a situation where we decided that substantive changes were needed to the rule, so it was necessary to delay the effective date while those issues were resolved through notice-and-comment rulemaking. Moreover, the statute did not set a deadline for implementation. We have put in place a substantial implementation support team to provide guidance on the mortgage rules along the way. We are confident that the rules can be implemented by next January, just as the rules written by the Federal Reserve implementing the CARD Act were implemented by its effective date.

Will the CFPB start examining for compliance immediately?

The CFPB will assess policies and procedures in a timely fashion. Transaction testing will not take place until after the effective date for the applicable rule and enough time as passed to allow for an adequate sample of transactions. You should be prepared to discuss your implementation plan and policy changes prior to the effective date.

Where can I find CFPB examination procedures?

The exam procedures can be found on the CFPB website
http://www.consumerfinance.gov/guidance/supervision/manual/

http://www.consumerfinance.gov/guidance/

Where do I find additional resources to assist in implementation?

For additional information, you may use the CFPB developed tools and compliance guides. Many of the tools developed by the CFPB can be accessed on our website, http://www.consumerfinance.gov/guidance/.

What do the mortgage servicing rules do?

The rules implement protections for consumers in three core areas: These core areas include:

- Lack of transparency which results in surprises to borrowers.
- Inefficient handling of delinquent borrowers which results in borrowers getting the run-around.
- Restrictions on dual tracking to protect borrowers for whom loss mitigation options are available to avoid unnecessary foreclosures.

The Bureau addresses these issues through 9 provisions affecting mortgage loan servicing

- Periodic statement to be sent each billing cycle
- Disclosures before an interest rate changes
- Requirements regarding prompt crediting of payments and provision of payoff statements
- Protections regarding force-placed insurance
- Requirements to correct errors and provide requested information
- Provisions addressing general servicing policies, procedures and requirements
- Requirements for early intervention for delinquent borrowers
- Requirements for continuity of contact for certain delinquent borrowers

- Required procedures for evaluating loss mitigation applications

Does the rule require servicers to offer a loan modification when the borrower is eligible and such a modification wouldn't be a violation of the contract with the investor? If not, why not, and will the CFPB address this at a later date?

The rule does not require the servicer to offer any specific loan modification option. The rule does require the servicer to offer loan modification options as required by the investor.

How does the 120-day foreclosure prohibition work in this rule? How did the CFPB arrive at this amount of time? Is it enough for the typical borrower?

A servicer may not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan obligation is greater than 120 days delinquent. This period of time prevents the servicer from foreclosing before borrowers have had an opportunity to bring the loan current themselves, or to submit a complete application for a loss mitigation option. This timing is consistent with the requirements imposed by Fannie Mae and Freddie Mac for mortgage loans they guarantee, as well as timing requirements set forth in the National Mortgage Settlement.

There are a variety of measures that address aspects of mortgage servicing—the mortgage settlement monitoring process, banking agency guidance and enforcement actions, HAMP guidelines, and now this regulation. Is there any effort to coordinate all of this?

In developing these rules, the CFPB focused on the layers of requirements applicable to mortgage servicing, including other federal agency requirements, the national mortgage settlement, state law requirements, and government insurance or guarantee program requirements (as well as GSE and other investor requirements). These rules establish uniform consumer protection standards that fill the gaps left by many other initiatives. These are standards applicable to, and appropriate for, all servicers, whether they service loans for their own portfolios, loans insured by government programs, or loans that have been sold to private investors. The rules are intended to be consistent with other applicable requirements such as federal agency requirements, the mortgage settlement standards, and state laws, and to preserve flexibility for others, such as States or investors to impose requirements that provide further protections beyond those in the proposed rule.

Will this impact state laws? (Note: Some states have different foreclosure processes example: Georgia)

Yes. Although in many instances, the rules do not conflict with state laws, one instance is particularly notable. The loss mitigation procedures include a prohibition on making the first notice or filing required for a foreclosure process unless a borrower is more than 120 days delinquent if a property is occupied as a principal residence of the borrower. This prohibition applies notwithstanding state law allowing such filings to occur earlier.