By: *Jane Mason*

NO REST FOR THE WEARY

In the aftermath of a year of forbearance activity and foreclosure moratoria, mortgage servicers face a long road ahead.

More than 2,000 years since the Roman poet Virgil wrote "Fortune favors the bold," the phrase holds particular significance for today's mortgage servicing industry—especially given recent actions by the CFPB. Between inconsistencies and fluctuating guidelines in the aftermath of a year of forbearance activity and foreclosure moratoria, mortgage servicers face a long road ahead. As a result, they will need to be bold to handle a continuing onslaught of evolution and change.

Thankfully, the COVID-19 pandemic has ushered in greater sophistication in automation, complex decisioning tools, and overall innovation. If servicers have not already embraced these new technologies, the only sound method for future-proofing their organizations is to do so now.

THIS IS NOT LAST YEAR'S CFPB

The CFPB has already been busy this year, driving home the importance for servicers to prepare to assist borrowers affected by the COVID-19 pandemic. While Acting Director Dave Uejio and Director-Nominee Rohit Chopra have been aligning their courses of action, the impact of the agency's increasing focus on servicers may not yet be fully understood.

With multiple moving parts, from rulings to directives, servicers will need to engage and educate employees—and borrowers—with a progressive approach to doing business and to remain compliant in 2021. They'll also need to understand the ground rules, which haven't been completely clear.

In a recent comment letter sent to Uejio, the National Mortgage Servicing Association and the Mortgage Bankers Association sought to ensure that the CFPB establish the proper framework for mortgage servicers to navigate the next phase of pandemic recovery. The comment letter offers thoughtful

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consideration as servicers absorb the numerous announcements the CFPB has made this year, ones that potentially will have a severe impact on business.

The reality is that more complex requirements will further stress resources that are already strained. For example, as things stand now, staff training for servicers will grow more cumbersome as some employees return to the office while others work permanently from home. We will also see servicing systems being taxed by temporary pandemic regulatory and guideline changes and permanent industry updates.

Another ongoing issue impacted by the pandemic is compliance with Regulation X of the Real Estate Settlement Procedures Act (RESPA). The MBA and the NMSA collectively reached out to Uejio in reply to proposed rules to amend Regulation X. While acknowledging industry's support for the CFPB's proposed rulings, again the groups called out areas that need clarification.

For servicers, changes of this magnitude can create both timing and monetary constraints. For instance, new rules and guidelines will require extensive follow-up to ensure they are implemented properly and to ensure adherence to new compliance processes. Some servicers simply won't be prepared to integrate proposed CFPB rules and mandates effectively. More importantly, some may not be able to stand up to increased agency scrutiny, which could place them at risk of a fine or other enforcement action.

MORE CHANGES ARE ON THE WAY

Remarkably, mortgage servicers, which are the focus of the CFPB's recommended changes, have done an admirable job in addressing borrower needs as they handled nearly 4.3 million in pandemic forbearances. In fact, in their comment letter to the CFPB, the NMSA, and MBA pointed out that, even though the CFPB reported a 54% increase in year-over-year complaints (2019 to 2020), mortgage servicers experienced a decline. This brings into question the CFPB's forthcoming debt collection rule, which is partially founded on complaint data.

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For example, the groups said the CFPB's failure to augment and clarify the scope of its streamlined modification exemptions could frustrate the agency's goal of reducing hurdles for borrowers who enter permanent loan modifications. In fact, it could further impair consumer access to this option. In another example, the proposed communication guidance for borrowers nearing the end of their forbearance plans duplicates existing processes required by the government-sponsored enterprises (GSEs) and investors.

The CFPB is making a valid effort to address real concerns that homeowners financially impacted by the COVID-19 pandemic have. However, each rulemaking scenario creates a near-term response on behalf of mortgage servicers to digest, educate, and properly implement new or changed processes, which will disrupt their ability to support distressed homeowners.

The CFPB has also sent servicers a clear signal that debt collection will be among the agency's priorities. The agency's annual report to Congress on the Fair Debt Collection Practices Act (FDCPA), a joint effort on the part of the CFPB and the Federal Trade Commission, insinuated that the industry should expect examinations to resume full-force with a strong focus on the fair treatment of consumers who have been impacted by COVID-19.

SERVICERS HAVE BEEN WARNED

Regulators are also paying closer attention to consumer complaints, which Uejio states represent "an important real-time window into where consumers encounter problems in the marketplace." With complaints on the rise during the pandemic, increasing over 50% since 2019, the CFPB used a keyword search to highlight the frequency of the COVID-19's impact on consumers. The other most prevalent area of concern revolved around credit reporting, which has been an ongoing subject of consumer complaints spanning several years.

The CFPB is also continuing to warn servicers to prepare for the possibility of increasing foreclosure risk. Concerned over the potential volume of foreclosures that could hit the industry as early as this fall, Uejio has cautioned servicers to incorporate preventative measures now. It's been made clear that servicers will be evaluated on their demonstrated ability to be proactive, work with borrowers, address language access, evaluate income fairly, handle inquires promptly, and prevent avoidable foreclosures.

In fact, the CFPB has proposed rule changes to ensure servicers are ready. With numerous COVID-19 consumer protections about to expire, and almost 1.7 million homeowners who are more than 360 days delinquent, the CFPB's proposals would provide borrowers with a special pre-foreclosure review window that would push foreclosure starts out to the end of the year. They would also allow servicers to offer borrowers suffering from COVID-19 hardships special streamlined loan modifications instead of having to explain and propose all options.

While some of the CFPB's changes will impact servicers immediately, they've also moved some proposals further back. In order to appropriately address unfair debt collection practices, the CFPB has delayed the implementation of two rules originally set to take effect on November 30 of this year, moving the effective dates collectively to January 29, 2022.

These rules are designed to improve clarity and specificity around the information required when debt collectors communicate with consumers. The first rule offers more transparency around communication guidance and restrictions to prevent unfair collection practices, including harassment, abuse, and making false or misleading representations. The second rule provides information on required actions and disclosures associated with time-barred debt. Although this typically does not apply to a mortgage, the line could be plausibly breached as a part of collection efforts.

WHY IT'S IMPORTANT TO ACT NOW

Even if the rule proposals, extensions, and temporary guidance slow down in today's environment, servicers simply will not prevail without the right technology. Irrespective of the size of a company's default servicing team, only modern automation can help servicers achieve the velocity, transparency, and precision they need to manage loss mitigation processes and the predicted surge in foreclosures. That's why it's so important for servicers to act now.

The first thing servicers should do is start organizing their data and implement process automation for all stages of default, so they are ready for any and all borrower scenarios. They should also identify and adopt workflow technologies that ensure both flexibility and transparency to manage new rules and requirements, which will continue as we move past the pandemic.

These technologies should have the ability to centralize all borrower communications, requests, and complaints—including all past interactions—into a single view. Fortunately, with today's technologies, it's possible for servicers to implement such systems, which can also automate bulk processing and default decisioning in addition to providing borrower self-service options.

That last piece is important. By centralizing customer communications and automating borrower assistance, it becomes much easier to improve response times, which is likely to keep servicers out of trouble with the CFPB. It's also easier to resolve complaints, as such technologies can apply business rules and automatically distribute complaints to staff as soon as they're received. They can also alert staff as to what actions to take and the appropriate timeline based on the borrower's individual needs.

Make no mistake, mortgage servicing is tough, and it's only going to get tougher. But for organizations that plan ahead and equip themselves with the right technologies, new rule changes don't have to create major business disruption. Instead, it offers servicers the confidence to handle any rule changes with minimal effort. Now they can put borrowers first and give them their maximum attention, which is how it should be.

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