

CFPB Supervisory Highlights Reflect Continued Emphasis on “Junk Fees”

April 25, 2024

On April 24, 2024, the Consumer Financial Protection Bureau (CFPB) released the latest [edition](#) of its Supervisory Highlights, this time targeting so-called “junk fees” in the mortgage servicing industry. According to the CFPB, its examiners found that mortgage servicers continued to assess junk fees in a wide array of activities, including unnecessary property inspection fees and improper late fees. The highlighted observations reflect that boarding errors and compliance failures that involve the assessment of fees will be categorized as “junk fees” by the Bureau as it and other regulatory agencies address the assessment of fees and product pricing for financial products and services.

“Unfair” Property Inspection Fees

The CFPB first highlighted unfair acts or practices committed by loan servicers for charging property inspection fees prohibited by investor guidelines. According to the Bureau, Fannie Mae guidelines prohibit property inspections if the property is occupied by a borrower or tenant and one of the following applies:

- the servicer established right party contact with the borrower in the last 30 days;
- the borrower made a full payment within the last 30 days; or
- the borrower is performing under a loss mitigation option or bankruptcy plan.

According to the CFPB, its examiners found that servicers charged borrowers for property inspection fees on hundreds of occasions, notwithstanding the fact that one of the exclusions above applied to each of the borrowers charged.

The CFPB found that this constituted a violation of the CFPA because “[c]onsumers were unable to anticipate the property inspection fees or mitigate them because they have no influence over the servicer’s practices.”

In response, the servicers corrected automated flaws in their servicing platforms, implemented new training and monitoring to avoid these inspection fees in the future and, where appropriate, reimbursed borrowers charged these fees.

Despite consumers not being party to investor contracts and limitations on servicing fees varying by investor, servicers should take note that an operational or compliance error resulting in failure to adhere to GSE or

investor servicing guidelines may result in claims under the Unfair, Deceptive, or Abusive Acts or Practices Act (UDAAP) (including, potentially, under the FDCPA) and allegations regarding the assessment of “junk fees”.

“Unauthorized” Late Fees

The Bureau’s examiners also uncovered instances of servicers engaging in unfair acts or practices by assessing “unauthorized” late fees. The unauthorized late fees arose in two circumstances:

1. when the servicer charged a late fee that exceeded the amount permitted in the loan documents; and
2. when the servicer charged a late fee even though the consumer had entered into a loss mitigation agreement that should have precluded such fees.

In response to these findings, servicers reimbursed the impacted borrowers.

Here we note that in the Bureau’s view, the assessment of late charges resulting from boarding errors or compliance errors can result in “junk fee” allegations.

Improper Fees Related to COVID-19 Loss Mitigation

Finally, examiners reported numerous instances of loan servicers charging borrowers for certain fees that should have been waived following acceptance of COVID-19 loss mitigation plans. Reg. X, 12 C.F.R. § 1024 et. seq., authorizes loan servicers to offer borrowers streamlined loan modifications to those who experienced a COVID-19 hardship. Reg. X further mandates that servicers “waive all existing late charges, penalties, stop payment fees, or similar charges that were incurred on or after March 1, 2020, promptly upon the borrower’s acceptance of the loan modification.” The CFPB’s examination found a number of servicers were not, in fact, waiving these existing fees in violation of Regulation X. In response, loan servicers are remediating consumers.

This Supervisory Highlight demonstrates enhanced scrutiny by the Bureau of servicer compliance requirements when fees and charges assessed to consumers are involved. In addition, it reflects that the Bureau will categorize the failure to adhere to investor guidelines, boarding errors or general operational errors resulting in the assessment of servicing fees as the assessment of “junk fees,” as the Bureau, along with other federal agencies, scrutinize the assessment of fees and charges in financial products and services, as well as pricing practices in general.

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