

What Mortgage Servicers Need to Know About CFPB's Junk Fees Update

March 24, 2023

In early March 2023, the Consumer Financial Protection Bureau (CFPB) issued a special edition of its [Supervisory Highlights](#) that focused exclusively on “junk fees” uncovered in supervisory examinations in various industries, including mortgage servicing. This continued focus on junk fees is unsurprising given the priorities of the Biden Administration to curb the use of fees charged to consumers for goods and services.

The Bureau highlighted numerous Unfair or Deceptive Acts or Practices (UDAAP) and Regulation Z violations related to junk fees in mortgage servicing. Those examinations resulted in servicers waiving or refunding these so-called junk fees and also serve as notice to other mortgage servicers for potential future regulatory or enforcement actions if these practices were to continue.

Here is what the Bureau's examinations uncovered and what mortgage servicers should be aware of:

Overcharging or Misrepresenting Late Fees

Repeating its previously reported examination findings in other industries, the Bureau's examinations uncovered servicers engaged in unfair acts or practices by assessing late fees in excess of the amounts provided for in the borrowers' loan agreements. Of note:

“... where loan agreements included a maximum permitted late fee amount, the servicers failed to input these late fee caps into their systems. Because the systems did not reflect the maximum late fee amounts permitted by their loan agreements, the servicers charged the maximum allowable late fees under the relevant state laws, which frequently exceeded the specific caps in the loan agreements.”

The Bureau's examinations also cited violations of Regulation Z when the servicer sent periodic statements that included inaccurate late payment fee amounts, as they exceeded the amounts permitted by the loan agreements.

The Bureau also reported that certain servicers charged a late fee even though the monthly periodic statement reflected a late fee in the amount of \$0.00. Examiners found this practice to be deceptive and required servicers to update their periodic statements and waive or refund late fee charges for specific payments.

Charges for “Unnecessary” Property Inspections

The Bureau also highlighted property inspection charges it declared were unnecessary because it involved the wrong property. Specifically, the Bureau found that in some instances, vendors would report back to the servicer that an address was incorrect but, despite this, the loan servicer would hire the vendor to again inspect the wrong property address and pass those charges along to the borrower. The Bureau declared this practice an unfair act or practice and noted that in response to these findings, the various mortgage servicers revised their applicable policies and procedures and waived or refunding the fees to borrowers.

Misrepresenting the Need for PMI or Charging for PMI Once it Should Have Been Removed

According to the Bureau, sending a monthly periodic statement that included charges for private mortgage insurance (PMI) when the borrower did not owe such a charge constitutes a deceptive act or practice. The Bureau's examinations found that lender-paid PMI was added to monthly periodic statements, even though this charge is not supposed to be billed directly to a borrower. The servicers were ordered to refund the overpayments.

Likewise, examinations uncovered instances where a servicer continued to charge for PMI even though the loan-to-value ratio outlined in the Homeowners Protection Act (HPA) had been met, which should have resulted in the automatic termination of PMI. This, too, resulted in the servicers refunding excess PMI payments and updating applicable policies and procedures.

Charging Borrowers Fees that Should Have Been Waived

Under The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), servicers were directed not to charge fees or penalties during the time period borrowers were in a forbearance agreement. While such fees and penalties could be charged once the forbearance period ended, for certain types of loans, including those insured by the Federal Housing Administration (FHA), such fees and penalties were supposed to be waived.

However, the CFPB's examinations found that some servicers failed to waive such fees and charges on FHA-insured loans, despite being required to do so. The Bureau declared this an unfair act or practice and ordered the offending parties to waive the improper charges and, in certain circumstances, provide refunds.

Key Takeaways

The Bureau's special edition Supervisory Highlights on junk fees puts persons and entities subject to the CFPB's rule-making and enforcement authority on notice. That notice is important because, under the Consumer Financial Protection Act (CFPA), a person who violates federal consumer financial law can face a significant daily penalty for committing a knowing violation, although the penalties faced by servicers here were not terribly onerous; typically refunds or waivers of fees charged to borrowers.

The Supervisory Highlights also continue to refine what the Bureau considers a “junk fee” in the first place. While a somewhat vague and amorphous concept, the Bureau’s examination findings make clear that unnecessary or excessive charges are likely to be flagged as an impermissible “junk fee.” Loan servicers are well-advised to review their applicable policies and procedures to ensure any fees charged to a borrower comply with applicable law and the express terms of the underlying loan agreements, and to review whether the charges made related to work that was actually performed.

Related people

Jim Sandy