

The Intersection of New Rule 3002.1 with RESPA and the FDCPA: What Could Go Wrong?

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PURPOSES OF R.3002.1 FDCPA, AND RESPA

- Fed. R. Bankr. P. 3002.1:
 - Established to address problem of servicers demanding payment from discharged former chapter 13 debtors of amounts assessed but not disclosed during the borrower's chapter 13 bankruptcy
 - Requires servicers to file notices that inform chapter 13 debtors about status of their loan during their case, including payment changes (3002.1(b)) and fees/expenses charged to the account (3002.1(c))
 - Requires servicers to respond to a 'final cure notice' filed upon completion of the plan term, in order to ensure that debtors pay all legitimate post-petition amounts and are able to emerge from a successful chapter 13 bankruptcy with a current mortgage (3002.1(g))

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PURPOSES OF R.3002.1 FDCPA, AND RESPA

- FDCPA – Congressional Findings and Statement of Purpose:
 - 15 U.S.C. § 1692a(a):
 - There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.
 - 15 U.S.C. § 1692a(b):
 - Existing laws and procedures for redressing these injuries are inadequate to protect consumers.
 - 15 U.S.C. § 1692a(e):
 - eliminate abusive debt collection practices by debt collectors
 - insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and
 - promote consistent State action to protect consumers against debt collection abuses.

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PURPOSES OF R.3002.1 FDCPA, AND RESPA

RESPA (12 USC 2601 et seq.) became effective on June 20, 1975. The act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process.

RESPA also prohibits specific practices, such as kickbacks, and places limitations on the use of escrow accounts.

RESPA also requires detailed disclosures concerning the transfer, sale, or assignment of mortgage servicing. RESPA also requires disclosures for mortgage escrow accounts at closing and annually thereafter, itemizing the charges paid by the borrower and those paid out of the account by the servicer.

On January 17, 2013, the CFPB issued a final rule to amend Regulation X. The final rule implemented certain provisions of Title XIV of Dodd–Frank and included substantive and technical changes to existing regulations. Substantive changes included modifying the servicing transfer notice requirements and implementing new procedures and notice requirements related to borrowers' error resolution requests and information requests. The amendments also included new provisions related to escrow payments, force-placed insurance, general servicing policies, procedures, and requirements, early intervention, continuity of contact, and loss mitigation. The amendments became effective January 10, 2014.

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PURPOSES OF R.3002.1 FDCPA, AND RESPA

RESPA is implemented through Regulation X (“Reg. X”), 12 C.F.R. 1024 et. seq.

- Escrow Account Analysis (12 CFR 1024.17(c)(2), 1024.17(c)(3), and 1024.17(k))
- Mortgage Servicing (12 CFR 1024.30-1024.41)
 - Servicing Transfer disclosures / notices 1024.33
 - Timely Escrow Payments and Treatment of Escrow Accounts 1024.34
 - Error Resolution Procedures 1024.35
 - Requests for Information 1024.36
 - Force Placed Insurance 1024.37
 - General Servicing Policies, Procedures, Requirements 1024.38
 - Early Intervention 1024.39
 - Continuity of Contact 1024.40
 - Loss Mitigation 1024.41

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PURPOSES OF R.3002.1 FDCPA, AND RESPA

On August 4, 2016, the CFPB issued a mortgage servicing rule to further clarify and amend provisions of Regulation X as well as Regulation Z, the regulation implementing the Truth in Lending Act (TILA).

- addresses compliance with certain servicing requirements when a person is a debtor in bankruptcy or sends a cease communication request under the Fair Debt Collection Practices Act (FDCPA).
- clarifies or amends provisions regarding force-placed insurance notices, policy and procedure requirements, early intervention, and loss mitigation requirements under Regulation X’s servicing provisions.
- covers certain periodic statement requirements relating to bankruptcy and charge-off, and prompt crediting requirements under Regulation Z’s mortgage servicing provisions.

In October 2017, the CFPB issued an interim final rule amending a provision of the 2016 Mortgage Servicing Rule relating to the timing for servicers to provide modified written early intervention notices under Regulation X to borrowers who have invoked their cease communication rights under the FDPCA. The interim final rule took effect October 19, 2017.

The CFPB also issued an interpretive rule under the FDCPA to clarify the interaction of the FDCPA and certain mortgage servicing rules under Regulations X and Z. This interpretive rule constitutes an advisory opinion for purposes of the FDCPA and provides safe harbors from liability for servicers acting in compliance with it.

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