



July 10, 2017

VIA ELECTRONIC SUBMISSION

The Honorable Richard Cordray  
Director  
Consumer Financial Protection Bureau  
1275 First Street NE  
Washington, DC 20552

Dear Director Cordray:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits these comments on the Consumer Financial Protection Bureau (CFPB or the Bureau) Request for Information Regarding 2013 Real Estate Settlement Procedures Act Servicing Rule Assessment.<sup>1</sup> Advocacy encourages the CFPB to consider less burdensome alternatives for small entities as part of the assessment process. Specifically, Advocacy believes that the threshold for the small servicer exemption is too low and some of the foreclosure requirements are too burdensome for small entities. Advocacy also believes that the assessment of the rule would benefit from further outreach to small entities.

### **Advocacy Background**

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The RFA,<sup>2</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>3</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>4</sup> The agency must include, in any explanation or

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<sup>1</sup> 82 *Federal Register* 21952, May 11, 2017.

<sup>2</sup> 5 U.S.C. § 601 et seq.

<sup>3</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

<sup>4</sup> Small Business Jobs Act of 2010 (PL 111-240) § 1601.

discussion accompanying the final rule's publication in the Federal Register, the agency's response to written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.<sup>5</sup>

In July 2010, the United States Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act or Dodd-Frank).<sup>6</sup> Section 1011 of the Act establishes the CFPB to supervise certain activities of financial institutions. Section 1100G, entitled "Small Business Fairness and Regulatory Transparency," amends 5 U.S.C. § 609, to include the CFPB with its coverage. The CFPB convened a SBREFA panel for the mortgage servicing rule in 2012.

The Office of Advocacy performs outreach through roundtables, conference calls and other means to develop its position on important issues such as this one. Advocacy held a roundtable on this issue on June 26, 2017 and a conference call on June 27, 2017.

### **The Assessment Process**

Section 1022(d) of the Dodd-Frank Act requires the CFPB to conduct an assessment of each significant rule or order adopted by the CFPB under the Federal consumer law. The CFPB must publish a report of the assessment not later than 5 years after the effective date of such rule or order.

### **The 2013 Mortgage Servicing Rule**

In January 2013, the Bureau issued the 2013 RESPA Servicing Final Rule. The effective date of the 2013 RESPA Servicing Rule was January 10, 2014.<sup>7</sup> It impacted commercial banks/savings institutions (NAICS 522110 and 522120), credit unions (NAICS 522130), firms providing real estate credit (NAICS 522292), firms engaged in other activities related to credit intermediation (NAICS 522390), and small non-profit organizations.<sup>8</sup>

The 2013 RESPA Servicing Rule imposed new mortgage servicing requirements and prohibitions under RESPA on servicers of federally related mortgage loans with respect to force-placed insurance, borrower assertions of error, and borrower requests for information.<sup>9</sup> It also included provisions regarding servicing policies and procedures, early intervention with delinquent borrowers, continuity of contact with delinquent borrowers, and loss mitigation procedures, as well as certain exemptions.<sup>10</sup>

The 2013 RESPA Servicing Rule exempted small servicers that service 5,000 mortgage loans or fewer and only service mortgage loans the servicer or an affiliate owns or originated. Small servicers are exempt from: Certain requirements relating to obtaining force-placed insurance; the provisions relating to general servicing policies, procedures, and requirements; and certain

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<sup>5</sup> Id.

<sup>6</sup> Pub. L. 111-203.

<sup>7</sup> 82 Federal Register at 21953.

<sup>8</sup> 78 Federal Register 10865, February 14, 2013.

<sup>9</sup> 82 Federal Register 10696.

<sup>10</sup> Id.

requirements and restrictions relating to communicating with borrowers about, and evaluation of, loss mitigation applications.<sup>11</sup>

## **Recommendations for Modifying, Expanding or Eliminating the 2013 RESPA Servicing Rule**

### *The Threshold for the Small Servicer Exemption is Too Low*

Although the Office of Advocacy appreciates the fact that the CFPB exempted small entities that service 5,000 or fewer loans from the rule, Advocacy asserts that the exemption threshold is too low. At the roundtable, some participants stated that the 5,000 loan threshold was problematic because it was too low. As Advocacy noted in its 2012 comment letter, small entity representatives were adamant that they did not cause the problems that the servicing rule was meant to address. Advocacy encouraged the CFPB to exempt all small servicers in its 2012 comment letter to the CFPB.<sup>12</sup> Advocacy reiterates the concern that the small entity exemption threshold is too low and encourages the CFPB to exempt all servicers that fall under the SBA's definition of a small business entity.

### *The Foreclosure Requirements Are Burdensome*

At Advocacy's roundtable, the participants stated that it is burdensome to have to wait 120 days to foreclose on a property that has been abandoned. According to the participants, there are costs associated with holding abandoned properties. Before the servicing rule, small entities could take immediate possession of an abandoned property, now they cannot. It creates a problem for the servicers and the community to have abandoned properties. Advocacy encourages the CFPB to evaluate the burden associated with the foreclosure requirement and consider criteria for a streamlined foreclosure process for abandoned properties that will minimize the economic impact on small entities.

### *Additional Feedback from the Industry May Be Helpful*

At Advocacy's roundtable some participants indicated that it may be helpful for the CFPB to hold industry roundtables on the servicing issue to receive feedback. The participants also thought the CFPB could clarify industry confusion by issuing frequently asked questions.

### *The CFPB Should Consider Delaying the Assessment Until After the Other Servicing Rules Are In Effect*

At Advocacy's roundtable, some of the participants asserted that the cumulative impact of regulations is burdensome to small entities. The CFPB has upcoming amendments to the servicing rule. The roundtable participants stated that although the new rule is separate, the CFPB should delay the assessment until after it is in place in order to have a clear understanding of the impact of the servicing regulations.

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<sup>11</sup> Id.

<sup>12</sup> <https://www.sba.gov/content/letter-dated-10052012-consumer-financial-protection-bureau>

## **Conclusion**

Advocacy believes that there are less burdensome alternatives to the servicing rule, including an expansion of the exemption for small servicers and a streamlined foreclosure process. Advocacy further asserts that more outreach to the industry would improve the assessment, which should be delayed until the CFPB's expected further rulemaking is in place.

Thank you for the opportunity to comment on this important RFI and for your consideration of Advocacy's comments. If you have any questions regarding these comments or if Advocacy can be of any assistance, please do not hesitate to contact me or Jennifer Smith at (202) 205-6943.

Sincerely,

/s/

Major L. Clark  
Acting Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

/s/

Jennifer A. Smith  
Assistant Chief Counsel  
For Economic Regulation & Banking  
Office of Advocacy  
U.S. Small Business Administration