

# BANKING LAW ALERT NEWSLETTER

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Jackson Offices  
105 S. Highland Avenue  
Jackson, TN 38301  
and  
209 E. Main Street  
Jackson, TN 38301  
P 731.423.2414

Memphis Office  
50 N. Front Street, Ste. 610  
Memphis, TN 38103  
P 901.333.8101

Thomas H. Rainey, of Counsel  
Jerry D. Kizer, Jr.  
Russell E. Reviere  
William C. Bell, Jr.  
John D. Burlison  
Laura A. Williams  
Robert O. Binkley, Jr.  
R. Dale Thomas  
Deana C. Seymour  
Charles C. Exum  
Marty R. Phillips  
Dale Conder, Jr.  
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Bradford D. Box  
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John O. Alexander, IV  
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Michael B. Joiner  
A. Blake Neill  
Matthew R. Courtner  
J. Caleb Meriwether  
W. Chris Frulla  
John V. Arnold  
Brandon W. Reedy  
Gregory D. Jordan, of Counsel

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## MORTGAGE SERVICE OPERATIONS

Two sets of regulations implementing the mortgage servicing provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (collectively the "Rule") took effect on January 10, 2014. The Rule significantly alters mortgage servicing operations by requiring banks servicing mortgage loans to comply with a broad range of borrower-friendly standards. Although banks servicing 5,000 or fewer mortgage loans during a calendar year (so-called "Small Servicers") are exempt from many of the Rule's more stringent requirements, Small Servicers still face substantial compliance obligations. The following is a general overview of these regulations:

**Interest Rate Adjustment Notices.** The Rule requires banks to send two types of notices to borrowers with adjustable rate mortgages ("ARMs"): (1) the initial interest rate adjustment notice, which banks must provide between 210 days and 240 days before the first payment at the new rate is due; and (2) the ongoing interest rate adjustment notice, which banks must provide between 60 and 120 days before the first payment at the new rate. Both types of notices must contain certain content set forth in the Rule in the form of a table that is substantially similar to the Rule's sample forms. Importantly, the Rule establishes different timing requirements for frequently-adjusting ARMs (ARMs with short look-back periods), and ARMs adjusting soon after closing. Additionally, the Rule's notice requirements apply only to ARMs with a term of 1 year or more that are secured by the borrower's principal dwelling.

**Payoff Statements and Prompt Payment Crediting.** The Rule expands existing requirements for providing borrowers with copies of their payoff statement to transactions secured by any dwelling, rather than the borrower's principal dwelling. The Rule also extends the timeline to respond to requests from 5 to 7 business days and limits the response requirement to apply only to written requests. Regarding the Rule's prompt payment crediting provisions, subject to certain limited exceptions, banks must credit all payments as of the day of receipt. One notable exception applies when the borrower has been notified in writing of specific procedures to follow when making payments, and the borrower fails to conform, provided that any requirements imposed are reasonable. These "non-conforming" payments may be credited up to 5 days after receipt.

**Force-Placed Insurance.** The Rule significantly limits the use of force-placed insurance. In general, before charging for force-placed insurance, there must be a reasonable basis to believe the borrower has failed to maintain required hazard insurance, and the borrower must receive, and not respond to, at least two notices containing specific information set forth in the Rule. Additionally, the borrower must be notified that no response has been received to either notice before charging for the insurance. The Rule also requires banks to cancel force-placed insurance within 15 days of receiving evidence that the borrower has required hazard insurance and to provide borrowers with a refund for any fees or charges during periods of overlapping coverage.

**Error Resolution and Information Requests.** The Rule's error resolution and information request provisions establish specific procedures for responding to written requests from borrowers asking for resolution of an alleged error or for information about the borrower's mortgage. To comply with the Rule, banks must acknowledge receipt of the request within 5 days and respond within 30-45 days. The Rule includes special provisions for requests considered "overbroad" or "unduly burdensome," meaning the information requested is too voluminous or would require the bank to incur unreasonable costs in light of the circumstances. But the Rule does not allow banks to charge borrowers a fee for responding to error resolutions or information requests (unless, of course, there is a basis for charging the fee, such as a request for a payoff or state law beneficiary notices).

**Loss Mitigation Procedures.** Small Servicers are exempt from most of the Rule's loss mitigation provisions. A few specific provisions that do apply to Small Servicers include that they may not: (1) make the first notice or filing required to foreclose unless a consumer's mortgage loan obligation is more than 120 days delinquent; or (2) move for a judgment or order of foreclosure sale, or conduct a foreclosure sale, if a consumer is performing pursuant to the terms of a loss mitigation agreement. The Rule grants consumers a private right of action to remedy violations of the loss mitigation procedures. For the banks that do not qualify as Small Servicers, these institutions must work with consumers to complete and evaluate loss mitigation applications and refrain from foreclosure proceedings under certain circumstances.

**Practice Point.** It is advised that you speak to legal counsel for any specific questions concerning these mortgage servicing regulations and if you need assistance to determine if your institution falls under the Small Servicer exception.



William C. Bell, Jr.  
[wbell@raineykizer.com](mailto:wbell@raineykizer.com)



Laura A. Williams  
[lwilliams@raineykizer.com](mailto:lwilliams@raineykizer.com)



Charles C. Exum  
[cexum@raineykizer.com](mailto:cexum@raineykizer.com)



Adam C. Crider  
[acrider@raineykizer.com](mailto:acrider@raineykizer.com)