

FINANCIAL SERVICES

MITIGATING RISK RELATED TO INCREASED STATE LAW ENFORCEMENT ACTIVITY

The stakes continue to rise for mortgage lenders and servicers as state attorneys general and state financial services regulators step up their enforcement actions. Mortgage lenders and servicers have dedicated significant resources to compliance over the past several years. Although federal enforcement actions may eventually decrease as the Trump administration pledges to reduce federal regulation, institutions should remain vigilant with respect to compliance risk as state attorneys general and financial services regulators are already stepping up their enforcement of both federal and state consumer financial protection laws to more than offset the expected federal decrease. Examples include recent Multi-State Mortgage Committee (“MMC”), California Department of Business Oversight, and New York State Department of Financial Services Consent Orders against several large mortgage banks. These state regulators will likely bring actions against mortgage lenders and servicers to enforce state laws that are not preempted, and that go “above and beyond” or are more stringent than similar federal laws. As institutions shift their focus from federal laws to state laws, they face operational and compliance challenges.

CHALLENGES AND ISSUES FACING MORTGAGE LENDERS AND SERVICERS

Navigant has worked with banks and nonbanks of all sizes and complexity. Generally, mortgage lenders’ and servicers’ policies, procedures, processes, and systems appear to take into account federal laws; however, they are struggling with updating these to comply with each separate state-specific law. While there are frequently an unwieldy number of state laws, Navigant has noted five recurring areas where mortgage lenders and servicers are struggling as they operationalize these state-specific nuances. *(Please refer to sidebar)*

When mortgage lenders and servicers do not update their policies, procedures, processes, and systems for state laws, it can result in improperly foreclosing on borrowers or improperly assessing fees on them among other issues.

NAVIGANT’S MORTGAGE BANKING EXPERTISE AND RECOMMENDATIONS

Navigant has unparalleled mortgage banking experience. We have executed high profile mortgage banking and servicing engagements for years, and understand all aspects and stages of mortgage banking from origination to REO disposition. Accordingly, we have valuable insight and perspective as mortgage lenders and servicers begin or continue to update their policies, procedures, processes, and systems for state laws. We have significant experience advising financial institutions on the evolving regulatory landscape to ensure that our clients are on the forefront of industry best practices and are prepared for potential investigations.

FIVE RECURRING CHALLENGES

1

Disclosures

- Mortgage lenders must disclose closing costs and the related terms and conditions in accordance with state-specific requirements / forms.

2

Loss mitigation

- Mortgage servicers must place foreclosure activity on hold in certain states within different timeframes depending on whether the borrower submits a complete or incomplete loss mitigation application package and when the borrower submits that package.
- Mortgage servicers must include certain state-specific content on their acknowledgement letters, denial notices, and prominent links.
- Mortgage servicers must consider various state-specific timing requirements. This includes timing requirements related to initial contact and due diligence as well as appeal requirements among many others that vary from state to state.

3

Foreclosures

- Mortgage servicers must include certain state-specific content on their Notices of Sale.
- Mortgage servicers must take into account various state-specific timing requirements for these notices.

4

Fees and costs

- Mortgage lenders and servicers must take into consideration state laws that may limit the amount of fees they can charge borrowers (e.g., closing costs, attorney’s fees).

5

Servicing transfers

- Mortgage servicers must include certain state-specific content on their Hello and Goodbye letters.
- Mortgage servicers must consider various state-specific timing requirements for these servicing transfers notices as well as Requests for Information.

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About Navigant

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For example, Navigant can conduct assessments or perform compliance testing to identify where mortgage lenders and servicers may have gaps in their policies, procedures, processes, and systems that need to be closed / remediated. While this is not an all-encompassing list, we have identified a few areas for consideration and some of our related recommendations below.

AREAS OF CONSIDERATION	RECOMMENDATIONS
Legal Repository	<ul style="list-style-type: none">Obtain state-specific requirements and identify those that are not preempted, and that go "above and beyond" or are more stringent than similar federal requirements.Gain an understanding of how each state defines items such as a loss mitigation application or when the clock starts and stops for state-specific timing requirements, and distill this information into distinct requirements.
Policies and Procedures	<ul style="list-style-type: none">Update policies, procedures, job aides, checklists, templates, etc. based on state-specific requirements.
Processes, Systems, and Controls	<ul style="list-style-type: none">Enhance processes and systems to account for the state-specific requirements.Implement new controls to monitor these updated processes and systems.
Training	<ul style="list-style-type: none">Upgrade training materials in response to the state-specific requirements.Conduct training to evidence business enhancement and subject matter expert qualification.
Monitoring	<ul style="list-style-type: none">Expand first, second, and third-line-of-defense testing related to state-specific requirements.Establish a recurring reconciliation / verification process to review state-specific requirements, and update related policies, procedures, processes, and systems as necessary.

HOW NAVIGANT CAN HELP

Many successful banks and mortgage servicers are using the help of experienced and trusted advisors to help mitigate the risks associated with these state-specific requirements. Using independent, outside resources who have industry wide perspectives allows financial institutions to implement best in class solutions in the most cost-effective manner. Navigant's breadth and depth of experience allows us to serve as trusted advisors for mortgage lenders and servicers dealing with these state-specific regulatory challenges.

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