

Dual Track Comparison: AG Settlement vs. CA Bill of Rights vs. CFPB Rule

	AG Settlement	CA Bill of Rights	CFPB Rule	Analysis*
Application of Rule	<p>Loans: Owner-occupied, principal residence mortgages.</p> <p>Servicers: loans serviced by one of the following: BoA, Citibank Wells Fargo, Ally (formerly GMAC), JP Morgan Chase.</p>	<p>Loans: First liens of owner-occupied, one-to-four unit principal residence mortgages.</p> <p>Servicers: Limited exemption for servicers that foreclose on fewer than 175 residential properties in the prior year.</p>	<p>Loans: Closed-end “federally related mortgage loans,” which includes (in general) all first or subordinate liens on 1-4 unit properties, made by any lender regulated by the federal government or whose deposits or accounts are insured by the federal government; or is made by, insured, guaranteed, supplemented or assisted in anyway way by any officer of the federal government, FHA or similar program, or is intended to be sold to Fannie Mae, Ginnie Mae or Freddie Mac; or made by any creditor that makes or invests in residential real estate loans aggregating more than \$1 million per year.</p> <p>Servicers: This section includes a partial exemption for small servicers defined as those that service 5,000 mortgage loans or less and only service mortgage loans the servicer or an affiliate owns or originated, and also for housing finance agencies.</p>	<p><i>*highlighting marks key/ most significant differences</i></p> <p>CFPB broadest as to loans</p> <p>CA broadest as to servicers</p>

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Hard Time Stop on Beginning Foreclosure Process	None.	Servicer shall not record a Notice of Default (NoD) until 30 days after initial contact with the borrower or due diligence in attempting to make contact.	No first foreclosure notice or filing unless the borrower is more than 120 days delinquent.	<i>*highlighting marks key/ most significant differences</i> CFPB rule provides broadest protection by providing 120 days before servicer can start foreclosure.
Borrower Outreach Requirements	<p><i>Reasonable Effort</i> (based upon HAMP). When loans are 2 or more payments past due, servicer must make reasonable effort to proactively solicit the borrower, which includes at least 4 phone calls to the last known phone number on different days and times, and 2 written notices to the last address on record.</p> <p>Notices shall include contact information for state or national foreclosure assistance hotlines and housing counseling resources and shall disclose and provide information about eligibility and qualification process.</p> <p><i>Post-Foreclosure Referral Notice.</i> Within 5 days after referring to foreclosure, servicer shall send a written notice stating that the</p>	<p><i>Contact or Due Diligence.</i> Servicer shall contact the borrower in person or by phone to explore options for avoiding foreclosure. Borrower may request an additional meeting which shall be scheduled within 14 days.</p> <p>Servicer must make contact or attempt through due diligence to establish live contact with a delinquent borrower, as follows: (a) first class mail letter; (b) at least 3 tries by phone (different days/times); and (c) if no contact 2 weeks after phone attempts, send a letter by certified mail. Provide a toll-free number with access to a live representative; a website with access to information on options that may be available, list of documents borrower may need to submit, phone number, and</p>	<p><i>Live contact.</i> Make good faith efforts to establish live contact with a delinquent borrower by the 36th day of the borrower's delinquency, and inform the borrower about available loss mitigation options.</p> <p><i>Written notice.</i> Send a written notice by the 45th day of the borrower's delinquency. The notice shall: (a) encourage the borrower to contact the servicer, (b) provide single point of contact phone number and servicer mailing address; (c) if applicable, include a brief description of examples of loss mitigation options that may be available from the servicer and how to apply or get more information; and (d) include the website and the HUD toll-free telephone number to access homeownership</p>	

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Borrower Outreach Requirements (cont.)	borrower may be evaluated for a foreclosure prevention alternative, that the borrower should contact the servicer for an application, and that s/he must submit an application to be considered.	<p>HUD toll-free telephone number to access homeownership counselors or counseling organizations.</p> <p><i>Post-NoD Notice.</i> Within 5 days after recording an NoD, if borrower has not already gone through the loan modification process, servicer shall send a written notice stating that the borrower may be evaluated for a foreclosure prevention alternative, and provide information about how to apply and deadlines for applying.</p>	counselors or counseling organizations	<i>*highlighting marks key/ most significant differences</i>
Pre-Foreclosure Referral Rule	<p>Pending Application:</p> <p>1. If the borrower has not already been referred to foreclosure, and if a servicer receives a “complete loan modification application” by day 120 of delinquency,* then, servicer must not refer to foreclosure while application is pending.</p> <p><i>*If borrower submits a “substantially complete application” by day 120, same protection for</i></p>	<p>Pending Application:</p> <p>1. If borrower submits a complete application, then servicer may not record an NOD while the application is pending.</p> <p>When Process May Start After Application:</p> <p>2. Servicer shall not record an NoD:</p> <p>a. if a foreclosure prevention</p>	<p>Pending Application:</p> <p>1. If borrower submits a complete application within 120 days or before referral to foreclosure, then servicer may not begin foreclosure until after a denial and other steps.</p> <p>When Process May Start After Application:</p> <p>2. If borrower submits a complete application before servicer has made first</p>	<p>CFPB provides the broadest pre-foreclosure dual track protections (120 hard stop and firm stop at any time complete application is received before foreclosure start), but shorter appeal period (14 days vs. 30 for AG settlement and California law)</p> <p>California does not provide a hard stop, but also does not cut off protections after a specific</p>

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<p>Pre-Foreclosure Referral (cont.)</p>	<p><i>borrower who completes (by providing missing hardship documentation) by day 130.</i></p> <p>When Process May Start After Application:</p> <p>2. Servicer shall not refer to foreclosure until</p> <p>a. It determines borrower is not eligible for a loan modification; or</p> <p>b. The borrower declines an offer (or does not accept within 14 days); or</p> <p>c. The borrower accepts an offer, but doesn't pay or otherwise breaches the plan.</p> <p>What Happens if Borrower Has a Right to Appeal?</p> <p>3. If borrower is entitled to an appeal of a denial, servicer <i>will not proceed to foreclosure sale</i> until later of:</p> <p>a. Expiration of 30-day appeal period; or</p> <p>b. 15 days after appeal denial, or</p> <p>c. 14 days after an offer (that is not accepted); or</p>	<p>alternative is approved and the borrower is in compliance.</p> <p>b. until 31 days after written denial with no appeal; or</p> <p>c. 15 days after appeal denial; or</p> <p>d. 14 days after an offer is either declined or accepted but breached.</p>	<p>foreclosure notice or filing, servicer shall not make first foreclosure notice or filing, until the following:</p> <p>a. it has sent a written denial, and either 14-day appeal period has run or is not applicable, or appeal has been denied; or</p> <p>b. borrower rejects all loss mitigation options offered; or</p> <p>c. borrower failed to perform under an agreed option.</p>	<p><i>*highlighting marks key/ most significant differences</i></p> <p>time period (like the AG settlement does).</p> <p>AG Settlement provides the least pre-foreclosure dual track protections in that it provides pre-foreclosure start protections only if a complete application is received by day 120 of delinquency.</p>

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Pre-Foreclosure Referral (cont.)	d. the borrower accepts an offer, but doesn't pay or otherwise breaches the plan.			<i>*highlighting marks key/ most significant differences</i>
Post-Foreclosure Referral	<p>When Does Complete Application Trigger Protections? Definite (though varied) protections if at least 15 days before foreclosure sale. Limited protections if less than 15 days before sale.</p> <p>Within 30 Days After Post-Referral Letter: 1. If servicer receives a complete application within 30 days after Post Referral to Foreclosure Solicitation Letter, then servicer <i>shall not move for foreclosure judgment or order of sale or conduct a foreclosure sale</i> while application is pending, and until:</p> <p>a. It determines borrower is not eligible for a loan modification; or b. The borrower declines an offer (or does not accept within 14 days); or</p>	<p>When Does Complete Application Trigger Protections? At any time</p> <p>Pending Application: If borrower submits a complete application, then servicer may not record a Notice of Trustee Sale (NTS) or conduct a trustee sale while the application is pending.</p> <p>When Process May Start After Application: If borrower submits a complete application after an NoD has been recorded, servicer may not record a notice of trustee sale or conduct a sale:</p> <p>a. if a foreclosure prevention alternative is approved and the borrower is in compliance. b. until 31 days after written denial with no appeal; or c. 15 days after appeal denial;</p>	<p>When Does Complete Application Trigger Protections? 37 days or more before foreclosure sale.</p> <p>When Process May Start After Application: If borrower submits a complete application after servicer has made first foreclosure notice or filing, but more than 37 days before a foreclosure sale, servicer shall not move for foreclosure judgment or conduct a foreclosure sale unless:</p> <p>a. it has sent a written denial, and either 14-day appeal period has run or is not applicable,* or appeal has been denied; or b. borrower rejects all loss mitigation options offered; or c. borrower failed to perform</p>	<p>California provides the broadest post-foreclosure start dual track protection in that there is no deadline for post-NoD application for dual track protections to apply.</p> <p>CFPB provides the narrowest post-foreclosure start dual track protection in that there is no protection if applications are received less than 37 days before foreclosure</p> <p>AG Settlement offers somewhat more protection than the CFPB rules, including some duties with respect to applications received all the way to foreclosure sale date.</p>

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<p>Post-Foreclosure Referral (cont.)</p>	<p>c. The borrower accepts an offer, but doesn't pay or otherwise breaches the plan.</p> <p>If borrower is entitled to an appeal of a denial, servicer <i>will not proceed to foreclosure sale</i> until later of:</p> <ul style="list-style-type: none"> a. Expiration of 30-day appeal period; or b. 15 days after appeal denial, or c. 14 days after an offer (that is not accepted); or d. the borrower accepts an offer, but doesn't pay or otherwise breaches the plan. <p>More than 30 Days After Letter but More than 37 Days Before Sale is Scheduled</p> <ul style="list-style-type: none"> -Servicer only restricted from proceeding to sale -Appeal right exists only if reasonable to believe that more than 90 days remain until sale date or first date on which a sale could reasonably be expected to occur. 	<p>or</p> <p>d. 14 days after an offer is either declined or accepted but breached.</p>	<p>under an agreed option.</p> <p><i>*No right to appeal unless servicer received complete application 90 days or more before a foreclosure sale (or within first 120 days).</i></p>	<p>*highlighting marks key/ most significant differences</p>

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Post-Foreclosure Referral (cont.)	<p>More than 30 Days After Letter But Between 15 and 37 Days Before Sale is Scheduled</p> <ul style="list-style-type: none"> -No explicit restriction on moving forward while application is pending -Expedited review required -Servicer restricted from proceeding to sale if an offer is made (same timelines for acceptance, etc.) -No right to appeal <p>More than 30 Days After Letter and Less Than 15 Before Sale is Scheduled</p> <ul style="list-style-type: none"> -Servicer required only to notify borrower before foreclosure sale date as to its determination if a review was completed or of its inability to complete a review. -If offer made, then servicer must postpone sale date until earlier of 14 days after the date of the notice and the date the borrower declines the offer, or if borrower accepts, until the later of the date the borrower 			<p><i>*highlighting marks key/ most significant differences</i></p>

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Post-Foreclosure Referral (cont.)	fails to make payment or otherwise breaches the agreement.			
What is a completed loan modification application?	<p>“Complete loan modification application” is not defined.</p> <p>A “substantially complete loan modification application” is missing only documentation of hardship.</p>	A complete application includes “all documents required by the servicer within the reasonable timeframes specified by the mortgage servicer.”	A complete loss mitigation application includes “all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.”	Minimal differences. CFPB helpfully adds duty for servicer to exercise reasonable diligence in obtaining all documents.
Enforcement Mechanism/ Private Right of Action	The Monitor will oversee implementation of the servicing standards required by the settlement; impose penalties of up to \$1 million per uncured violation (or up to \$5 million for certain repeat violations); and publish regular public reports that identify any quarter in which the Servicer fell short of the standards imposed in the settlement.	<p>Borrower may seek either an injunction (to halt the foreclosure until the servicer can demonstrate compliance) or actual damages (after a foreclosure sale) for a material violation.</p> <p>The greater of treble damages or \$50,000 in statutory damages, if the violation is a result of intentional or reckless misconduct.</p>	<p>Borrower may enforce under 12 U.S.C. 2605(f), which allows for actual damages and pattern & practice damages (up to \$1,000 per person) in individual or class action cases, as well as attorneys’ fees and costs.</p> <p>Limitations:</p> <ol style="list-style-type: none"> 1. Nothing imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. 2. The rules do not create or 	<p>CA provides the the broadest enforcement rights, allowing an injunction to pause a foreclosure sale and save the home, upon a violation.</p> <p>CFPB provides some remedy, by allowing an action for damages under RESPA.</p> <p>The AG Settlement provides no individual enforcement mechanism.</p>
Enforcement	Gov’t signatories may bring an			

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Mechanism/ Private Right of Action (cont.)	action to enforce the servicer obligations and seek equitable relief or civil penalties. No individual enforcement		eliminate any right that may exist to enforce the terms of any Pooling and Servicing Agreement.	<i>*highlighting marks key/ most significant differences</i>
Rule for smaller servicers	n/a	<p>Basic dual tracking provisions apply, but detailed procedural requirements and appeal rights do not.</p> <p>If borrower submits a complete application, servicer may not record an NoD, NTS or conduct a trustee sale while modification application is pending, and until a written denial is sent.</p> <p>If a foreclosure prevention alternative is approved in writing prior to recording of NoD, servicer shall not record an NoD if borrower is in compliance (or approval and proof of funds for short sale)), and if post-NoD, same, but servicer shall not record NTS or conduct sale.</p>	120 day hard stop applies, with more limited dual tracking after 120 days (servicer only prohibited from moving to sale if a borrower is performing pursuant to the terms of a loss mitigation agreement, and is not prevented from referring to foreclosure upon receipt of an application); no appeal rights.	

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Miscellaneous Related Rules				
Receipt of Documents/ Notification	<p>Written acknowledgement of receipt of application w/in 3 business days, including (1) description of process; (2) deadlines; and (3) any expiration date for submitted docs.</p> <p>Servicer shall notify borrower of any known deficiency no later than 5 business days after receipt, including anything required for the loan modification to be considered complete. Borrower shall be given 30 days to provide missing information (subject to timelines for dual track protections).</p>	<p>When borrower submits any document, written acknowledgement of receipt w/in 5 business days, including: (1) description of process; (2) deadlines; (3) any expiration date for submitted docs; and (4) any deficiency in application.</p>	<p>If receives application 45 days or more before sale, review and notify borrower w/in 5 days if complete and if not (1) deadlines; (2) any deficiency in application; and (3) statement about contacting servicers of other mortgages on property to discuss options.</p>	Similar rules
Duty to Evaluate Application/ Time Period for Evaluation	<p>Upon the timely receipt of a complete loan modification application, Servicer shall evaluate borrowers for all available loan modification options for which they are eligible prior to referring a borrower to foreclosure and shall facilitate the submission and review of loss mitigation</p>	<p>Implicit duty to evaluate. No time period for evaluation specified.</p>	<p>If complete application received (more than 37 days before foreclosure sale), servicer shall review and give notice with a determination within 30 days.</p>	<p>Both the AG Settlement and CFPB rules require review within 30 days. This is stricter than CA, which has no deadline.</p>

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Duty to Evaluate Application/ Time Period for Evaluation (cont.)	<p>applications. Servicer shall review and make decision within 30 days of receipt of complete application, “absent compelling circumstances beyond Servicer’s control.”</p>			<p><i>*highlighting marks key/ most significant differences</i></p>	
Denial Notice	<p>Written denial notice within 10 days of decision. Notice shall identify the reasons for denial and the factual information considered and inform the borrower that he or she has 30 days to provide evidence that the eligibility determination was in error.</p> <p>If denied because disallowed by investor, Servicer shall disclose the name of the investor and summarize the reasons for investor denial.</p> <p>If denied due to NPV calculation, Servicer shall provide in the written non-approval notice the monthly gross income and property value used in the calculation.</p>			<p>If denied, must send written denial notice with reason for denial. Notice shall also include how to appeal, and if applicable, specific reasons for investor disallowance, gross income and property values used if NPV negative, and description of other foreclosure alternatives.</p> <p>If denied, notice shall include specific reasons for denial of each option, and if applicable, statement that borrower may appeal.</p> <p>The official interpretation provides that the denial notice must include specific reasons for an investor disallowance if that is the reason for the denial, and all of the inputs used in any net present value (NPV) calculation if failing the NPV test is the reason for the denial.</p>	<p>CFPB rule (as described in the official interpretation) requires the most detailed information in the denial letter.</p> <p>CA is close, requiring some specifics.</p> <p>The AG Settlement requires the least detail for denial letters.</p>

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Time to Accept	14 days	14 days	If received 90 days or more before sale, servicer may require response no earlier than 14 days after offer. If received 38-89 days before sale, servicer may require response no earlier than 7 days after offer.	<i>*highlighting marks key/ most significant differences</i> CFPB provides shorter 7-day borrower response period for some offers.

ⁱ National Mortgage Settlement Terms - http://www.state.ia.us/government/ag/latest_news/releases/mar_2012/Wells_ExhA.pdf.

ⁱⁱ California Senate Bill 900 - http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB900.

ⁱⁱⁱ CFPB Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) - http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa.pdf.