

SERVICER'S CONCLUSORY RESPONSE TO BORROWER'S
REQUEST MAY HAVE VIOLATED RESPA

The United States Court of Appeals for the Eleventh Circuit recently held that a loan servicer may have violated the Real Estate Settlement Procedures Act ("RESPA") for responding to a borrower's qualified written request regarding an alleged error in her account only by informing the borrower that there had been no error and without providing any further information. See RIENFROIE V. NATIONSTAR MORTGAGE, LLC, 822 F.3d 1241 (11th Cir. 2016). There, the plaintiff's mortgage was transferred from one servicer to the defendant, and the monthly payments immediately increased by about \$100. After the plaintiff refinanced and the defendant was no longer her servicer, she sent the defendant a qualified written request demanding a detailed explanation for the payment increase and, if necessary, a refund. Under RESPA, **this letter triggered the servicer's duty to conduct an investigation and either (i) make the appropriate correction, (ii) provide a written explanation containing "a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer," or (iii) provide a written explanation that the requested information is unavailable, and the reasons for this unavailability.** See 12 USC 2605(e). The servicer, however, responded only that the loan documents were reviewed and that no error was found.

After the plaintiff commenced the action, alleging that the servicer's response violated RESPA, the servicer filed a motion to dismiss. The district court granted the motion, holding that the servicer's response satisfied its duties under RESPA and that the plaintiff did not allege damages because the alleged overpayments occurred before she sent the request. On appeal, the Eleventh Circuit reversed. First, **it held that the servicer's response was insufficient because it simply made the conclusion that there was no error without explaining why the payments had increased or why the plaintiff was incorrect on her suspicion that an error had occurred.** Second, it held that the plaintiff had adequately pled damages based on the alleged overcharge. It found that the district court's conclusion that pre-notice errors did not give rise to RESPA violations was a "cramped reading of RESPA" because "a servicer notified of an account error could always avoid RESPA liability just by claiming it thought there was no error and correcting the error going forward." Therefore, it held that the motion to dismiss should have been denied because the plaintiff had pled both a violation and damages.