

New CFPB Mortgage Servicing Amendments Likely To Pose Implementation And Compliance Challenges

New amendments are likely to pose implementation and compliance challenges for mortgage servicers.

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The Consumer Financial Protection Bureau (CFPB) recently released a final rule amending the existing mortgage servicing rules in Regulations X and Z. The CFPB first proposed to amend these rules in November 2014 and, after receiving considerable feedback from both industry and consumer stakeholders, has now released a final rule that will very likely present implementation and compliance challenges for mortgage servicers.

The final rule makes changes to nine areas, including successors in interest, force-placed insurance, prompt payment crediting, requests for information, early intervention, loss mitigation, definition of delinquency, periodic billing statements and small servicer.

The rule makes three types of changes to the existing requirements in Regulations X and Z. First, the rule contains numerous non-substantive, technical adjustments to the current regulatory framework. Second, in a number of places, the rule memorializes informal guidance previously provided by the CFPB and clarifies existing provisions that are potentially ambiguous. Finally, the rule adds a substantial number of requirements by either removing cur-

rent exemptions or imposing additional obligations that previously didn't exist.

Not only do the amendments touch upon many different aspects of a servicer's day-to-day business, but they will also likely force servicers to undertake significant operational and system modifications. As expected, since the CFPB first released its proposal, the largest impacts in the final rule are likely to be felt in the areas of successors in interest, loss mitigation and periodic billing statements. In addition to being difficult to operationalize, new requirements in these areas raise other complicated issues. For example, servicers may now be required to communicate with borrowers in active bankruptcy and also with the successors in interest to both deceased and living borrowers.

The CFPB recognizes that implement-

ing all of the new requirements in the final rule will require time and resources and has adopted a two-tiered implementation framework. Provisions related to successors in interest and billing statements for borrowers in bankruptcy will become effective 18 months from when the final rule is published in the Federal Register, with the remainder of the rule going into effect 12 months after the final rule is published in the Federal Register.

Following is a high-level overview of the more substantial amendments in each of the nine aforementioned categories. To the extent servicers have not already begun working on this next implementation challenge, they should immediately assess the impact of the final rule and take the necessary steps to ensure compliance.

Successors in interest

The final rule fundamentally changes the way successors in interest are treated under the Mortgage Servicing Rules. It





expands the definition of a successor in interest to include transfers 1) by devise, descent or operation of law from a decedent; 2) to a relative resulting from a borrower's death; 3) from a spouse or parent; 4) as a result of a divorce decree, separation agreement or property settlement agreement; and 5) into an inter vivos trust in which the borrower is and remains a beneficiary.

The rule requires servicers to have policies and procedures designed to determine and communicate to any potential successor in interest the documents reasonably required to confirm that person's identity and ownership interest in the property. Upon receipt of those documents, a servicer must then promptly confirm or deny the person as a successor in interest or, alternatively, notify him or her of additional required documents necessary to make the confirmation determination.

Similarly, to the extent a potential successor in interest provides a written request to the designated address for information requests, the servicer must provide the person with a list of the documents reasonably required to confirm that person's identity and ownership interest in the property in compliance with the requirements in 12 Code of Federal Regulations (CFR) Section 1024.36(c)-(g).

Upon confirmation, successors in interest are entitled to the full protections of Regulation X, subpart C and 12 CFR Section 1024.17, and Regulation Z,

with some notable caveats, including the following:

Communication with confirmed successors in interest. The rule generally requires servicers to provide disclosures and comply with live contact requirements for confirmed successors in interest unless they are provided to another borrower/successor in interest on the account.

Loss mitigation. Servicers are not required to, but may, review and evaluate applications received from potential successors in interest. Servicers are, however, required to preserve loss mitigation applications from potential successors in interest to review and evaluate upon confirmation.

Force-placed insurance

The rule updates force-placed insurance disclosures to contemplate circumstances when a property has insufficient insurance coverage. The rule also now permits servicers to include account numbers in their force-placed insurance notices.

Prompt payment crediting

The rule clarifies that a periodic payment under a temporary loss mitigation program is the amount sufficient to cover principal, interest and escrow under the original loan contract regardless of the payment due under the temporary loss mitigation program. Once a loan is permanently modified, a periodic payment is the amount sufficient to cover principal,

interest and escrow under the modified contract.

Requests for information

The rule provides that, if Fannie Mae or Freddie Mac is the owner/trustee of the loan and the borrower's request does not expressly request information related to the trust or pool, the servicer need only provide information for Fannie Mae or Freddie Mac - without having to also provide the name of the trust.

Early intervention

The rule provides minor clarifications as to the timing and frequency by which servicers must make live contact and send the early intervention notice. The rule also notes that, in the servicing transfer context, a servicer is required to provide the early intervention notice regardless of whether the transferor servicer provided said notice in the preceding 180-day period.

More substantively, however, the rule provides certain exemptions for borrowers in bankruptcy and borrowers who submit Fair Debt Collection Practices Act (FDCPA) cease communication requests. In particular, for borrowers in bankruptcy, a servicer is exempt from the early intervention live contact requirements. And a servicer is exempt from the written notice requirements if loss mitigation options are not available or the borrower has provided an FDCPA cease communication request. For borrowers who submit an FDCPA cease communication request, servicers are exempt from the early intervention live contact requirements. And a servicer is exempt from the written notice requirement if loss mitigation options are not available or the borrower is a debtor in bankruptcy. The rule also provides timing and content requirements for these bankruptcy and FDCPA early intervention notices.

Loss mitigation

The rule provides numerous and significant changes to the loss mitigation rules of Regulation X. Of note, the rule provides that servicers must satisfy Regulation X's loss mitigation requirements for all loss mitigation applications unless the servicer complied with all

requirements for a complete application and the borrower has been delinquent at all times since submitting the prior complete application. The rule requires servicers to provide a written notice - with certain, specific content - within five business days of receipt of a complete application. The rule also provides further clarity on the "reasonable date" servicers should provide to borrowers to submit missing documents in acknowledgment letters, generally providing that 30 days is reasonable.

The rule generally prohibits denying a borrower for loss mitigation solely because the servicer lacks necessary third-party information; rather, the servicer is required to send a new, specific notice within the 30-day evaluation period and evaluate the application upon receipt of the third-party information. The rule further provides that servicers can offer certain short-term repayment plans based upon incomplete applications but, in so doing, must provide a certain notice regarding the plan within five business days of the offer.

Servicing transfers

In addition to all of the above-described miscellaneous loss mitigation-related changes, the rule provides for numerous loss mitigation changes in the servicing transfer context. The rule generally provides that, if a transferee servicer acquires servicing rights to a loan for which a loss mitigation application is pending as of the transfer date, the transferee must comply with Regulation X's loss mitigation requirements within the time frames that were applicable to the transferor based on the date the transferor received the application.

With that being said, the rule does provide some additional time in which to satisfy certain requirements following a transfer. For example, if a transferee servicer acquires servicing rights to a loan for which the transferor has not provided an acknowledgment letter, and the time in which to do so has not expired as of the transfer date, the transferee must provide an acknowledgment notice within 10 business days of the transfer date. And if a transferee servicer acquires servicing rights to a loan for which a complete application is pending as of the transfer date, the

transferee has to evaluate the application and provide an evaluation notice to the borrower within 30 days of the transfer date.

For appeals, if a transferee servicer acquires servicing rights to a loan for which an appeal has not been resolved or an appeal is timely filed after transfer, the transferee must make a determination on the appeal if it is able or, if it is unable, must treat the appeal as a pending complete loss mitigation application. The rule provides certain timing requirements associated with these appeal determinations. Lastly, if a transferee servicer acquires servicing rights to a loan in which the transferor made a loss mitigation offer and the time for the borrower to accept the offer has not expired, servicers must permit the borrower to accept the offer.

Definition of "delinquency"

The rule makes minor adjustments to the existing definition of delinquency. The rule applies the definition to all of the mortgage servicing provisions in Regulation X and also adds the definition to Regulation Z. The rule also clarifies that servicers may adopt a payment tolerance with respect to amounts received that are less than a periodic payment.

Periodic billing statements

The rule provides numerous changes to the closed-end periodic billing statement requirements of Regulation Z, including the following:

Accelerated accounts. The rule provides that, if an account has been accelerated but the servicer will accept a lesser reinstatement amount, the amount due on the billing statement must reflect the reinstatement amount. And if the amount due reflects the reinstatement amount, then the explanation of amount due section must contain both the reinstatement amount and the accelerated balance. It must not contain a regular monthly payment amount. The statement should also include an explanation of any special payment requirements that apply.

Charged off accounts. The rule provides that, if an account has been charged off, a servicer may cease sending periodic billing statements. This exemption applies if the servicer will not charge any additional fees or interest on the account and so long as the servicer sends one last

statement after the account is charged off with specific content. If, at a later time, the servicer does not treat a loan as being charged off or charges fees or interest to the account, then the obligation to send periodic billing statements resumes.

Bankruptcy. The rule removes the current exemption for accounts in bankruptcy and will generally require that statements be sent regardless of a consumer's bankruptcy or discharge. However, the obligation to send statements will not apply in certain limited circumstances, such as when a consumer requests, or a court orders, that statements cease. When sending statements to accounts in bankruptcy, the rule sets out modified content requirements that apply to all types of cases and more modifications for borrowers in a Chapter 12 or 13 case. The rule also allows servicers to adjust terminology on statements as necessary.

Small servicer

The rule slightly adjusts how an entity determines whether it qualifies as a small servicer. The rule provides that, for purposes of the small servicer calculation, a servicer can exclude loans voluntarily serviced for a non-affiliate for which the servicer does not receive any compensation and also transactions serviced for a person, estate or trust that qualifies as a seller financier under Regulation Z. **SM**



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