



Financial Services Webinar Series

CFPB Mortgage Servicing Amendments

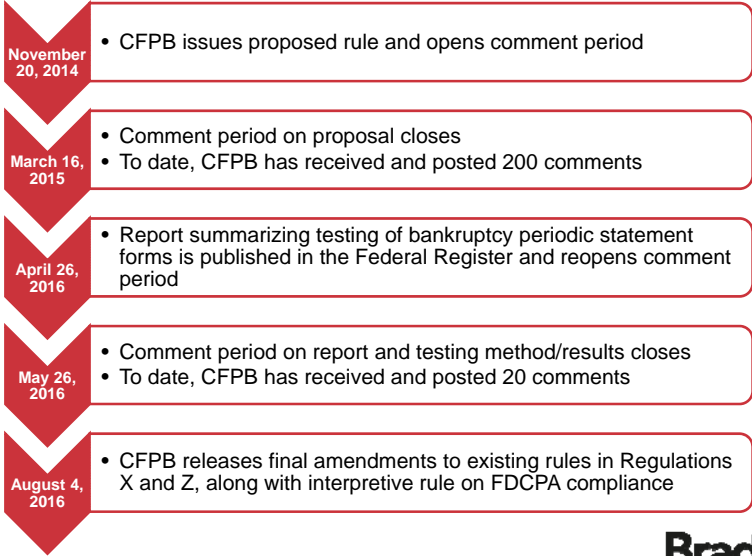
Part 1. What You Need to Know: Overview

August 11, 2016


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Timeline



- November 20, 2014**
 - CFPB issues proposed rule and opens comment period
- March 16, 2015**
 - Comment period on proposal closes
 - To date, CFPB has received and posted 200 comments
- April 26, 2016**
 - Report summarizing testing of bankruptcy periodic statement forms is published in the Federal Register and reopens comment period
- May 26, 2016**
 - Comment period on report and testing method/results closes
 - To date, CFPB has received and posted 20 comments
- August 4, 2016**
 - CFPB releases final amendments to existing rules in Regulations X and Z, along with interpretive rule on FDCPA compliance



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Summary

Amendments primarily cover nine topics:

1. Successors in interest
2. Requests for information
3. Definition of delinquency
4. Force-placed insurance
5. Early intervention
6. Loss mitigation
7. Periodic billing statements
8. Prompt payment crediting
9. Small servicers

Effective date:

- 18 months from date published in Federal Register for provisions related to:
 - Successors in interest; and
 - Periodic billing statements for borrowers in bankruptcy
- 12 months from date published in Federal Register for all other provisions

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Successors in Interest

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Successors in Interest

Current Rule

- Servicer is required to maintain P&Ps reasonably designed to, upon notification of the death of a borrower, promptly identify and facilitate communication with the successor in interest of the deceased borrower

Amended Rule

- Three components:
 - Definition of “successor in interest”
 - Process requirements for confirming successors in interest; and
 - Once confirmed, successors in interest must be considered borrowers for purposes of servicing rules

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Successors in Interest

Definition

Amended Rule (cont.)

- “Successor in interest”
 - Means a person to whom an ownership interest in a property securing a mortgage loan is transferred
- Covered transfers:
 - Transfers by devise, descent or operation of law on the death of a joint tenant or tenant by the entirety
 - Transfers to a relative resulting from a borrower’s death
 - Transfers where the spouse or children of the borrower become an owner
 - Transfers to a spouse resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement
 - Transfers into an *inter vivos* trust in which the borrower is and remains a beneficiary

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Successors in Interest

Confirmation Process

Amended Rule (cont.)

- Servicers must have policies and procedures reasonably designed to:
 - Upon receiving notice of the existence of a potential successor in interest, promptly:
 - Facilitate communication with any potential or confirmed successors in interest; and
 - Determine the documents reasonably required to confirm the potential successor in interest's identity and ownership interest and communicate the requirements to the potential successor in interest
 - Upon receipt of documents from a potential successor, promptly make a determination and notify the person either that additional documents are required, individual is confirmed, or individual is not a successor

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Successors in Interest

Confirmation Process

Amended Rule (cont.)

- “Documents reasonably required” to confirm a successor in interest
 - Must be reasonable in light of:
 - The laws of the relevant jurisdiction;
 - The specific situation of the potential successor; and
 - The documents already in the servicer's possession
- Prompt confirmation
 - “Notification is not prompt . . . if it unreasonably interferes with a successor in interest's ability to apply for loss mitigation options”

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Successors in Interest

Successor = Borrower

Amended Rule (cont.)

- “A confirmed successor in interest shall be considered a borrower” and, therefore, receive the same protections as borrowers under the servicing rules (Regulations X and Z):
 - Escrow account
 - Mortgage servicing transfers
 - Error resolution
 - Requests for information
 - Force-placed insurance
 - Early intervention
 - Continuity of contact
 - Loss mitigation
 - ARM rate change notices
 - Payment crediting
 - Periodic billing statements

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Successors in Interest

Successor = Borrower

Amended Rule (cont.)


- Once confirmed, successors in interest may need/want to receive servicing correspondence
- CFPB recognizes that certain language in “borrower” correspondence could confuse a successor in interest and has provided three options:
 1. Alter all letters – flexibility built in for notices with required content
 2. Add an affirmative disclosure to clarify that a successor in interest who has not assumed the loan is not liable
 3. Send successor in interest a written notice and require that acknowledgment form be signed and returned before correspondence is sent
- Servicer only required to send correspondence to one borrower/successor

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Requests for Information

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The slide features a large, empty rectangular frame with a black border. The title "Requests for Information" is centered in a bold, red font. At the bottom center, the number "11" is displayed. In the bottom right corner, the "Bradley" logo is shown in black text with a red underline. A decorative bar at the bottom consists of a black segment on the left, a red segment in the middle, and a black segment on the right.

Requests for Information

Successors in Interest


Current Rule

- Servicer not required to treat a request from a potential or confirmed successor in interest as a request for information

Amended Rule

- Confirmed successor in interest
 - Can submit a request for information and servicer is bound by all procedural requirements of 1024.36 (acknowledgment, response, timing, etc.)
 - In certain instances, a servicer's response can omit location and contact information and personal financial information

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The slide features a large, empty rectangular frame with a black border. The title "Requests for Information" is centered in a bold, red font, with the subtitle "Successors in Interest" below it in a smaller, red font. Under the subtitle, there are two sections: "Current Rule" and "Amended Rule", both underlined. The "Current Rule" section contains one bullet point. The "Amended Rule" section contains one bullet point with two sub-bullets. At the bottom center, the number "12" is displayed. In the bottom right corner, the "Bradley" logo is shown in black text with a red underline. A decorative bar at the bottom consists of a black segment on the left, a red segment in the middle, and a black segment on the right.

Requests for Information

Successors in Interest

Amended Rule (cont.)

- **Potential** successor in interest
 - If a servicer receives a written request from a person indicating that he/she may be a successor in interest, the servicer must respond with:
 - A description of documents the servicer requests to confirm identity and ownership
 - Contact information (including telephone number) for further assistance
 - Servicers are not required to provide any other information
 - For requests for other information, must inform the person that he/she may resubmit the request once confirmed as a successor in interest

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Requests for Information

Owner of Mortgage Loan – Fannie/Freddie

Current Rule

- When a borrower submits a request for information related to the owner/assignee of a loan that is held in trust, the servicer must provide:
 - the name of the trust and
 - the name, address, and contract information for the trustee (even if Fannie/Freddie is the owner or trustee)

Amended Rule

- If Fannie/Freddie is the owner or trustee, **and the request does not expressly request the name or number of the trust or pool**, the servicer only has to provide the name of Fannie/Freddie
- If Fannie/Freddie is the owner or trustee, **and the request does expressly request the name or number of the trust or pool**, the servicer has to provide:
 - The name of the trust; and
 - The name, address, and contact information for the trustee

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Definition of Delinquency

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Definition of Delinquency

Current Rule

- Delinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if the borrower is afforded a period after the due date to pay before being assessed a late fee
- Definition limited to sections 1024.39 and 1024.40

Amended Rule

- A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid, until such time as no periodic payment is due and unpaid
 - Servicers may incorporate payment tolerance
- Definition applies to the mortgage servicing subpart of Regulation X (subpart C) and 1026.41

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Force-Placed Insurance

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Force-Placed Insurance

Current Rule

- Requisite initial and reminder force-placed insurance notices do not contemplate instances when a borrower has **insufficient** coverage – only contemplates expired/expiring coverage
- Force-placed insurance notices may not contain any information other than what is specifically required
 - Does not permit inclusion of account number

Amended Rule

- Initial and reminder notices contemplate insufficient coverage
 - As applicable, initial and reminder notices must include statement that servicer does not have evidence of sufficient coverage
- Force-placed insurance notices may include account number

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Early Intervention

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Early Intervention Bankruptcy and FDCPA Exemptions

Current Rule

- Servicer is exempt from the early intervention live contact and written notice requirements while a borrower is a debtor in bankruptcy
- Servicer is also exempt when a borrower has provided an FDCPA cease communication request

Amended Rule

- Borrowers in bankruptcy
 - Servicer is exempt from the early intervention live contact requirements
 - Servicer is exempt from the written notice only if:
 - Loss mitigation options are not available; or
 - Borrower has provided an FDCPA cease communication request

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Early Intervention

Bankruptcy and FDCPA Exemptions

Amended Rule (cont.)

- Written Notice for borrowers in bankruptcy
 - If a borrower is delinquent when he/she becomes a debtor in bankruptcy, the servicer must send a notice not later than the 45th day after borrower files petition
 - If a borrower is not delinquent when he/she becomes a debtor in bankruptcy but subsequently becomes delinquent after filing a bankruptcy petition, the servicer must send a notice not later than the 45th day of delinquency
 - Notice may not contain a request for payment
 - Only has to be sent once during the bankruptcy case

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Early Intervention

Bankruptcy and FDCPA Exemptions

Amended Rule (cont.)

- Borrowers who have provided an FDCPA cease communication request
 - Servicer is exempt from the early intervention live contact requirements
 - Servicer is exempt from the written notice only if:
 - Loss mitigation options are not available; or
 - The borrower is a debtor in bankruptcy
- Written notice for accounts that have submitted an FDCPA cease communication request
 - Must include statement that servicer may or intends to invoke remedy of foreclosure (model clauses provided)
 - May not include request for payment
 - Prohibited from providing more than once during any 180-day period

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Loss Mitigation

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Loss Mitigation Successors in Interest

Current Rule

- Servicer not expressly required to offer loss mitigation protections to successors in interest

Amended Rule (cont.)

- Servicer must offer loss mitigation protections, and is bound by all loss mitigation requirements, for loss mitigation applications submitted by **confirmed** successors in interest
 - Not required – but may – review and evaluate applications received from **potential** successors in interest
 - If a servicer chooses not to review/evaluate an application received from a **potential** successor in interest, the application must be preserved and the servicer must review/evaluate upon confirmation of the successor in interest

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Loss Mitigation

Short-Term Repayment Plans

Current Rule

- Ambiguous as to whether short-term repayment plans can be offered based on incomplete applications

Amended Rule

- Short term repayment plan:
 - Allows for the repayment of no more than 3 months of past due payments over a period lasting no more than 6 months
 - Can be offered based on incomplete applications

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Loss Mitigation

Short-Term Repayment Plans

Amended Rule (cont.)

- Within 5 business days of offering a short-term option (repayment or forbearance) based on an incomplete application, a servicer must provide a notice stating the specific payment terms and the duration of the program
- Notice must also contain an explanation that:
 - The offer was based on an evaluation of an incomplete application;
 - Other loss mitigation options may be available; and
 - The borrower has the option to submit a complete application
- As with existing rule for short-term forbearance plans, when offering short-term repayment plans based on incomplete applications, servicer must comply with all other loss mitigation requirements in 1024.41 (acknowledgment, evaluation of complete applications, etc.)

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Loss Mitigation

Notice of Complete Applications

Current Rule

- Notice that application is complete not expressly required, unless part of acknowledgment letter

Amended Rule

- Within 5 business days of receipt of a complete application, a servicer must provide a written notice to the borrower (subject to certain exceptions) with the following information:
 - That the application is complete;
 - The date the servicer received the complete application;
 - That the evaluation should be completed within 30 days;
 - Explanation of applicable dual tracking protections;
 - That the servicer may later need additional information; and
 - That the borrower may be entitled to additional protections under State or Federal law

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Loss Mitigation

Missing 3rd Party Documents

Current Rule

- No exception to the requirement to evaluate a complete loss mitigation application within 30 days of receipt
 - Arguably have to deny a borrower at the end of the 30-day period if waiting on 3rd party documents necessary for the evaluation

Amended Rule

- Generally prohibited from denying a complete application solely because the servicer lacks necessary 3rd party documents
- Within the 30-day evaluation period, must send a notice explaining:
 - That documents/information not in the borrower's control have not been received;
 - The specific documents/information that the servicer lacks;
 - That the servicer will complete the evaluation promptly upon receipt of the missing documents/information; and
 - That the servicer has requested the missing documents/information
- Upon receipt of missing 3rd party information, must promptly evaluate the application and provide evaluation notice

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Loss Mitigation

Servicing Transfers – In-Flight Loss Mitigation

Current Rule

- A servicer that obtains the servicing of a mortgage loan for which an evaluation of a complete loss mitigation application is in process should continue the evaluation to the extent practicable
 - Also 1024.38 P&P requirements and CFPB bulletin

Amended Rule

- Generally, 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 the loss mitigation requirements within the timeframes that were applicable to the transferor based on the date the transferor received the application
- Any rights/protections related to the evaluation, appeal, and dual tracking to which a borrower was entitled before the transfer continue to apply (notwithstanding the transfer)

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Loss Mitigation

Servicing Transfers – In-Flight Loss Mitigation

Amended Rule (cont.)

- 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**
 - Unique dual tracking restrictions are applicable here, including a prohibition on making the first notice or filing until after the reasonable date in the acknowledgment letter expires
- 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**

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Loss Mitigation

Servicing Transfers – In-Flight Loss Mitigation

Amended Rule (cont.)

- 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 able or, if unable, must treat the appeal as a pending complete loss mitigation application
 - For appeals that have not been resolved as of the transfer date, must provide an appeal determination within 30 days of the transfer date
 - For appeals timely filed after the transfer, must provide an appeal determination within 30 days after receipt of the appeal
- 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, must permit the borrower to accept offer

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Loss Mitigation

Reasonable Date in Acknowledgment Letters

Current Rule

- Requires that an acknowledgment letter include a reasonable date by which the borrower should submit missing documents
 - Servicer should select the deadline that preserves the maximum borrower rights based on the following milestones: document stale date, 120th day of delinquency, 90 days before foreclosure sale, and 38 days before foreclosure sale

Amended Rule

- Acknowledgment letter must include reasonable date
- 30 days is generally reasonable
- BUT: must consider milestones
 - If one of the milestones is within the 30-day period, provide the next milestone date
 - BUT: date must never be less than 7 days

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Loss Mitigation

Review All Options – Borrower Preference

Current Rule

- Informal guidance suggested that servicer/investor can generally deny loss mitigation options based on a borrower's preference and, in turn, not collect documents related to option(s) in which borrower has not expressed interest
 - Permits servicers/investors to bifurcate home retention and non-home retention process based on borrower preference

Amended Rule

- Servicer may not stop collecting documents/information for any loss mitigation option based solely upon a borrower's stated preference
 - May stop collecting documents/information based upon a borrower's stated preference in conjunction with other information, as prescribed by any requirements established by the owner or assignee

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Periodic Billing Statements

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Periodic Billing Statements

Close Proximity

Current Rule

- Items in close proximity may not have any intervening text between them
 - E.g., required items in Explanation of Amount Due section of statement

Explanation of Amount Due	
Principal	\$386.46
Interest	\$1,048.07
Escrow (for Taxes and Insurance)	\$235.18
Regular Monthly Payment	\$1,669.71
Total Fees Charged	\$410.00
Total Amount Due	\$2,079.71

Amended Rule

- Items in close proximity may not have any unrelated text between them. Text is unrelated if it does not explain or expand upon the required disclosures

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Periodic Billing Statements

Acceleration

Current Rule

- Disclosures must reflect the legal obligation between the parties
- If an account is accelerated, the Amount Due should reflect the full outstanding balance, not just the amount past due

Amended Rule

- Amount Due – If servicer will accept a lesser amount to reinstate the loan, the lesser amount must be reflected
 - May specify that amount due is only accurate for a specified period of time using “as of [date]” or “good through [date]”
- Explanation of Amount Due – If servicer will accept a lesser amount to reinstate the loan, both the reinstatement amount and accelerated amount must be reflected
 - Regular monthly payment amount should be removed
 - Any special payment instructions must be explained

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Periodic Billing Statements

Loss Mitigation

Current Rule

- Informal guidance:
 - Amount Due – Could reflect trial payment amount under a loss mitigation agreement, and
 - Explanation of Amount Due – Could explain the difference between trial payment and regular monthly payment amount

Amended Rule

- Temporary loss mitigation program:
 - Amount Due – Can reflect either the payment due under the program, or the amount due according to loan contract
 - Explanation of Amount Due – If Amount Due reflects the amount due under the temporary program, this section must reflect both amounts (contractual payment and amount under the program)
- Permanent loan modification:
 - Statement should reflect amounts due pursuant to modified contract

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Periodic Billing Statements

Charged Off Loans

Current Rule

- No exception to billing statement requirements for loans that have been charged off

Amended Rule

- Billing statements are not required for charged off loans if:
 - Servicer will not charge additional fees or interest on the account; and
 - A billing statement is provided to the borrower containing the following:
 - “Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records” label;
 - Notification that loan is being charged off and additional fees and interest will not be charged;
 - Notification that statements will no longer be provided, and loan may be purchased, assigned, or transferred; and
 - Explanation that lien remains in place, debt is not canceled, borrower is still liable and may have to pay the balance in the future

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Periodic Billing Statements Bankruptcy

Current Rule

- Borrowers in active bankruptcy and those who have received a discharge are exempt from the billing statement requirements

Amended Rule

- Generally requires periodic billing statements to be sent to consumers in bankruptcy, subject to certain exemptions, and with modified content depending on the type of bankruptcy
- Provides sample forms for borrowers in a Chapter 7 or 11 bankruptcy, and for borrowers in a Chapter 12 or 13 case

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Periodic Billing Statements Bankruptcy

Amended Rule (cont.)

- Modified billing statement requirements don't apply for a consumer in bankruptcy if any of the following apply:
 - The consumer requests in writing that the servicer cease sending statements (or coupon books);
 - The consumer's bankruptcy plan provides for a surrender of the dwelling, the avoidance of the lien, or otherwise does not provide for payment of pre-bankruptcy arrearage or maintenance of payments due;
 - A court enters an order providing for the avoidance of the lien, lifting the automatic stay with regard to the dwelling, or requiring the servicer to cease providing statements; or
 - The consumer files with the court a statement of intention identifying an intent to surrender the dwelling and has not made any payments on the loan after the commencement of the bankruptcy case

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Periodic Billing Statements

Bankruptcy

Amended Rule (cont.)

- Exemption from statement requirement no longer applies if:
 - The consumer reaffirms personal liability for the loan; or
 - The consumer requests in writing that statements be provided (subject to court order restricting/preventing statements)
- Designated address may be established for requests for statements, and requests to cease sending statements
- When transitioning to, or from, a modified periodic statement, if the next billing cycle due date is within 14 days of the triggering event, then the servicer is exempt from the statement requirements for one cycle
 - Statements must resume within a reasonably prompt time after the next billing cycle

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Periodic Billing Statements

Bankruptcy

Amended Rule (cont.)

- Content requirements are modified for borrowers in bankruptcy:
- Not required to contain the following:
 - The amount of any late fee, and the date on which it will be imposed if payment has not been received;
 - The date on which the consumer became delinquent;
 - The possible risks, such as foreclosure, and expenses, that may be incurred if the delinquency is not cured; and
 - Whether the servicer has made the first notice or filing
- Must contain:
 - Statement identifying the consumer's status as a debtor in bankruptcy or the discharged status of the loan; and
 - Notification that the statement is for informational purposes only
- Specific content adjustments for Chapter 12 and 13 statements
- Permits terminology adjustments as necessary

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Periodic Billing Statements Bankruptcy

- Required bankruptcy messages:

Bankruptcy Message
<p>Our records show that you are a debtor in bankruptcy. We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.</p> <p>If your bankruptcy plan requires you to send your regular monthly mortgage payments to the Trustee, you should pay the Trustee instead of us. Please contact your attorney or the Trustee if you have questions.</p> <p>If you want to stop receiving statements, write to us.</p>

- Terminology adjustments:

Non-bankruptcy:

Account Number	1234567
Payment Due Date	4/1/2012
Amount Due	\$2,079.71
<small>If payment is received after 4/15/12, \$160 late fee will be charged.</small>	

Bankruptcy:

Account Number	1234567
Payment Date	9/1/2015
Payment Amount	\$3,569.88

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Prompt Payment Crediting

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Prompt Payment Crediting

Current Rule

- Informal guidance suggested that trial modification payments should be held in suspense until amount sufficient to cover a regular periodic payment is received

Amended Rule

- Temporary Loss Mitigation
 - A periodic payment is amount sufficient to cover principal, interest and escrow under the original loan contract, regardless of payment due **under temporary loss mitigation program**
 - Likely treat payments under temporary loss mitigation program as “partial payments”
- Permanent Loan Modification
 - A periodic payment is amount sufficient to cover principal, interest and escrow **under modified contract**

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Small Servicer

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Small Servicer

Current Rule

- In making small servicer determination, can exclude:
 - Loans voluntarily serviced for a creditor or assignee that is not an affiliate of the servicer, and for which the servicer does not receive any compensation

Amended Rule

- In making small servicer determination, can exclude:
 - Loans voluntarily serviced for a non-affiliate of the servicer, and for which the servicer does not receive any compensation
 - Transactions serviced for a seller financier that satisfies all criteria in 1026.36(a)(5)

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Questions?



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Thank You

See below for upcoming webinars in this series.

Date	Webinar
Thursday, August 25 11:30 AM - 12:30 PM CST	What You Need to Know: Successors in Interest Jonathan Kolodziej, John Harrelson
September, TBD 11:30 AM - 12:30 PM CST	What You Need to Know: Bankruptcy Jonathan Kolodziej, Chris Hawkins
October, TBD 11:30 AM - 12:30 PM CST	What You Need to Know: Loss Mitigation Jonathan Kolodziej, Jason Bushby

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