



Financial Services Webinar Series

# CFPB Mortgage Servicing Amendments

## *Part 2. What You Need to Know: Successors in Interest*

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### Effective Date

- Provisions specifically addressing successors in interest will become effective 18 months from the date the amendments are published in the Federal Register
- The CFPB believes that implementation of the successor in interest provisions:
  - Generally should not require the same levels of operating system challenges as bankruptcy periodic billing statements;
  - May require new systems to track potential and confirmed successors who are not obligated on the loan;
  - Requires an implementation period that affords sufficient time for servicers to develop P&Ps relating to the type of documents that will be accepted for common factual scenarios that could arise under the broader definition; and
  - May require servicers to work with third-party service providers to ensure compliance



# Overview

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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
- CFPB Bulletin 2013-12 – Implementation Guidance

### 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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## Definition

- “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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## Confirmation Process

### Policies and Procedures

- Servicers must have policies and procedures that are 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;
    - Determine the documents reasonably required to confirm the potential successor in interest’s identity and ownership interest; and
    - Communicate the documentation requirements and designated address to the potential successor
  - 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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## Confirmation Process

### Requests for Information

- If a servicer receives a written request from a person that indicates that he/she may be a successor in interest, the servicer must respond with:
  - Either:
    - A description of documents the servicer requires to confirm identity and ownership; or
    - Examples of documents typically accepted and whatever additional information the servicer needs to identify the required documents, and
  - Contact information (including telephone number) for further assistance
- Upon receipt of additional information either verbally or in writing, servicer must treat as a new request
- Servicers are not required to provide any other information to a potential successor but must inform the person that he/she may resubmit the request once confirmed

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## Successors = Borrower

- “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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## Deep Dive: Definition

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### Definition

- Current requirements only apply to successors in interest of a deceased borrower
- New definition expands and includes scenarios where one or more borrowers may still alive
- Living borrowers could create additional challenges for servicers:
  - Multiple borrowers and confirmed successors in interest on the same account
  - Execution of loss mitigation agreements with multiple parties
  - Servicers placed in the middle of family disputes

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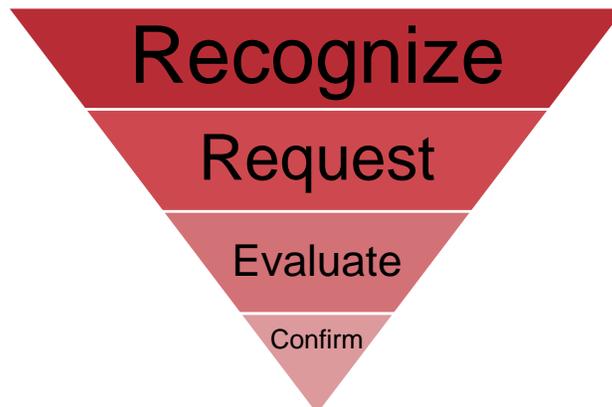
# Deep Dive: Confirmation Process

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## Confirmation Process

- Together, the policy and procedure and request for information requirements create an obligation to:

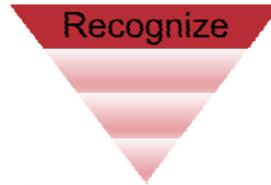


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## Confirmation Process

### Recognize



- Requirements apply upon “notice of the existence of a potential successor in interest”
  - “A servicer may not wait until it has reason to believe that the transfer falls within the scope of the definition”
  - For example, a servicer should facilitate communication with any individual who indicates that a borrower has died, even if the servicer is not certain whether the person is a successor
- Limited duty to search
  - Comment 38(b)(1)(vi)-1: “A servicer is not required to conduct a search for potential successors in interest if the servicer has not received actual notice of their existence.”

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## Confirmation Process

### Recognize



- To ensure that policies and procedures are reasonably designed to meet the objectives, servicers will need to:
  - Identify intake points
    - *E.g.*, loss mitigation, requests for information, payoff requests, SPOC, customer service, etc.
  - Provide training so that employees recognize potential successor in interest scenarios
  - Develop documentation/information retention process
    - Comment 38(b)(1)(vi)-1: P&Ps must be “reasonably designed to ensure that the servicer can retain this information...”
  - Develop handoffs that will start document request and confirmation processes when appropriate

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## Confirmation Process

### Request



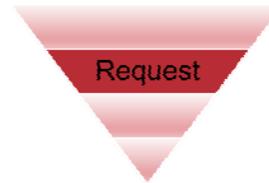
- Determine the documents *reasonably required* to confirm the potential successor in interest's identity and ownership interest and communicate the requirements to the potential successor in interest
  - Must be reasonable in light of:
    - The laws of the relevant jurisdiction;
    - The specific situation of the potential successor; and
    - The documents already in the servicer's possession
- This will require document requests that account for:
  - Circumstances of the individual conveyed in previous verbal and written communications
  - Real property law, contract law, estate law, and family law in each of the fifty states

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## Confirmation Process

### Request



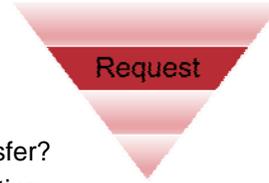
- What is reasonably required for a deceased borrower?
  - Conveyance deed
  - Executed will
  - Affidavit of heirship
  - Small estate affidavit
  - Court order
- What is reasonably required for divorced borrowers?
  - Separation agreement
  - Divorce decree
  - Property settlement agreement
  - Deed conveying property

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## Confirmation Process

### Request



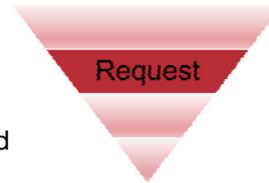
- What is reasonably required for a family transfer?
  - Conveyance document (e.g., act of donation, deed)
  - Birth certificate
  - Marriage certificate
- What is reasonably required for a transfer to an *inter vivos* trust?
  - Trust declaration
  - Conveyance document (e.g., act of donation, deed)

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## Confirmation Process

### Request



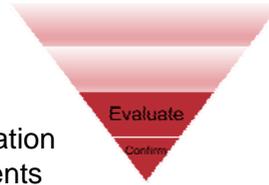
- Industry expressed concern that the proposed rule would require them to give legal advice
- CFPB's response is:
  - "The final rule, like the proposal, does not require servicers to provide legal advice to successors in interest"
  - They recognize that confirmation determinations can in some cases raise complex issues
  - However, relevant determinations regarding identity and ownership interest are determinations that servicers make on a regular basis in the course of their work already
- Servicers may need to:
  - Carefully craft correspondence so that the focus is on what the servicer will accept in a particular jurisdiction under certain circumstances, and not on what the person should do
  - Train employees so that conversations are not construed as providing legal advice

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## Confirmation Process

### Evaluate/Confirm



- Requirement to *promptly* make a confirmation determination upon receipt of the documents
- Prompt confirmation
  - “Notification is not prompt . . . if it unreasonably interferes with a successor in interest’s ability to apply for loss mitigation options”
  - May require consideration of proximity to foreclosure sale, and impact of delays on loss mitigation eligibility
- Like the document request, the evaluation and confirmation process will require servicers to have an understanding of real property law, contract law, estate law, and family law in each of the fifty states
  - How much scrutiny do you apply?

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## Deep Dive: Successor = Borrower

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## Successor = Borrower

- “A confirmed successor in interest shall be considered a borrower for purposes of” the mortgage servicing rules in Regulations X and Z
- This may cause a number of operational challenges and may raise certain concerns:
  - Correspondence
  - System categorization
  - Loss mitigation
  - Privacy

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## Successor = Borrower FDCPA

- Servicers expressed concern that the final rule would require them to violate the FDCPA in two ways:
  - Communicating with third parties in connection with the collection of a debt; and
  - Using false, deceptive, or misleading representations in connection with the collection of a debt
- CFPB interpretive rule
  - Provides a safe harbor from liability under FDCPA section 805(b) for servicers communicating with a confirmed successor in interest in compliance with Regulations X and Z
  - Servicers should be cautious about non-required correspondence and communications
- CFPB considered, but declined, to provide a safe harbor from UDAP or FDCPA deception claims

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## Successor = Borrower 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
- CFPB: “UDAAP claims are unlikely to arise . . . particularly if servicers implement one of the approaches described above”
- Servicer only required to send correspondence to one borrower/successor

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## Successor = Borrower Privacy Concerns

- Industry expressed concern that treating a successor in interest as a borrower would violate privacy laws
- CFPB does not believe there are privacy concerns
  - CFPB “concludes that complying with the final rule does not cause servicers to violate the GLBA or its implementing regulations”
  - Complying with Federal law is permitted by privacy laws
  - A confirmed successor in interest’s ownership interest is sufficient to warrant that person’s access to information about the mortgage loan
- Nevertheless, the CFPB has created an exception to the existing request for information requirements:
  - In certain instances, a servicer’s response can omit location and contact information, and personal financial information

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## Successor = Borrower

- Servicers will need to be able to distinguish between different categories of individuals:
  - Potential successors in interest
  - Confirmed successors in interest
  - Borrowers
  - Authorized third parties of:
    - The borrower
    - Potential successors in interest
    - Confirmed successors in interest
  - Administrators/Executors/Personal Representatives
- Individual who assumes the mortgage loan obligation becomes a borrower

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## Successor = Borrower

### Loss Mitigation

- Servicers must offer loss mitigation protections, and are 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
- Servicers may not condition evaluation of loss mitigation application on assumption of the loan, but may condition an offer of loss mitigation on assumption of the loan

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## Successors in Interest Next Steps

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## Successors in Interest Next Steps

- To successfully implement the new successor in interest requirements, servicers will need to:
  - Conduct research on real property law, contract law, estate law, and family law in each of the fifty states
  - Develop notice and acknowledgment process
  - Develop successor in interest-specific correspondence
  - Develop policies and procedures to achieve the specified objectives
  - If necessary, enhance systems to accommodate confirmed successors in interest and ensure compliance
  - Train borrower-facing employees to recognize potential successor in interest scenarios
  - Train employees responsible for evaluating successor in interest confirmation requests
  - Train employees on debt collection, privacy, and other concerns (e.g., legal advice)

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# Questions?



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# Thank You

See below for upcoming webinars in this series.

Date	Webinar
<b>Tuesday, September 20</b> 11:30 AM - 12:30 PM CST	<b>What You Need to Know: Bankruptcy</b> Jonathan Kolodziej, Chris Hawkins
<b>Thursday, October 6</b> 11:30 AM - 12:30 PM CST	<b>What You Need to Know: Loss Mitigation</b> Jonathan Kolodziej, Jason Bushby

