

DRAFT/DELIBERATIVE: Template for Reviewing Regulatory Analyses.

Title: Mortgage Servicing Rules under Real Estate Settlement Procedures Act (Regulation X)  
RIN: 3170-AA14  
Publication Date: Feb 14, 2013

**Sec. 1022 (and GIPRA):**

1. **Universe** – Does the analysis assess the costs and benefits to persons identified by the Act, including consumers, covered persons, 1026 covered persons, and consumers in rural areas?  
  
Yes.
2. **Content** – Does the analysis assess the potential loss of access to consumer financial products and services?  
  
Yes, though assess may be too generous a word.

Cost-benefit analysis best practices (based on OMB Circular A-4):

**3. Is there a clear statement of the problem the rule is intended to address?**

Yes. The rule discusses potential market failures.

**4. Does the analysis identify a market failure?**

Yes. The analysis makes what I will call a “missing market” analysis, claiming that consumers don’t get to choose their servicer. They also mention frequently the externalities associated with foreclosure. They also claimed that servicers may have a sort of principle-agent/incentive alignment problem.

**Commented [RR(1)]:** The missing markets analysis is not compelling. Sometimes markets are missing because the WTP is lower than the cost/opportunity cost.

The externalities associated with foreclosure are real and have been claimed by other agencies’ analysis in the past.

**5. Does the analysis present evidence of a market failure?**

Yes. There is a footnote that provides a nice summary of literature on the external costs of foreclosure.

**6. Does the analysis define an appropriate baseline? Does it use the baseline consistently?**

Yes. Pre-statute baseline

**7. Does the analysis define an appropriate time horizon?**

No. The Bureau didn’t quantify anything, so no need to define a time horizon.

**8. Does the analysis identify a range of regulatory alternatives, including potential alternatives to regulation? What alternatives to regulation were identified (such as additional enforcement)?**

No.

**9. Are benefits connected to market failure?**

In the case of foreclosure and default externalities, yes.

**10. Does the analysis assess the potential effectiveness of the regulation?**

Generally no, but there is one notable exception. The Bureau used a regression analysis from a study to assess the potential foreclosures avoided if the worst servicers performed at the level of the highest performing servicers. T

**11. Does the analysis correctly identify and account for costs, benefits, and transfers for each alternative? Does it explicitly identify and account for impacts on credit access and availability?**

Some benefits are correctly identified, such as the reductions in foreclosure-related externalities. Some benefits identified are substantially transfers (reductions in forced-insurance contracts.

The bureau states that it does not believe additional costs will reduce access.

**Commented [RR(2):** This was presumed rather than analyzed

**12. Are costs, benefits, and transfers quantified for each alternative? Does it explicitly identify and account for impacts on credit access and availability?**

No.

**13. Are costs, benefits, and transfers monetized for each alternative? Does it explicitly identify and account for impacts on credit access and availability?**

No.

**14. Are future costs and benefits discounted to present value using appropriate rates?**

Nothing to discount.

**15. Does the analysis identify key sources of uncertainty?**

No.

**16. Does the analysis conduct sensitivity analyses for sources of uncertainty?**

No.

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**17. Was the analysis put out for public comment prior to finalizing?**

Yes.

**18. The following questions should be included in a thorough evaluation, but are more difficult, time-consuming, and/or less-objective: Is the analysis transparent and reproducible? Is it transparent in its assumptions? Does it rely on the best available science and evidence? Does it comply with data quality standards?**