

Summary of the proposed changes to the Mortgage Servicing Rules

The Consumer Financial Protection Bureau is proposing several amendments to the Bureau's Mortgage Servicing Rules under Regulation X, which implements the Real Estate Settlement Procedures Act, and Regulation Z, which implements the Truth in Lending Act. The proposed amendments include sample forms. The proposed rule, including the sample forms, will be open for public comment for 90 days after publication in the Federal Register. The rules cover nine major topics, summarized below. More details can be found in the proposed rule.

Background

In January 2013, the Bureau adopted several final rules concerning mortgage markets in the United States, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, including the mortgage servicing rules. The Dodd-Frank Act imposed new requirements on servicers and gave the Bureau the authority to implement the new requirements and to adopt additional rules to protect consumers. The Bureau exercised that authority to improve the information consumers receive from their servicers, enhance the protections available to consumers to address servicer errors, and to establish some baseline servicing requirements that provide additional protections for consumers who have fallen behind on their mortgage payments.

The Bureau previously adopted several amendments that clarified and revised these rules through a notice and comment rulemaking during the summer and fall of 2013. In the summer of 2014, the Bureau added an alternative definition of small servicer, a definition that exempts certain servicers from parts of the mortgage servicing rules. The purpose of each of these updates was to address important questions raised by industry, consumer advocacy groups, and other stakeholders.

After January 10, 2014, the effective date of the Mortgage Servicing Rules, the Bureau has continued to engage in ongoing outreach and monitoring with consumer advocacy groups, industry representatives, housing counselors and other stakeholders. As a result, the Bureau has identified further issues.

Summary of the Proposed Rules:

The proposals cover nine major topics, summarized below generally in the order they appear in the proposed rule. More details can be found in the proposed rule.

1. Successors in interest. The Bureau is proposing three sets of rule changes relating to successors in interest—people who inherit or receive property when there is still an outstanding mortgage loan on the property. First, the Bureau is proposing to apply all of the Bureau’s Mortgage Servicing Rules to a successor in interest once a servicer confirms that a person is a successor in interest. Second, the Bureau is proposing rules relating to how a mortgage servicer makes this confirmation. Third, the Bureau is proposing that, to the extent that the Mortgage Servicing Rules apply to successors in interest, the rules would apply with respect to all successors in interest who acquired an ownership interest in a transfer protected from acceleration and therefore foreclosure, under Federal law. The new definition of successors in interest would include homeowners who receive a property through inheritance from a family member or upon the death of a joint tenant, after a divorce or legal separation, through a family trust, or through a transfer from a spouse or from a parent to a child.

2. Definition of delinquency. The Bureau is proposing to add a general definition of delinquency that would apply to all of the servicing provisions of Regulation X and the provisions regarding periodic statements for mortgage loans in Regulation Z. Under the proposed definition, a borrower and a borrower’s mortgage loan obligation are delinquent

beginning on the date a payment sufficient to cover principal, interest, and, if applicable, escrow, becomes due and unpaid, and the borrower remains delinquent until such time as the payment is made.

3. Requests for information. For loans in a trust for which Fannie Mae or Freddie Mac is the trustee, investor, or guarantor, the Bureau is proposing to allow a servicer to respond to requests for information asking for the owner or assignee of the loan with the name and contact information for Fannie Mae or Freddie Mac, as applicable (unless the borrower expressly requests the name and number of the trust or pool).

4. Force-placed insurance. The Bureau is proposing to amend the force-placed insurance disclosures to account for when a servicer wishes to force-place insurance because the borrower has insufficient, rather than expiring or expired, hazard insurance coverage on the property. Additionally, the Bureau is proposing to give servicers the option to include a borrower's mortgage loan account number on the notices.

5. Early intervention. The Bureau is proposing to clarify the early intervention live contact obligations and written early intervention notice obligations that require servicers to attempt to contact borrowers that become delinquent. The Bureau is also proposing to require servicers to provide written early intervention notices to certain borrowers who are in bankruptcy or who have invoked their cease communication rights under the Fair Debt Collection Practices Act.

6. Loss mitigation. The Bureau is proposing three general categories of amendments to the loss mitigation procedures that servicers must follow for a mortgage loan secured by a borrower's principal residence.

First, the proposal would add requirements for servicers collecting loss mitigation applications and evaluating them. It would require servicers to notify borrowers in writing when the servicer receives a borrower's complete loss mitigation application. It would clarify that servicers have flexibility in setting a reasonable date by which borrowers must return documents to complete an application. It would also clarify that if the servicer lacks certain third party information 30 days after receiving a complete application, the servicer may not deny the application, but must send a written notice to the borrower and complete the evaluation promptly upon receipt of such information. The proposal would permit servicers to offer, based on an evaluation of an incomplete application, a short-term repayment plan that allows the borrower to repay past due payments over a specified period of time until the mortgage loan account is current. The proposal would clarify that servicers may stop collecting documents and information from a borrower pertaining to a loss mitigation option after receiving information confirming that the borrower is ineligible for that option. The proposal would also require servicers to evaluate borrowers for loss mitigation under the Bureau's rules more than once in the life of a loan for borrowers who have brought their loans current at any time since the last loss mitigation application.

Second, the proposal addresses the dual-tracking prohibitions under the current rules and the ability of a subordinate lien holder to join a foreclosure action filed by a senior lien holder. The proposal would allow a servicer to join the foreclosure action of a senior lienholder, even if the borrower is not 120-days delinquent on the subordinate lien and the subordinate servicer would otherwise be barred from initiating foreclosure. On dual-tracking, the rules currently prohibit a servicer from proceeding to foreclosure once a servicer receives a complete loss mitigation application from a borrower. The Bureau is proposing to clarify what steps servicers

and their foreclosure counsel must take to protect borrowers from a wrongful foreclosure sale.

The proposal includes the requirement that servicers who do not take all reasonable affirmative steps, either directly or through their foreclosure counsel, to delay the sale must dismiss the foreclosure action, if necessary to avoid the sale.

Third, the proposal would address and clarify how loss mitigation procedures and timelines apply when a mortgage is transferred from one servicer to another during the loss mitigation process. The changes would clarify generally the understanding that a borrower's loss mitigation rights and foreclosure protections under Regulation X should not be affected by the transfer of mortgage servicing. The proposal clarifies generally that a transferee servicer must comply with the loss mitigation requirements within the same timeframes that applied to the transferor servicer. Transferee servicers would be given an additional five days to provide the acknowledgment notice. If the borrower's application was complete prior to the transfer, the transferee servicer generally must evaluate the application within 30 days of when the transferor servicer initially received the application. For involuntary transfers, the proposal would give the transferee servicer at least 15 days after the transfer date to evaluate a complete application. If the transferee servicer needs more information in order to evaluate the application, the borrower would retain most foreclosure protections while the application is being evaluated.

7. Prompt payment crediting. The Bureau is proposing to clarify how servicers must treat periodic payments made by borrowers who are performing under either temporary loss mitigation programs or permanent loan modifications. For borrowers performing under temporary loss mitigation programs, periodic payments would continue to be applied as specified in the loan contract, so that the payments made under the temporary loss mitigation program could be applied as partial payments. For permanent loan modifications, periodic payments

would be applied as specified in the permanent loan modification so that payments made in accordance with the terms of the permanent loan modification could not be applied as partial payments.

8. Periodic statements. The Bureau is proposing several clarifications and additional requirements regarding a servicer’s obligation to provide periodic statements under the mortgage servicing rules. First, the proposal would clarify certain periodic statement disclosure requirements relating to mortgage loans that have been accelerated, are in temporary loss mitigation programs, or have been permanently modified. Generally, the proposal would provide that, for loans that have been accelerated, if the servicer will accept a lesser amount to reinstate the loan than the entire accelerated balance, the “amount due” on the periodic statement must identify only the lesser amount that will be accepted to reinstate the loan, not the entire accelerated balance. For loans in a temporary loss mitigation program, the “amount due” could identify either the payment due under the temporary loss mitigation program or the amount due according to the loan contract. If the loan contract has been permanently modified, the proposal would require that the “amount due” must identify only the amount due under the modified loan contract.

Second, the proposal would require servicers to send periodic statements (or coupon books, where servicers are otherwise permitted to send coupon books instead of periodic statements) to consumers who have filed for bankruptcy, subject to certain exceptions. The Bureau is also proposing sample periodic statement forms that servicers could use to ensure compliance with these proposed requirements regarding consumers in bankruptcy. The Bureau intends to conduct consumer testing on the proposed sample forms.

Third, the proposal would exempt servicers from providing periodic statements for charged-off loans if the servicer will not charge any additional fees or interest on the account and provides a final notice of charge-off.

9. Small Servicer. The proposal would make certain changes to the small servicer definition. The small servicer definition generally applies to servicers who service 5,000 or fewer mortgage loans for all of which they are the creditor or assignee. The proposal would exclude certain seller-financed transactions from being counted toward the 5,000 loan limit, allowing servicers that would otherwise qualify for small servicer status to retain their exemption while servicing those transactions.

Additionally, the proposed rule makes a number of technical corrections to several provisions of Regulations X and Z.

The Bureau seeks public comment on all of the proposed changes.