

BUREAU OF CONSUMER FINANCIAL PROTECTION

Bulletin 2020-02 - Compliance Bulletin and Policy Guidance: Handling of Information and Documents During Mortgage Servicing Transfers

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance bulletin and policy guidance.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing a compliance bulletin and policy guidance (Bulletin) entitled, “Compliance Bulletin and Policy Guidance: Handling of Information and Documents During Mortgage Servicing Transfers.” The purpose of the policy statement is to provide guidance to residential mortgage servicers regarding the transfer of mortgage loans, including examples of practices that the Bureau may consider as contributing to policies and procedures that are reasonably designed to achieve the objectives of the regulatory requirements.

DATES: This Bulletin is applicable on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Introduction

The Bureau of Consumer Financial Protection (Bureau) is issuing this Bulletin to residential mortgage servicers and subservicers (collectively, servicers), in light of potential risks to

consumers that may arise in connection with transfers of residential mortgage servicing rights.

This bulletin covers: (A) transfer-related policies and procedures, and (B) loan information and documents for ensuring accuracy.

II. Compliance Bulletin and Policy Guidance

A. Background

A mortgage servicer, among other things, collects and processes loan payments on behalf of the owner of the mortgage note, conducts escrow related processes and handles loss mitigation as appropriate. Servicing transfers are common and may occur in several ways. The mortgage owner may sell the rights to service the loan, called the Mortgage Servicing Rights (MSR), separately from the note ownership. The owner of the loan or MSR may, rather than servicing the loan itself, hire a vendor—typically called a subservicer—to take on the servicing duties or aspects of such servicing. MSR owners frequently sell MSR outright as an asset. Servicing transfers may also occur through whole loan servicing transfers or whole loan portfolio transfers, rather than through sales of MSR. In this document, we use the term “transfer” broadly to cover transfers of servicing rights as well as transfers of servicing responsibilities, in total or in part, through subservicing or whole loan servicing arrangements. The term “transferor” servicer means a servicer who transfers or will transfer the right to perform servicing functions pursuant to an agreement or understanding. The term “transferee” servicer means a servicer who obtains or who will obtain the right to perform servicing functions pursuant to an agreement or understanding.

As consumers do not have a choice with respect to the transfer of servicing, seamless and accurate transfers are important to prevent consumer harm. In 2014, the Bureau issued CFPB

Bulletin 2014-01.¹ The Bulletin discussed the servicing transfer requirements in the Regulation X mortgage servicing rules.² The Bulletin also addressed frequently asked questions, the focus areas for Bureau examinations, and the other Federal consumer financial laws applicable to servicing transfers.

In supervisory examinations conducted since 2014, the Bureau has continued to find weaknesses in compliance management systems and violations of Regulation X related to mortgage servicing transfers.³ Specifically, the Bureau has seen inadequacies in servicers' policies and procedures for transferring all the loan information and documents to the new servicer in a timely and accurate manner. It is also important that servicing functions continue on an uninterrupted basis during servicing transfers—such as the payment of taxes and insurance from escrow accounts or continuing to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application. Recent economic conditions and structural changes to the mortgage servicing market, including the growth of nonbank servicers that are not subject to the same capital standards as banks, contribute to these risks.⁴

Taking into consideration the coronavirus pandemic that led to the President's declaration of a national emergency on March 13, 2020 (National Emergency), and the economic and social dislocations caused by the pandemic, for the duration of the National Emergency and for 120 days thereafter, if a servicing transfer is requested or required by a Federal regulator or by the

¹ Bulletin 2014-01 was published in the Federal Register as *Compliance Bulletin and Policy Guidance—Mortgage Servicing Transfers*, 79 FR 63295 (Oct. 29, 2014). Bulletin 2014-01 replaced the earlier Bulletin 2013-01 (Mortgage Servicing Transfers), released in February 2013, which addressed servicing transfers before the effective date of 12 CFR 1024.38(a), (b)(4).

² 12 CFR 1024.38(a), (b)(4).

³ In addition to the requirements discussed in this bulletin, State laws and regulations may impose additional requirements applicable to servicers.

⁴ See Kim, You Suk, Steven M. Laufer, Karen Pence, Richard Stanton, and Nancy Wallace. 2018. “Liquidity Crises in the Mortgage Market.” BPEA Conference Draft, Spring, and Goodman, Laurie, and Karan Kaul. 2016.

“Nonbank Servicer Regulation: New Capital and Liquidity Requirements Don’t Offer Enough Loss Protection” Urban Institute Brief.

security issuer of “Government Loans” (as defined in the CARES Act), the Bureau intends, for activity during this period, to consider the challenges that entities may face as a result, including operational and time constraints related to the transfer, and to be sensitive to good-faith efforts demonstrably designed to transfer the servicing without adverse impact to consumers. The Bureau intends to focus supervisory feedback for institutions, if needed, on identifying issues, correcting deficiencies, and ensuring appropriate remediation to consumers.

B. General Transfer-Related Policies and Procedures

In its supervisory examinations, the Bureau reviews mortgage servicers for compliance with Regulation X servicing transfer requirements, which among other things, require servicers to maintain certain policies and procedures related to facilitating the transfer of information during mortgage servicing transfers.⁵ Specifically, Regulation X requires transferor servicers to maintain policies and procedures that are reasonably designed to achieve the objective of the timely transfer of all information and documents in the possession or control of the servicer relating to a transferred mortgage loan to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred and that enables a transferee servicer to comply with the terms of the transferee servicer’s obligations to the owner or assignee of the mortgage loan and applicable law.⁶

⁵ “Small servicers” as defined in Regulation Z, 12 CFR 1026.41(e)(4), do not have to comply with the policies and procedures requirements described in this Bulletin. Regulation X, 12 CFR 1024.30(b)(1).

⁶ 12 CFR 1024.38(b)(4)(i). 12 CFR 1024.38(b)(4) does not prescribe any specific policies or procedures that a servicer must implement; the rule says that the policies and procedures must be “reasonably designed” to achieve the goal of facilitating the transfer of information during servicing transfers. The Bureau will consider a servicer’s transfer-related policies and procedures as a whole, in light of the servicer’s particular facts and circumstances, in determining whether they are reasonably designed to achieve the rule’s objectives. Comment 38(a)-1 also states that a servicer may determine the specific policies and procedures it will adopt and the methods by which it will implement those policies and procedures so long as they are reasonably designed to achieve the objectives set forth in § 1024.38(b). And a servicer has flexibility to determine such policies and procedures and methods in light of the size, nature, and scope of the servicer’s operations, including, for example, the volume and aggregate unpaid principal balance of mortgage loans serviced, the credit quality, including the default risk, of the mortgage loans serviced, and the servicer’s history of consumer complaints.

Regulation X also requires transferee servicers to maintain policies and procedures that are reasonably designed to ensure that the servicer can identify necessary documents or information that may not have been transferred by a transferor servicer and obtain such documents from the transferor servicer.⁷ The following are examples of servicer practices that the Bureau may consider as contributing to policies and procedures that are reasonably designed to achieve the objectives of these transfer requirements:

Planning and Pre-Transfer Testing

- For each transfer of mortgage servicing that occurs, developing a servicing transfer plan that includes a communications plan, testing plan (for system conversion), a timeline with key milestones and an escalation plan for potential problems.
- Conducting meetings to discuss and clarify issues with counterparties in a timely manner; for large transfers, this could occur months in advance of the transfer for the purposes of developing transfer plans and the obligations of all involved parties, including service providers and investors.
- Recognizing if the transfer cannot be implemented successfully in a single batch of all accounts and implementing alternative protocols, such as splitting the transfer into several smaller bundles of accounts to be transferred in subsequent months to ensure that the transferee can comply with its servicing obligations for every loan transferred.
- Determining servicing responsibilities for legacy accounts including tax reporting, credit bureau reporting and other questions that may arise.
- Using tailored testing protocols to evaluate the compatibility of the transferred data with the transferee servicer's systems and data mapping protocols.

⁷ 12 CFR 1024.38(b)(4)(ii).

- Proactively identifying material issues that potentially impact the accuracy or completeness of the loan data or documentation to be transferred as well as each servicer’s ability to comply with the law or investor guidelines with respect to the transferred loans.
- Identifying any loans in default, active foreclosure and bankruptcy. Where applicable, include documentation regarding loss mitigation activity for each loan, including status and notes pertaining to the loss mitigation action, copies of agreements entered into with a borrower on a loss mitigation option, and any analysis by a servicer with respect to potential recovery from a non-performing mortgage loan.
- Engaging in quality control work after a transfer of preliminary data to validate that the data on the transferee’s system matches the data submitted by the transferor. Prioritizing data mapping errors that occurred during de-boarding or on-boarding process for resolution.

Post-Transfer Monitoring

- Conducting a post-transfer review or de-brief to determine effectiveness of the transfer plan and whether any gaps have arisen that require resolution.
 - Monitoring consumer complaints and loss mitigation performance metrics including borrower engagement rate, approvals of trial modifications, repayment plans, non-home retention options, and completed workouts for at least four to six months post-transfer. Also monitoring for delinquencies, foreclosures and bankruptcies to detect trends, including for month-to-month increases after transfer.
- As the composition and complexity of servicer portfolios vary, servicers may not need to implement all the example policies and procedures listed above in order to meet the objectives

outlined in Regulation X. However, the Bureau emphasizes the importance of post-transfer monitoring to ensure that transferred data is complete, accurate and functional for the transferee. For example, the Bureau found at least one servicer that did not engage in adequate post-transfer validation with its transferee, which contributed to its failure to identify that it had not transmitted all the loss mitigation documents in its possession. Only after a borrower complained to the transferee did either servicer become aware that the transferor failed to send an executed loan modification agreement to the transferee.⁸ Generally, transferees must have policies and procedures reasonably designed to ensure, in connection with a servicing transfer, that the transferee receives copies of any loss mitigation applications and agreements, finds out about the status of any prior discussions with borrowers, and retrieves missing loss mitigation documents and information from the transferor servicer before asking the borrower for such information.⁹ These obligations apply to any accounts for which the servicer's determination of the borrower's eligibility for loss mitigation is in process, including any short-term payment forbearance program or a short-term repayment plan that the servicer may offer based on an evaluation of an incomplete loss mitigation application.¹⁰

The Bureau also emphasizes the importance of maintaining the transferred data after receipt. Under Regulation X, servicers must maintain certain documents and data on each mortgage loan account serviced by the servicer in a manner that facilitates compiling such documents and data into a servicing file within five days.¹¹ A servicing file includes, among

⁸ The Bureau published supervisory findings related to mortgage servicing transfers in the June 2016 edition of *Supervisory Highlights*, available here:

https://files.consumerfinance.gov/f/documents/Mortgage_Servicing_Supervisory_Highlights_11_Final_web.pdf

⁹ Comment 38(b)(4)(ii)-1.

¹⁰ See 12 CFR 1024.41(c)(2)(iii) (describing requirements for servicers offering certain short-term loss mitigation options based on an evaluation of an incomplete loss mitigation application); see also comments 41(b)(1)-4.iii and 41(c)(2)(iii).

¹¹ 12 CFR 1024.38(c)(2).

other things, a schedule of all transactions credited or debited to the mortgage loan account (including to any escrow or suspense account), a copy of the security instrument, copies of any loan modifications, any notes created by servicer personnel reflecting communications with the borrower about the mortgage loan account, and to the extent applicable, a report of the data fields relating to the borrower’s mortgage loan account.¹² Transferors must also retain records that document actions taken with respect to a borrower’s mortgage loan account until one year after the date a mortgage loan is discharged or servicing of a mortgage loan is transferred by the servicer to a transferee servicer.¹³ The Bureau encourages servicers to adopt strong policies and procedures for maintaining documents and information received in a transfer as part of an overall compliance program.

A. Loan Information and Documents to be Transferred or Received

Regulation X requires transferor servicers to maintain policies and procedures that are reasonably designed to achieve the objectives of timely transferring all information and documents in the possession or control of the servicer relating to a transferred mortgage loan to a transferee servicer in a form and manner that:

- Ensures the accuracy of the information and documents transferred, and
- Enables a transferee servicer to comply with the terms of the transferee servicer’s obligations to the owner or assignee of the mortgage loan and applicable law.¹⁴

Use of a uniform data standard like the Mortgage Industry Standards Maintenance Organization (MISMO) standard would increase data compatibility and strengthen compliance across the servicing industry by fostering more consistency in the data fields used by servicers. The Bureau

¹² 12 CFR 1024.38(c)(2)(i-v).

¹³ 12 CFR 1024.38(c)(1).

¹⁴ 12 CFR 1024.38(b)(4)(i).

encourages servicers to adopt a common data standard and data dictionary to facilitate these goals.

Other practices that could contribute to compliance include having contracts that require transferors to provide all the necessary information and documents at loan boarding to a transferee servicer's systems. Necessary information and documents could include foundational information for servicing the loan, not limited to, a unique identifier for each loan, the terms of the loan (including the rate and term), current unpaid principal balance (UPB) as of a specific date, information concerning any escrow accounts (including balances, distribution history, and future obligations), payment histories, the terms of any loss mitigation that was offered to a borrower under which the borrower is performing, and any other modifications or other information needed to adequately service the loan.

Certain information and documents present heightened compliance risk. For example, failure to transfer private mortgage insurance cancellation and mid-point dates may contribute to violations of the Homeowners Protection Act.¹⁵ Likewise, loss mitigation-related documents, including incomplete applications and executed modification agreements are critical for compliance. Regulation X requires transferor servicers to maintain policies and procedures with respect to the transfer of any information reflecting the current status of discussions with a borrower regarding loss mitigation options, any agreements entered into with a borrower on a loss mitigation option, and any analysis done with respect to potential recovery from a non-performing mortgage loan, as appropriate.¹⁶ Because borrowers may continue to provide loss mitigation-related documents and information to the transferor servicer after their loans have

¹⁵ See CFPB Bulletin 2015-03. "Compliance Bulletin: Private Mortgage Insurance Cancellation and Termination".

¹⁶ Comment 38(b)(4)(i)-2.

transferred, transferors must work with transferees to ensure that the new information and documents are transferred and that borrowers are not adversely affected.¹⁷ A borrower that submits a facially complete or complete application to the transferor servicer after the transfer date has the same rights and protections that would have applied if the borrower had submitted the complete application to the transferee servicer.¹⁸ An application that was facially complete under § 1024.41(c)(2)(iv) with respect to the transferor servicer remains facially complete under the transferee servicer as of the date it was facially complete with respect to the transferor servicer. And if an application was complete with respect to the transferor servicer, but is not complete with respect to the transferee servicer, the transferee servicer must treat the application as facially complete as of the date the application was complete with respect to the transferor servicer.¹⁹

Appendix A provides examples of information and documents grouped by subject area which the Bureau intends to use to assess compliance with Regulation X. The appendix is provided as a guide and focuses on common data elements essential to the servicing of mortgage loans. Servicers may use the appendix to assess the baseline appropriateness of their transfer-related policies and procedures. Some listed documents and information may be not applicable to certain loans. Other loans may require documents and information not listed in Appendix A. The overall composition and complexity of a servicer's portfolio is important in determining whether its policies and procedures meet the objectives outlined in Regulation X. For example, servicers with very few adjustable rate mortgages might have relatively simple policies and

¹⁷ See Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. 72160, 72273-76 (Oct. 19, 2016); comments 38(b)(4)(i)-2 and 41(k)(1)(i)-1.iii.

¹⁸ See 12 CFR 1024.41(k)(1)(i); Comment 41(k)(1)(i)-2.

¹⁹ Comment 41(k)(1)(i)-2.

procedures for ensuring documents and information related to interest rate adjustments are timely transferred and accounted for. And servicers with large default portfolios might have robust policies and procedures for ensuring that loss mitigation documents and information pertaining to defaulted accounts are timely transferred.

Regulatory Requirements

This Bulletin is a non-binding general statement of policy articulating considerations relevant to the Bureau’s exercise of its supervisory authority under Regulation X and RESPA and reciting certain requirements of Regulation X and other Federal consumer financial laws applicable to servicing transfers. It is therefore exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b).²⁰ Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Bureau has determined that this Bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Pursuant to the Congressional Review Act, 5 U.S.C. 801 et seq., the Bureau will submit a report containing this Bulletin and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to its applicability date. The Office of Information and Regulatory Affairs has designated this Bulletin as not a “major rule” as defined by 5 U.S.C. 804(2).

²⁰ “However, this is not a “statement of policy” as that term is specifically used in Regulation X, 12 CFR 1024.4(a)(1)(ii).”

Appendix A- Examples of Information and Data to be Transferred or Received²¹

I. Foundational Loan Information

- Name and version of servicing systems of record for each product type serviced
- Loan number and MIN
- Principal balance
 - Original principal balance
 - Modified principal balance
- Periodic payment due
 - Amount of interest due
 - Amount of principal due
 - Next payment due date
 - Amount of any overdue payment
- Amount of any principal prepayments
- Amount of funds in suspense account
- Balloon payment data
- Origination date
- Property address
- Borrower mailing address
- Name of originator, NMLS ID if available
- Original loan to value
- Purchase loan/refinance
- Loan term

²¹ This is not an exhaustive list of documents and information that may be necessary for the transfer.

- Maturity date
- Successor-in-interest
 - If yes
 - Address and identity
 - Confirmed?
- Occupancy code (i.e. primary residence, second home, investment property)
- Interest rate
- Interest calculation method (i.e. 30/360, DSI)
- ARM loan
 - Index
 - Margin
 - Next change date
- Loan Type
 - FHA
 - VA
 - USDA
 - Conventional
 - State bond program
- Fees owed and whether reimbursable/collectible from borrower or investor
 - Late fees
 - Broker price opinion fees owed
 - Property inspection fees owed
 - Attorney fees owed

- Publication fees owed
- Fees owed for copies of documents
- Corporate advances owed
- Prior bankruptcy
 - Discharge date
 - Dismissal date

II. Investor Information

- Name
- Contact Information
- Disbursement Information
- Reporting Requirements
- Remittance type (Scheduled/scheduled, scheduled/actual, actual/actual)

III. Escrow accounts

- Amount of escrow payment due with periodic payment
- Date of last escrow analysis
- Tax agency code for each applicable agency
- Date of last tax payment to local agency
- Estimated total tax payments for next cycle
- Next tax due date(s)
- Parcel number (if multiple parcels include all)
- Date of last insurance payment
- Identity of insurer
- Confirmation of proof of adequate insurance received

- Historic escrow records (to address borrower questions and disputes)
- Tax service contracts that will stay in effect
- For any items paid from the escrow account other than taxes or insurance,
 - Identity of the payee
 - Due date(s) of payment
 - Date of last payment and date of next payment
 - Estimated payments for the next cycle, and other information necessary to maintain payment of such item pursuant to the escrow account agreement.

IV. Private mortgage insurance

- Amount last paid
- Name and address of insurer
- Amount due
- Date due
- Original value of the property
- The date based on amortization schedule(s) when a borrower may request cancellation
- Date on which monthly premiums are no longer required for 78% loan to original value
- Date on which monthly premiums are no longer required based on loan midpoint

V. FHA Insurance

- MIP amount
- MIP last paid
- MIP due
- MIP due date
- Loan origination date

- Loan term
- Partial claim amount, if any
- FHA case number assignment date
- MIP cancellation date based on original amortization

VI. Hazard insurance/Flood Insurance

- Policy numbers
- Name and address of insurer (voluntary and lender placed)
- Expiration / renewal date(s)
- Premium amount(s)
- Frequency of payment
- Coverage levels
- Original value of property
- Flood zone determination certificate
- Prior completed insurance claims
- Open insurance claims
 - Claim amount
 - Loss draft funds held
 - Inspection dates and completion estimates

VII. Loss Mitigation (Including Short-Term Options)

- Current status of discussions with a borrower on a loss mitigation option
- Any agreements made with a borrower on a loss mitigation option
- Any analysis by a servicer with respect to potential recovery from a non-performing mortgage loan

- Copies of complete and incomplete loss mitigation application(s) and information and documents submitted in conjunction with the application, including acknowledgment notices and denial notices
 - Date of forbearance, modification or other loss mitigation option
 - New loan amount
 - New payment amount (show Principal and Interest as well as taxes and insurance, if applicable.)
 - Term
 - Due date of plan
 - Denial date
 - Denial reason
 - New gross modification amount
 - Modified appraisal value

VIII. Foreclosure

- Status of foreclosure
- Date referred to attorney
- Attorney name and contact information
- Publication date
- Anticipated or scheduled sale date
- All time line step and events
- Borrower contact information
- All phones numbers on file
- E-mail addresses for all borrowers

IX. Bankruptcy

- Notice of bankruptcy/court and case number
- Bankruptcy chapter and filing date
- Status of case
- Proof of Claim filing date
- Next prepetition and post-petition payment due dates
- Motion for Relief filing date
- Plan conversion date, if applicable
- Attorney acknowledgement of bankruptcy
- Other bankruptcy documents

X. Signing Authority

The Director of the Bureau, having reviewed and approved this document is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the *Federal Register*.

Dated: April 24, 2020.

/s/ Laura Galban

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.