

Summary of Mortgage Servicing Rules

The Consumer Financial Protection Bureau (CFPB) released its final rules on mortgage loan servicing on January 17, 2013, and amended them in August 2016. These new national standards are changes to Regulation Z, Truth in Lending Act, and Regulation X, Real Estate Settlement Procedures Act. The August 2016 amendment provided additional benefits for small servicers along with changes and new requirements dealing with successors in interest, borrowers in bankruptcy, force-placed insurance, expanded loss mitigation requirements, transfers of servicing, and clarification on the definition of delinquency.

Effective Date: January 10, 2014 (original rule)

Amended Rule Effective Dates: **October 19, 2017 for all provisions except as noted below:**

- **Successor in Interest Provisions, April 19, 2018**
- **Bankruptcy Periodic Statements, April 19, 2018**

Links to the Final Rule and CFPB Summary:

<http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/>

<http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/amendments-2013-mortgage-rules-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/>

Scope of the Rule

This rule applies to all entities that service consumer first lien mortgage loans whether the loan is retained in portfolio by the originator or is sold into the secondary market and the entity services the loan for an investor.

This rule does not cover:

- Reverse mortgage loans;
- Bridge loans;
- The construction phase of a construction to permanent loan;
- Loans for business purposes secured by a consumer's dwelling; or
- Mortgages secured by farm or agricultural properties where the lender is a qualified lender under the Farm Credit Act of 1971.

Small Servicer Exemption

The Bureau has created a small servicer threshold that will exempt smaller servicers from mandatory compliance with some of the provisions in the rules. A small servicer is defined as one that services 5,000 or fewer consumer mortgages which they or an affiliate own or originated. In August of 2016 the Bureau amended the small servicer designation to permit small servicers to service mortgages for certain non-profit entities where they are not compensated, and to service seller financed mortgages (subject to certain restrictions) for which they may be compensated.

Periodic Billing Statements (Small Servicers Are Exempt from this Section)

All creditors, assignees and servicers, **except small servicers**, must provide a periodic billing statement for each billing cycle that contains the following information:

- Amount due;
- Due date;
- Late fee information;
- Explanation of amount due (includes a breakdown of amounts allocated to principal and interest, and escrow including the total sum of any fees or charges and the amount of any past due payment);
- Past payment breakdown of what's been allocated to principal, interest, escrow, late fees etc.; and
- Transaction activity.

Additional Required Information on Periodic Statements

- Certain messages, such as detail on the application of partial payments or funds held in a suspense account.
- Contact information for the servicer.
- Current unpaid principal balance.
- Current interest rate.
- Next interest rate change date (if applicable).
- Contact information for homeownership counselors.
- Additional delinquency information if the borrower is more than 45 days past due.

Special Requirements for Borrowers in Bankruptcy

Servicers must provide periodic statements or coupon books to borrowers in bankruptcy, with certain exceptions, or who have discharged the loans. Content of these statements will vary depending on the chapter of bankruptcy that applies to the borrower.

Statements to all borrowers in bankruptcy must include:

- A statement which identifies the borrower's status as a debtor in bankruptcy.
- The discharged status of the loan.
- The periodic statement is being provided for informational purposes only.
- Information regarding late payments, fees, and foreclosure status may be omitted.

Statements to borrowers in bankruptcy under Chapter 12 or 13 must include:

- Post-petition payment due; any post-petition fees, charges or amount past due.
- Any transaction activity for both pre- and post-petition since the last statement.
- Additional notifications directing the borrower to send payments to the trustee as required by their plan, that the amounts shown may not reflect all payments to the trustee, and that the borrower should contact their trustee.

Exemptions. Servicers are not required to send periodic statements to borrowers in bankruptcy if any one of the following occurs:

- The borrower requests the servicer to cease sending the statements.
- The bankruptcy plan provides for the surrender of home securing the loan by the borrower.
- Bankruptcy court orders the lien avoided.

Other Periodic Statement Requirements:

- Servicers are not required to send periodic statements if a loan is charged off, subject to certain conditions.
- Statements to borrowers in temporary loss mitigation programs must show payment application per the original loan contract; however, the amount due can reflect the amount owed under the temporary loss mitigation program or the original loan agreement.
- Statements to borrowers in a permanent loss mitigation program should reflect the terms of the permanent loss mitigation program.

Small Servicers are exempt from all of the periodic statement requirements listed above.

Delivery to the Borrower: The periodic statement must be provided/sent either electronically or by regular mail to the borrower within a reasonably prompt time after the close of the grace period of the previous billing cycle. The CFPB has determined that four days after the close of any grace period would be considered reasonably prompt.

Billing Cycle: The billing cycle corresponds to the frequency of payments from the borrower as evidenced by the note and mortgage/deed of trust/loan modification documents.

Coupon Book Exemption: The final rule provides an exemption for all servicers who use coupon books rather than monthly or periodic statements. The provisions of this exemption are listed below.

- Applies to fixed-rate/fixed payment mortgages only.
- Required information on each payment coupon:
 - Payment due date;
 - Amount due; and
 - Amount of any late charge and the date incurred.
- Required information included in the coupon book itself, but not necessarily on each coupon:
 - Principal balance (as of the issuance of the coupon book);
 - Interest rate;
 - Amount of any prepayment penalty;
 - Contact information for the servicer and homeownership counselor; and
 - How the consumer can get more current information on their loan;
- Required information ***to be made available to consumers (so called “dynamic information”)***:
 - Breakdown of monthly principal, interest and escrow amounts;
 - Total of all payments received;
 - Any past due amounts or other amounts owed;
 - Any payments held in suspense;
 - Total transaction activity;
 - Total of any fees or charges applied to the account and when they occurred; and

- Information must be made available either orally, in person, electronically, or in writing; delinquency information must be made in writing as a separate communication.
- **The exemption for coupon books is separate from the small servicer exemption and is available to all servicers that use coupon books for fixed rate mortgages.**

Interest Rate Adjustment Notices for ARMs

- Applies to **all** servicers who service ARM loans.
- New notice of first adjustment required to be sent to borrower 210-240 days prior to the first adjustment.
- Subsequent adjustment notices must be sent 60-120 days prior to the adjustment of the borrower's payment.
- If an interest rate change **does not** result in a payment change, then no notice is required.
- Applies to all ARM loans serviced.

Prompt Crediting of Payments and Provision of Payoff Statements

- Applies to **all** servicers.
- Borrower payments must be credited as of the day of receipt.
- Partial payments must be accepted and either held in a suspense account or credited to the borrower's account. Once the amount in the suspense account covers a full payment it must be credited to the borrower's account.
- Servicers must provide an accurate payoff balance to the consumer within seven business days of receipt of a written request.

Force-Placed Insurance

- Servicer cannot charge borrower for force-placed coverage unless:
 - Servicer has reason to believe borrower has allowed coverage to lapse;
 - First notice is sent 45 days prior to charging borrower for force-placed insurance; and
 - Second notice is sent at least 30 days after the first notice and at least 15 days before charging the borrower for force-placed coverage.
- Servicer must cancel any force-placed coverage and refund any premiums paid during periods of overlapping coverage.
- For loans that are escrowed, servicers must continue to advance premiums and cannot obtain force-placed insurance. **Small servicers are exempt from this provision provided the force-placed coverage is less than any disbursement from the escrow account the servicer would have made to maintain the borrower's insurance coverage.**

Error Resolution and Information Requests

- Servicers must respond to a written notification of an error from a borrower as follows:
 - Must acknowledge any written notice of error within 5 business days of receipt unless error is corrected;
 - Must acknowledge error is corrected in writing; and
 - All errors must be corrected within 30 days of receipt of a written request.

- Servicers must maintain policies and procedures to ensure that oral requests for information and notices of errors are resolved quickly.

General Servicing Policies, Procedures and Requirements (Small Servicers Are Exempt from this Section)

Servicers, **except small servicers**, must establish and maintain policies and procedures to achieve the following:

- Provide accurate and timely information to borrowers, investors, courts.
- Confirm a person’s status as a successor in interest.
- Properly evaluate loss mitigation applications per investor guidelines.
- Monitor compliance of service providers.
- Facilitate transfers of servicing.
- Inform borrowers of written error resolution requests.
- Maintain the following and be able to provide it in a servicing file within 5 days of receipt of a request from a borrower:
 - Schedule of payments credited or debited to the borrower’s account;
 - Escrow payments and history;
 - Copies of the borrower’s security instrument;
 - Collection notes made by the servicer reflecting communication with borrower;
 - Any data fields relating to a mortgage loan account created by servicer’s auto dial and response system regarding collection activity; and
 - Copies of documents provided by the borrower to the servicer in connection with the collection of their mortgage loan account.

Definition of Delinquency

The August 2016 Amendment to the Mortgage Servicing Rules provides for a standard definition of delinquency which servicers will use to measure time frames for early intervention/contact, the offering of loss mitigation alternatives, and notice of foreclosure. According to the rule, ***delinquency begins on the day that a periodic payment sufficient to principal, interest, and escrow (if applicable) is due and unpaid until such time as no periodic payment is due and unpaid.*** Additional provisions are:

- Servicer may consider a borrower *not* delinquent if they make a partial payment.
- Servicers may credit payments to the oldest missed payment.
- Foreclosure referral waiting periods are advanced when a borrower makes a payment.
- Failure of the borrower to pay the full amount due following exercise of the acceleration clause would begin or continue a delinquency.

It should be noted that the Bureau’s definition of delinquency is not intended to change the definition of delinquency for actions required of servicers by their prudential regulator or mortgage investors, guarantors or insurers.

Definition of Principal Residence

The August 2016 Amendment to the Mortgage Servicing Rules confirms that the borrower protections under Regulation X only apply to a property that secures the loan which is the borrower’s principal

residence. However, the Bureau cautions servicers that a vacant property may still be the borrower's principal residence.

Early Intervention with Delinquent Borrowers (Small Servicers Are Exempt from this Section)

Servicers, **except small servicers**, must:

- Establish or make good faith efforts to establish "live" contact with delinquent borrowers by the 36th day of delinquency.
- Where appropriate, inform delinquent borrowers of available loss mitigation options.
- Provide written notice of loss mitigation options by the 45th day of delinquency.

Continuity of Contact (Small Servicers Are Exempt from this Section)

Servicers, **except small servicers**, must establish reasonable policies and procedures which would provide delinquent borrowers access to personnel from servicer's staff who are qualified to assist them with loss mitigation options if applicable. This staff must be:

- Accessible by phone;
- Assigned to the borrower by the 45th day of delinquency;
- Able to assist borrower with any loss mitigation options that may be available to them;
- Able to advise the borrower on the status of any loss mitigation application and the applicable timelines; and
- Able to access all information provided by the borrower to the servicer and provide that information to staff responsible for evaluating the borrower for loss mitigation alternatives.

Loss Mitigation Procedures (Small Servicers Are Exempt from this Section but Must Follow Certain Foreclosure Requirements)

Small servicers are exempt from this section, but must follow these two rules: (1) the servicer may not file first notice for foreclosure unless the borrower is more than 120 days delinquent; and (2) the servicer may not proceed to foreclosure or sale if a borrower is performing under the terms of a loss mitigation agreement.

- Servicers, **except small servicers**, must have specified procedures for loss mitigation.
- Servicers must acknowledge receipt of a loss mitigation option within 5 days, informing the borrower if the application is complete or not and what information is missing.
- Servicers must exercise reasonable diligence to obtain needed documents to complete the application.
- Complete loss mitigation applications must be reviewed within 30 days if received more than 37 days prior to foreclosure sale.
- Borrower must be evaluated for all loss mitigation options they may be eligible for in accordance with the investor's rules, including both retention of the home (modification) and non-retention of the home (short sales).
- Servicers must evaluate a borrower for a loss mitigation option more than once during the life of the loan subject to certain conditions.

- Servicers must provide borrower a written decision, including reasons for denial of any option, and provide any data used to make any “net present value” calculation.
- Borrower may appeal the decision as long as a complete loss mitigation application is received 90 days or more before a scheduled foreclosure.
- “Dual tracking” is restricted; servicer may not start the foreclosure process unless the borrower is not eligible for loss mitigation option and all appeals have been exhausted, or the borrower rejects all loss mitigation options, or the borrower fails to comply with the terms of any loss mitigation option (trial modification).
- Servicers may not move to obtain a foreclosure judgment, or conduct a foreclosure sale, if a borrower submits a complete application for a loss mitigation option after the foreclosure process has started but more than 37 days from a foreclosure sale.
- Servicers cannot move forward with foreclosure unless borrower is not eligible for loss mitigation options and all appeals have been exhausted, or the borrower rejects all loss mitigation options, or if a complete loss mitigation application is pending, or the borrower fails to comply with the terms of any loss mitigation options.
- Servicers must collect information for all loss mitigation options even if the borrower has a preference for a particular option.
- Servicers may offer a short-term repayment plan based on an evaluation of incomplete loss mitigation option; the servicer cannot move forward with any first notice or filing if the borrower is performing on the repayment plan.
- Servicers must notify borrowers in writing when a loss mitigation application is complete within 5 days of its completion.
- Servicers must give borrowers a “reasonable date” by which to return the required documents for a loss mitigation option.
- Servicers must use reasonable diligence and efforts to obtain any third-party information when evaluating a loss mitigation application and cannot deny a borrower solely because such information is lacking, unless the servicer was unable to obtain said information for a “significant” period of time.
- Servicers must affirmatively prevent foreclosure judgement and/or sales while a complete loss mitigation application is pending.
- Servicers may join the foreclosure action of a subordinate lien holder without adhering to the 120-day prohibition on filing.
- Servicers may suspend work on a loss mitigation application during short term forbearance or repayment plans; servicers must resume those efforts if the borrower defaults or requests assistance.

Successors in Interest

The August 2016 Amendment to the Mortgage Servicing Rules, establishes that “confirmed” successors in interest are “borrowers” and “consumers” and are therefore entitled to protections under the mortgage servicing rules. Successors in interest are defined as persons who receive ownership interest in the property by:

- Devise or descent, or by inheritance from a deceased relative.
- Right of survivorship from a deceased joint tenant.
- Transfer from a spouse or a parent.
- A transfer incident to a divorce, legal separation and /or property settlement.

- Transfer into an inter vivos trust for the benefit of the successor in interest.

Process for Confirming Successors in Interest

The Bureau requires all servicers to act/respond quickly to a possible successor in interest who contacts the servicer by providing a written list of information required to confirm the person's status as a successor in interest. The required information must be reasonable. Servicers must have policies and procedures to help with their compliance with these successors in interest. **Servicers are not required to proactively search for a possible successor in interest.**

Servicing Transfers

The August 2016 Amendment to the Mortgage Servicing Rules added provisions regarding the handling of borrowers who file applications for loss mitigation options while their loan is being transferred to another servicer. The Bureau clarified that the transferee servicer *must* meet all of the deadlines and requirements for loss mitigation of Regulation X. Those deadlines are based on the date the application *was received by the transferor servicer*. A transferee servicer must:

- Comply with the requirement to evaluate the borrower for all loss mitigation options within 30 days of receipt by the transferor servicer of complete loss mitigation application.
- Allow the borrower to accept a pending loss mitigation option which was pending as of the transfer date and honor the unexpired time period for the borrower to accept the offer given by the transferor servicer.
- Make a determination on an appeal within the later of 30 days of the transfer date or 30 days of the appeal date, or the transferee servicers must treat the appeal as a complete loss mitigation application.
- Not file a first notice of foreclosure until after the date disclosed to the borrower from the transferee servicer for the submission of a complete loss mitigation application.
- Send the acknowledgement notice within 10 days of the transfer date if the transferor servicer has not and the acknowledgment period has not expired.

The Bureau defines the transfer date as the date that the transferee servicer will begin accepting payments on a mortgage loan which is transferred.

Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with the Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)

As part of the August 2016 Amendment to the Mortgage Servicing Rules, the Bureau also issued a separate interpretive rule regarding certain provisions of the Fair Debt Collection Practices Act. Specifically, the interpretive rule provides mortgage servicers a safe harbor from liability when acting in compliance with the mortgage servicing rules for the following situations:

- Servicers do not violate FDCPA section 805(b) when communicating about the mortgage loan with confirmed successors in interest.
- Servicers do not violate FDCPA section 805(c) with respect to the mortgage loan when providing a written early intervention notice required by Regulation X to a borrower who has invoked the cease communication right under FDCPA section 805(c).

- Servicers do not violate FDCPA section 805(c) when responding to a borrower-initiated communication concerning loss mitigation after the borrower has invoked the cease communication right under FDCPA section 805(c).

Link to the Interpretive Rule:

<http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/safe-harbors-liability-under-fair-debt-collection-practices-act-certain-actions-taken-compliance-mortgage-servicing-rules-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/>

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