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## **MORTGAGE SERVICING RULE**

### **I. INTRODUCTION**

In August of 2016, the Consumer Financial Protection Bureau (CFPB) issued a final rule amending certain mortgage servicing provisions in Regulation X and Regulation Z. The CFPB also issued an interpretive rule under the Fair Debt Collection Practices Act (FDCPA) relating to servicers compliance with certain mortgage servicing provisions as amended by the 2016 Mortgage Servicing Rule.

The 2016 Mortgage Servicing Rule's key changes and the interpretative rule with respect to (a) successors in interest; and (b) periodic statements/communications with certain borrowers facing bankruptcy, **which become effective on April 19, 2018**, are summarized below:

### **II. SUCCESSORS IN INTEREST**

The 2016 Mortgage Servicing Rule makes several changes related to successors in interest. First, it adds similar definitions of "successor in interest" to Subpart C of Regulation X and to Regulation Z.

Generally, a person is a successor in interest for purposes of Regulation X if a borrower transfers an ownership interest in a property securing a mortgage loan to the person by means of one of the types of transfers enumerated in the 2016 Mortgage Servicing Rule. These types of transfers are: (i) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety; (ii) a transfer to a relative resulting from the death of a borrower; (iii) a transfer where the spouse or children of the borrower become an owner of the property; (iv) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or (v) a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property. A person does not have to assume or otherwise be liable on the mortgage loan in order to be a successor in interest under the 2016 Mortgage Servicing Rule.

Second, the 2016 Mortgage Servicing Rule includes provisions related to how a servicer confirms a successor in interest's identity and ownership interest in the property securing the mortgage loan. A servicer must respond to a written request from a person indicating that the person may be a successor in interest if the request includes the name of the borrower from whom the person received an ownership interest and information that enables the servicer to identify the mortgage loan. The response must generally provide a written description of the

documents the servicer reasonably requires to confirm the person's identify and ownership interest in the property as well as contact information for further assistance.

The 2016 Mortgage Servicing Rule generally requires servicers, other than small servicers and qualified lenders, to maintain certain policies and procedures with respect to successors in interest. These policies and procedures must be reasonably designed to ensure that, upon receiving notice of the existence of a potential successor in interest, the servicer can (1) promptly provide a potential successor in interest with a description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property; and (2) upon receiving those documents, the servicer can promptly notify a potential successor in interest of the servicer's determination regarding the potential successor's status (i.e., confirmation of the person's status as a successor in interest, a request for additional documents needed to make a determination, or a determination that the person is not a successor in interest).

Third, the 2016 Mortgage Servicing Rule provides that a confirmed successor in interest shall be considered a borrower for purposes of the Regulation X mortgage servicing provisions (including the servicing transfer, error resolution, request for information, early intervention, continuity of contact, loss mitigation, force-placed insurance, and escrow provisions) and a consumer for purposes of the Regulation Z mortgage servicing provisions (including the periodic statement requirements for mortgage loans, provisions on interest rate adjustment notices, the payment processing and payoff statement requirements, and the mortgage transfer notice requirement). The rights discussed in these provisions generally apply to confirmed successors in interest in the same way that they would apply to another borrower or consumer. If a servicer, such as a small servicer, is otherwise exempt from a requirement, such as the early intervention requirement, it does not need to comply with that requirement with regard to a confirmed successor in interest.

A servicer must respond to a confirmed successor in interest's request for information but can omit location, contact, and personal financial information (other than information about the mortgage loan's terms, status, and payment history) if the information pertains to a borrower other than the confirmed successor in interest requesting the information. Similarly, in response to a borrower's request for information, a servicer may omit location, contact, and personal financial information (other than information about the mortgage loan's terms, status, and payment history) that pertains to a potential or confirmed successor in interest who is not the requester.

The 2016 Mortgage Servicing Rule does not require a servicer to send a specific written disclosure or notice to a confirmed successor in interest if the servicer provides the same written disclosure or notice to another borrower or consumer, including another confirmed successor in interest. For example, if a servicer provides a force-placed insurance disclosure to a borrower, the servicer does not need to send the same force-placed insurance disclosure to a confirmed successor in interest. Similarly, a servicer that is subject to the early intervention requirements is not required to comply with the live contact requirements with respect to a confirmed successor in interest if it is complying with those requirements with respect to another borrower, including another confirmed successor in interest. A confirmed successor in interest who does not receive servicing communications because the servicer is providing them to another borrower on the account can request additional information as needed through the request for information process under Regulation X.

Unless a servicer is exempt from the loss mitigation requirements, it must review and evaluate a loss mitigation application received from a confirmed successor in interest in accordance with the Regulation X loss mitigation procedures if the property is the confirmed successor in interest's principal residence. This requirement includes a loss mitigation application that a servicer received but did not review and evaluate prior to confirmation of a successor in interest. Although a servicer who is required to comply with the loss mitigation requirements cannot require a confirmed successor in interest to assume the mortgage loan before evaluating a complete loss mitigation application, the 2016 Mortgage Servicing Rule does not prohibit a servicer from conditioning an offer for a loss mitigation option on the successor in interest assuming the mortgage loan under state law.

Upon receiving a request from a confirmed successor in interest, a servicer must (1) send an acknowledgment of the receipt within five business days; or (2) after searching your system for the requested information or documents, you either provide the requested information or inform the consumer that you do not have the information, including the basis for the determination and the contact information, including a telephone number, for further assistance. This must be done within 10 business days for a request for the identity of, and address or other relevant contact information for, the owner or assignee of a mortgage loan or 30 business days for all other requests.

If a potential successor in interest sends in a request for information that includes the name of the transferor or borrower and information that enables you to identify the account, you may send an acknowledgment of the receipt within five business days; or send a written description of the documents you reasonably require to confirm their identity and ownership interest in the property, contact information (including a telephone number) for further assistance and a statement that they may resubmit a request for information once confirmed as a successor in interest. If the potential successor in interest's request does not provide sufficient information to enable you to identify the documents you reasonably require to confirm their identity and ownership interest in the property, you may respond by:

- including examples of documents typically accepted to establish a person's identity and ownership interest in a property;
- stating that they may obtain a more individualized description of the required documents by providing additional information;
- specifying what additional information is required to enable you to identify the required documents; and
- providing contact information, including a telephone number, for further assistance.

### **III. PERIODIC STATEMENTS/COMMUNICATIONS WITH CERTAIN BORROWERS IN BANKRUPTCY**

The CFPB has issued a final rule to help mortgage servicers communicate with certain borrowers facing bankruptcy. The final rule gives mortgage servicers more latitude in providing periodic statements to consumers entering or exiting bankruptcy, as required by the CFPB's 2016 Mortgage Servicing Rule.

The Truth-in-Lending Act requires mortgage servicers to provide periodic statements to borrowers, and the CFPB has developed sample forms for servicers to use. The 2016 mortgage servicing rule requires that servicers send modified periodic statements or coupon books to certain consumers in bankruptcy effective April 19, 2018. The 2016 final rule also addressed the timing for servicers to transition to providing or ceasing to provide modified periodic statements to consumers entering or exiting bankruptcy.

The final rule provides a clear single-statement exemption for servicers to make the transition, superseding the single-billing-cycle exemption included in the 2016 rule.

These changes provide a clearer and more straightforward timing standard for the delivery of period statements containing important loan information to borrowers in bankruptcy. As such, the amendments offer greater certainty for implementation and compliance and more latitude to mortgage servicers in providing periodic statements to consumers entering or exiting bankruptcy.

Effective April 19, 2018, Regulation Z will no longer contain the blanket exemption for providing statements to consumers in bankruptcy. Instead, servicers will now be required to provide to some consumers in bankruptcy a statement containing certain bankruptcy-specific modifications. To give servicers time to adjust their systems to provide compliant statements once they learn of a consumer's bankruptcy, the CFPB finalized a single-billing-cycle-exemption in the 2016 Rule. In the original exemption, a servicer was exempt from the requirement to provide a statement to a consumer for a "single billing cycle." The original exemption only applied, however, when the payment due date for that billing cycle was no more than 14 days after a specific triggering event, such as when a consumer on the mortgage loan becomes a debtor in bankruptcy. Under the amended final rule, the single-billing-cycle exemption is replaced with a single-statement exemption. Now, once a triggering event occurs, such as a new bankruptcy filing, servicers will be exempt from the requirement to provide the next statement, but must resume providing compliance statements starting with the next billing cycle.

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