

PUBLICATION

CFPB Seeking Public Comment on Proposed Amendments to 2013 Mortgage Rules

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The CFPB is currently seeking public comment on several proposed amendments to its final rules issued in 2013, which went into effect in January 2014. The comment period is open through March 16, 2015, so mortgage servicers, or any interested parties, still have about a month to chime in on the proposed amendments.

By now, servicers are all familiar with the final CFPB Rules promulgated in 2013 that modified the impact of the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). In November 2014, the Bureau proposed amendments to those Rules. Several proposed amendments are noteworthy to those in the mortgage servicing industry:

- **An expansion of "borrower" to include successors in interest to collateral property.** Specifically, for the purposes of Regulation X, the Bureau is proposing to define "successor in interest" in § 1024.31 as "a member of any of the categories of successors in interest who acquired an ownership interest in the property securing a mortgage loan in a transfer protected by the Garn-St Germain Act." (See 12 U.S.C. § 1701j-3(d).) The expansion would include situations where the collateral property is transferred as a result of divorce. The effect of this would be that, for all intents and purposes of Regulation X, any successor in interest would now be considered a borrower.
- **A loosening of the requirement for servicers to identify both the trust name and the appropriate contact information for the trustee when requested by the borrower.** Currently, the Rules mandate that servicers must respond to a request for information regarding the owner or assignee of a loan by identifying both the name of the trust and the name, address and appropriate contact information for the trustee. Servicers have noted that providing detailed information about the trust is unnecessarily burdensome, especially when the trustee is Fannie Mae or Freddie Mac. Given these considerations, the CFPB is proposing that, "for loans for which Fannie Mae or Freddie Mac is the trustee, investor or guarantor, a servicer complies with § 1024.36(d) by responding to requests for information asking only for the owner or assignee of the loan by providing only the name and contact information for Fannie Mae or Freddie Mac, as applicable, without also providing the name of the trust." If a borrower explicitly requests the name or number of the trust or pool, however, the servicer is still required to identify that information, regardless of whether or not Fannie Mae or Freddie Mac is the trustee, investor or guarantor.
- **A requirement that lenders offer loss mitigation to borrowers more than once over the lifetime of a loan if a borrower becomes current after a previous delinquency.** Today, servicers are required to comply with the loss mitigation procedures in § 1024.41 only once over the life of a mortgage loan, regardless of the history of payment (or non-payment) by the borrower after an application has been evaluated. The CFPB is proposing changing § 1024.41(i) to require servicers to comply with § 1024.41, even if has previously already complied with the provision, if the borrower has been current on his payments at any time between the prior complete loss mitigation application and a subsequent application.

Several other proposed amendments merit note:

- An expansion of mandatory disclosures when a servicer wishes to force-place insurance where a borrower has insufficient – as opposed to expiring or expired – hazard insurance.
- A clarification that servicers have flexibility in determining the date by which borrowers must return documents and information to complete a loss mitigation application.
- A clarification of the rules governing some mortgage servicers when a borrower submits a cease-and-desist letter.
- A requirement that servicers provide written notice when it receives a complete loss mitigation application.
- A clarification that a servicer who has not taken, or has not caused its counsel to take, all reasonable affirmative steps to delay a foreclosure sale is required to dismiss the foreclosure action if necessary to avoid the sale.
- A clarification that servicers may stop collecting documents from a borrower for a specific loss mitigation option after receiving information confirming that the borrower is ineligible for that option.
- A requirement that servicers send modified periodic statements to consumers involved in bankruptcy.

If you would like more detail regarding the proposed amendments, click [this link](#).

As of the date of publication of this article, more than 40 comments have been submitted. The comments period is open through March 16, 2015.

Several of the CFPB's proposed amendments are the direct result of feedback received from the mortgage servicing industry. If nothing else, the proposal is an encouraging sign regarding the CFPB's willingness to engage with the industry it regulates.