MAYER·BROWN

White Paper

Servicing With a Smile Comes at a Cost

What Servicers Should Know About the CFPB's New Servicing Rule

On August 4, 2016, the Consumer Financial Protection Bureau ("Bureau") issued a comprehensive 900-page final rule ("2016 Mortgage Servicing Rule" or "Final Rule") that amends the mortgage servicing rules under the Real Estate Settlement Procedures Act ("Regulation X") and the Truth in Lending Act ("Regulation Z") (together, the "Mortgage Servicing Rules"). The 2016 Mortgage Servicing Rule adds significant new requirements and complexities to residential mortgage servicers' compliance obligations. This White Paper addresses and summarizes some of the key aspects of the Final Rule.

Contents

On August 4, 2016, the Consumer Financial Protection Bureau ("Bureau") issued a comprehensive 900-page final rule ("2016 Mortgage Servicing Rule" or "Final Rule") that amends the mortgage servicing rules under the Real Estate Settlement Procedures Act ("Regulation X") and the Truth in Lending Act ("Regulation Z") (together, the "Mortgage Servicing Rules").

The Mortgage Servicing Rules were amended several times since 2013, but the proposed rules that amended Regulations X and Z were most recently published on November 20, 2014. The 2016 Mortgage Servicing Rule finalizes the proposed amendments and clarifies, revises and amends provisions regarding force-placed insurance notices, policies and procedures, early intervention and loss mitigation requirements under Regulation X, as well as prompt crediting and periodic statement requirements under Regulation Z.

Generally, the Final Rule is effective 12 months from the date of publication in the Federal Register. However, certain amendments relating to bankruptcy periodic statements and to successors in interest are effective 18 months from the date of publication in the Federal Register.[1] The Bureau stated that it has considered the various comments, but believes these effective dates achieve the right balance between promptly affording consumers the benefits of the Final Rule and affording the industry sufficient time to revise and update policies and procedures, coordinate with third-party service providers to implement and test systems changes and train staff.

The Final Rule includes several technical corrections and minor clarifications to wording throughout several provisions of Regulations X and Z that generally are not substantive in nature. This White Paper addresses and summarizes some of the key aspects of the Final Rule:

1. **Successors in interest.** The Final Rule makes several changes regarding successors in interest: (a) the adoption of definitions of "successor in interest" for purposes of Regulation X's Subpart C and Regulation Z that are modeled on the categories of transfers protected under section 341(d) of the Garn-St Germain Act; (b) a mortgage servicer's confirmation of a successor in interest's identity and ownership interest; and (c) the application of the Mortgage Servicing Rules to successors in interest once a servicer confirms the successor in interest's status.
2. **Definition of delinquency.** The Final Rule provides a general definition of "delinquency" that applies to all of the servicing provisions of Regulation X and the provisions regarding periodic statements for mortgage loans in Regulation Z.
3. **Requests for information.** The Final Rule amends how a servicer responds to requests asking for ownership information for loans in trust for which Fannie Mae or Freddie Mac is the owner of the loan or the trustee of the securitization trust in which the loan is held.
4. **Force-placed insurance.** The Final Rule amends force-placed insurance disclosures and model forms.
5. **Early intervention.** The Final Rule clarifies the early intervention live contact obligations for servicers to establish or make good faith efforts to establish live contact so long as the borrower remains delinquent. The Final Rule also clarifies requirements regarding the frequency of the written early intervention notices, including when there is a servicing transfer. In addition, regarding certain borrowers who are in bankruptcy or who have invoked their cease communication rights under the FDCPA, the Final Rule specifies exemptions for servicers from complying with the live contact obligations, but requires servicers to provide written early intervention notices under certain circumstances.
6. **Loss mitigation.** The Final Rule finalizes several amendments relating to the loss mitigation requirements: Specifically, the Final Rule:
    1. Requires servicers to meet the loss mitigation requirements more than once in the life of a loan for borrowers who become current on

payments at any time between the borrower's prior complete loss mitigation application and a subsequent loss mitigation application;

2. Modifies an existing exception to the 120-day prohibition on foreclosure filing to allow a servicer to join the foreclosure action of a superior or subordinate lienholder;
3. Clarifies how servicers must select the reasonable date by which a borrower should return documents and information to complete an application;
4. Describes requirements that apply when a servicer has already made the first foreclosure notice or filing, and a borrower timely submits a complete loss mitigation application;
5. Requires that servicers provide a written notice to a borrower within five days (excluding Saturdays, Sundays or legal holidays) after they receive a complete loss mitigation application and imposes requirements about the notice's contents;
6. Imposes requirements regarding obtaining information not in the borrower's control and evaluating a loss mitigation application while waiting for third-party information;
7. Permits servicers to offer a short-term repayment plan based upon an evaluation of an incomplete loss mitigation application;
8. Clarifies that servicers may stop collecting documents and information from a borrower for a particular loss mitigation option after receiving information confirming that, pursuant to any requirements established by the owner or assignee, the borrower is ineligible for that option; and clarifies that servicers may not stop collecting documents and information for any loss mitigation option based solely upon the borrower's stated preference, but may stop collecting documents and information for any loss mitigation option based on the borrower's stated preference *combined with* other information, as prescribed by requirements established by the owner or assignee of the mortgage loan; and
9. Clarifies how loss mitigation procedures and timelines apply when a transferee servicer receives a mortgage loan for which there is a loss mitigation application pending at the time of a servicing transfer.
7. **Prompt payment crediting.** The Final Rule clarifies how servicers must treat periodic payments made by consumers who are performing under either temporary loss mitigation programs or permanent loan modifications.
8. **Periodic statements.** The Final Rule specifies several requirements relating to periodic statements, including clarifications about content and about consumers in bankruptcy.
9. **Small servicer.** The Final Rule specifies changes to the small servicer determination.
10. **FDCPA safe harbor.** The Final Rule also addresses proper compliance regarding certain servicing requirements when a person is a potential or confirmed successor in interest, is a debtor in bankruptcy, or sends a cease communication request under the Fair Debt Collection Practices Act ("FDCPA"). Therefore, the Bureau concurrently issued with the Final Rule, but in a separate notice, an FDCPA interpretive rule.[2]

A more detailed discussion of the Final Rule follows.

I. Successors in Interest

The Bureau has found that successors in interest frequently have been unable to effectively communicate with mortgage servicers about a deceased borrower's mortgage loan account. Accordingly, the current Mortgage Servicing Rules require servicers to "maintain policies and procedures that are reasonably designed to ensure that the servicer can, upon notification of the death of a borrower, promptly identify and facilitate communication with the successor in interest of the deceased borrower with respect to the property securing the deceased borrower's mortgage loan."[3] The Bureau subsequently

published an October 2013 Servicing Bulletin to further clarify servicers' responsibilities in this regard.[4]

Despite the existing requirements and the Bureau's public guidance, anecdotal reports suggest that widespread confusion remains about the rights and options of successors in interest. The Bureau also notes that the protections established in the existing Mortgage Servicing Rules do not apply to many categories of successors in interest in need of assistance. Accordingly, the Final Rule makes several adjustments to the regulatory framework governing servicer interactions with successors in interest. First, the Final Rule establishes a new definition of "successor in interest." Second, the Final Rule specifies how a mortgage servicer must confirm a successor in interest's identity and ownership interest. Finally, the Final Rule expressly requires servicers to apply all of the Regulation X and Regulation Z servicing protections to a successor in interest once the servicer has confirmed the successor in interest's status.

A. DEFINITION OF "SUCCESSOR IN INTEREST"

The current Mortgage Servicing Rules refer only to a successor in interest of a deceased borrower.[5] The Final Rule formally defines and expands the scope of the term "successor in interest" in a manner that generally mirrors Section 341(d) of the Garn-St Germain Act,[6] which prohibits the exercise of due-on-sale clauses with respect to certain protected transfers of mortgaged property. Under this new definition, a "successor in interest" is defined as a person to whom an ownership interest in a property securing a mortgage loan is transferred from a borrower, provided that the transfer falls in one or more of the following categories:

1. A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
2. A transfer to a relative resulting from the death of a borrower;
3. A transfer where the spouse or child of the borrower becomes an owner of the property;
4. A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or
5. 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.

B. CONFIRMING SUCCESSOR IN INTEREST STATUS

There has been considerable confusion within the industry regarding how a servicer should verify a consumer's status as a successor in interest, given that doing so requires fluency in the intricacies of real property law, contract law, estate law and family law in various state and local jurisdictions. The Final Rule does not fully resolve this confusion, as the Bureau does not attempt to establish prescriptive standards regarding the particular documentation that may be necessary to establish successor in interest status. Rather, the Final Rule lays out a more detailed procedural framework with respect to how a servicer must interact with a putative successor in interest.

Specifically, the Final Rule:

- Requires servicers to respond to a written request that indicates that the person making the request may be a successor in interest by providing that person with a written description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property.
- Requires servicers to maintain policies and procedures reasonably designed to ensure that the servicer can, upon receiving notice of the death of a borrower or of any transfer of the property, promptly facilitate communication with any potential or confirmed successors in interest regarding the property.
- Requires servicers to maintain policies and procedures reasonably designed to ensure that the servicer can, upon receiving notice of the existence

of a potential successor in interest, promptly determine the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property and promptly provide to the potential successor in interest a description of those documents and how the person may submit a written request to be treated as a successor in interest (including the appropriate address where the address should be sent).

- Allows servicers to request additional documentation if the servicer reasonably determines, based on the documentation provided, that the status of the potential successor in interest cannot be deciphered.
- Requires servicers to maintain policies and procedures reasonably designed to ensure that the servicer can, upon the receipt of certain documents, promptly make a confirmation determination and promptly notify the person, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required and has specifically advised the person of those additional documents, or has determined that the person is not a successor in interest.

The Bureau expressly notes, however, that servicers do not need to affirmatively search for potential successors in interest if the servicer has not received actual notice of their existence. It also observes that the framework should not be construed to require a servicer to provide legal advice to a putative successor in interest.

C. APPLYING MORTGAGE SERVICING RULES TO CONFIRMED SUCCESSORS IN INTEREST

Under the Final Rule, the following specific mortgage servicing rules apply to a confirmed successor in interest, regardless of whether that person has assumed legal liability for the mortgage debt under state law:

- With respect to Regulation X: (i) all of the mortgage servicing requirements in Subpart C;[7] and (ii) certain escrow-related protections.[8]
- With respect to Regulation Z: (i) the rate adjustment notice requirements;[9] (ii) the escrow account cancellation notice requirement;[10] (iii) the restrictions on servicing practices in § 1026.36(c); (iv) the periodic statement requirements;[11] and (v) the mortgage transfer disclosure requirement.[12]

Except as otherwise indicated, the Final Rule applies these requirements to confirmed successors in interest in the same way that these provisions apply to other types of borrowers and consumers.

Significantly, however, the Final Rule relaxes certain aspects of these requirements in their application to successors in interest. First, it generally allows a servicer not to duplicate efforts, if the servicer is already complying with these requirements with respect to another borrower on the account. For example:

- Except in response to an information request as required by § 1024.36, a servicer is not required to provide to a confirmed successor in interest any written disclosure required by the Regulation X[13] or Regulation Z[14] mortgage servicing rules if the servicer is providing the same specific disclosure to another borrower or consumer.
- A servicer is not required to comply with the loss mitigation live contact requirements[15] with respect to a confirmed successor in interest if the servicer is complying with those requirements with respect to another borrower on the account.

The Final Rule also offers several different options to a servicer that wishes to avoid sending notices to a successor in interest that otherwise might suggest the successor in interest is personally liable for the debt. Specifically, a servicer may choose to do one or more of the following:

- Adjust the language in the notices to replace any terminology that might suggest liability.

- Add an affirmative disclosure, either in the required notices or in an explanatory cover letter, to clarify that a confirmed successor in interest who has not assumed the mortgage loan and is not otherwise liable for it has no personal liability.
- Provide an initial explanatory written notice and acknowledgment form to confirmed successors in interest who have not assumed the mortgage loan and are not otherwise liable on it. Servicers that send this type of notice and acknowledgment form would be relieved of the obligation to provide the required servicing notices and to engage in live contacts with the confirmed successor in interest until the confirmed successor in interest either: (i) provides the servicer an executed acknowledgment indicating a desire to receive the notices; or (ii) assumes the mortgage loan obligation under state law.

The Final Rule also responds to servicers that had expressed concern that providing account information to successors in interest could contravene borrower privacy, causing the servicer to incur liability under the Gramm-Leach-Bliley Act[16] (the "GLBA") and/or the Fair Debt Collection Practices Act[17] (the "FDCPA"). First, the Bureau concluded that complying with the Final Rule does not cause servicers to violate the GLBA or its implementing regulations. As discussed further below, concurrently with the Final Rule, the Bureau also issued an interpretive rule under FDCPA section 813(e),[18] concluding that a servicer may communicate with a confirmed successor in interest without violating the FDCPA's prohibition on unauthorized third-party contact.[19]

II. Definition of Delinquency

The current version of Regulation X does not contain a generally applicable definition of the term "delinquency." It does define delinquency for the specific purposes of the early intervention provisions[20] and the continuity of contact provision.[21] However, Regulation X does not define delinquency for purposes of other sections of Subpart C of Regulation X, including § 1024.41(f)(1), which prohibits a servicer from making the first notice or filing for foreclosure unless the borrower's mortgage loan obligation is more than 120 days delinquent. This failure has posed significant uncertainties for servicers.

To ensure that the term "delinquency" is interpreted consistently throughout Regulation X's mortgage servicing rules, the Bureau is removing the current definition of delinquency applicable to §§ 1024.39(a) and (b) and 1024.40(a) and adding a general definition of delinquency in § 1024.31 that would apply to all sections of Subpart C.[22]

The Final Rule defines the term "delinquency" as "a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent."[23] The Revised Commentary defines a borrower and a borrower's mortgage loan as being delinquent beginning on the date a periodic payment sufficient to cover principal, interest and, if applicable, escrow becomes due and unpaid, *until such time as no periodic payment is due and unpaid*."[24] This is substantially the same as the existing definition used for *§§ 1024.39(a) and (b) and 1024.40(a), with the primary distinction being that, under the existing definition, a payment is delinquent if the payment is due and unpaid for a given billing cycle.*[25] Under the Final Rule, however, the loan is delinquent until *no* periodic payment is due and unpaid.

This amended definition will impact servicers in a number of areas, including the timing of when servicers must assign personnel to a delinquent borrower within 45 days of the borrower's delinquency and when the servicer may initiate foreclosure proceedings. The definition of delinquent borrower and delinquency will also impact the preparation of periodic statements under Regulation Z, since essentially the same definition of "delinquency" as applies to Subpart C of Regulation X also applies to Regulation Z's periodic statement provisions.[26]

Of course there is more to this change than just the definitions. There is significant explication found in the Commentaries to both Regulation X and Regulation Z.

A. GRACE PERIOD

The definition of delinquency does not take into account any grace period. In short, the date of delinquency is measured from the date the periodic payment of principal, interest, and, if applicable, escrow becomes due and unpaid, even if there is a grace period after the due date before the servicer assesses a late fee.[27]

B. APPLICATION OF PAYMENTS

The Bureau considered, but rejected, requiring servicers to apply borrower payments to the oldest outstanding payment. However, the Final Rule provides that if a servicer follows this practice (as required by Fannie Mae, Freddie Mac and the laws of some states), a payment by a delinquent borrower will advance the date the borrower's delinquency began.

Nor did the Bureau adopt an exception for "rolling delinquencies," where the borrower becomes delinquent, resumes making payments but does not make all outstanding payments to cure the delinquency, and the servicer's application of payments to the oldest outstanding payment advances the borrower's delinquency. Therefore, if a servicer credits a payment to the oldest missed payment, the 120-day foreclosure referral waiting period in § 1024.41(f)(1)(i) is also advanced.[28]

For example, assume a borrower's mortgage loan requires the borrower to make periodic payments by no later than the first of each month. If the borrower does not make the January payment on January 1, then on January 31 the borrower is 30 days delinquent. If the borrower makes the periodic payment on February 3, and the servicer applies the payment to the oldest outstanding periodic payment (i.e., the payment that was due on January 1), then on February 4 the borrower would be 3 days delinquent for purposes of the Final Rule's specified mortgage servicing provisions (and Regulation Z's periodic statement provision).

Of course, the application of this rule might also impact the prohibition against initiating foreclosure until the borrower is 120 days delinquent. For example, assume a borrower's mortgage loan requires the borrower to make periodic payments by no later than the first of each month. If the borrower has not made the January, February or March payments, then on April 1 the borrower would be 90 days delinquent. If that borrower makes a full payment on April 29, and the servicer has a policy of applying payments to the oldest outstanding periodic payment, then on April 30 the borrower would be only 88 days delinquent, i.e., delinquent for the February, March and April payments. In that case the servicer could not make the first notice or filing required for any foreclosure process (unless the servicer is joining the foreclosure of a superior or subordinate lienholder).

C. SHORT PAYMENTS

If a borrower's payment is less than the periodic payment due, and the servicer chooses not to treat the borrower as delinquent (for example, because the servicer applies a $5.00 tolerance to payments), that borrower is not delinquent under the Final Rule's definition.[29] Once a servicer has established the policy relating to a loan, the servicer may not change its decision to treat the payment as timely for purposes of determining the date on which the borrower's delinquency began; however, the servicer may later collect the amounts included in a payment tolerance from the borrower. The Bureau does not intend to mandate that the "shortage" be within any specific dollar range.

D. RIGHT TO ACCELERATE

The Bureau adopted a New Comment to address a creditor's right to accelerate payment under the contract. This New Comment provides that a creditor is not prohibited from exercising a right provided by a mortgage loan contract to accelerate payment for a breach of that contract. The Comment explains that failure to pay the amount due after the creditor accelerates the mortgage loan obligation in accordance with the mortgage loan contract would begin or continue delinquency.[30]

If a servicer properly accelerates a mortgage loan, the periodic payment used to calculate the period of delinquency is the total amount due after acceleration. However, if the borrower reinstates the mortgage loan or cures the arrearage following acceleration, the borrower is no longer delinquent and the delinquency period ends.

For example, assume a servicer accelerates the amount due in accordance with the loan documents and applicable law and the full balance of the loan becomes due on June 1. If the borrower fails to pay the full amount due or reinstate the loan, then on June 2 the borrower and the borrower's mortgage loan are one day delinquent for purposes of the mortgage servicing provisions (and Regulation Z's periodic statement provision).

E. LOAN MODIFICATION

The Bureau explained that by providing that a delinquency exists only until no periodic payment is due and unpaid, a borrower who is performing under a permanent loan modification agreement will not be deemed delinquent. The premise is that even though the borrower has not made all outstanding payments under the terms of the original contract, he has made all periodic payments that are due and owing under the modified contract terms.[31]

III. Requests for Information

The Final Rule changes how a servicer must respond to requests for ownership information when Fannie Mae or Freddie Mac is the owner of the loan or the trustee of the securitization trust in which the loan is held.[32]

1. For a request for ownership information where Fannie Mae or Freddie Mac is *not* the owner of the loan or the trustee of the securitization trust in which the loan is held, the servicer must provide the name of the trust and the trustee's name, address and appropriate contact information.[33] Thus, if Fannie Mae or Freddie Mac is not the owner or trustee, the servicer must respond to even a nonspecific request for the identity of the owner or assignee by providing information about the trust and contact information for the trustee.
2. For a request for ownership information where Fannie Mae or Freddie Mac is the owner of the loan or the trustee of the securitization trust in which the loan is held, but the request does not expressly ask for the name or number of the trust or pool, the servicer complies by providing the name and contact information for Fannie Mae or Freddie Mac, as applicable, without also providing the name of the trust.[34] The Bureau intends this to permit a servicer to respond to a nonspecific request for information by providing only the name and contact information for Fannie Mae or Freddie Mac, as applicable, for only those loans that are subject to Fannie Mae's or Freddie Mac's servicing guide, but not for other loans.
3. For a request for ownership information where Fannie Mae or Freddie Mac *is* the owner of the loan or the trustee of the securitization trust in which the loan is held and the request expressly requests the name or number of the trust or pool, the servicer must provide the name of the trust and the trustee's name, address and appropriate contact information for the trustee.[35]

From a practical perspective, this means that a servicer will need to track the name of the trust. As this is not information many servicers have traditionally compiled, prior to the effective date of the Final Rule, servicers should consider initiating a process for obtaining trust and trustee information for all securitization trusts that contain loans that are serviced by the servicer.

IV. Force-Placed Insurance

The Final Rule generally does not make substantive adjustments to the process for ensuring that borrowers are charged for force-placed insurance only in appropriate circumstances, but does make several changes to the content of the lender-placed insurance notices which servicers must deliver to borrowers as part of that process. These include:

- Revising the model forms to account for situations in which the borrower has insufficient, rather than expired or expiring, hazard insurance coverage on the property;
- Giving servicers the option to include the borrower's mortgage loan account number on the notices; and
- Making several technical edits to more closely conform the model forms to the text of the regulation.

The Final Rule also makes one clarifying technical edit to the commentary to Regulation Z. Under the current rules, if the force-placed insurance reminder notice is put into production a "reasonable time" prior to the servicer delivering or placing the notice in the mail, the servicer is not required to update the notice with new insurance information received.[36] A "reasonable time" is defined as five days (excluding legal holidays, Saturdays and Sundays).[37] The Final Rule clarifies that five days is the maximum period of time that would be considered reasonable for this purpose.

V. Early Intervention Requirements

A. EARLY INTERVENTION THROUGH LIVE CONTACT

The preamble to the Final Rule states that the Bureau "has always understood [the provisions of 12 C.F.R. §1024.39(a)] to require servicers to make repeated attempts to contact a borrower who remains delinquent for more than one billing cycle," and that the Bureau is revising the regulation to codify that interpretation.[38] Accordingly, the Final Rule revises the regulation to state in relevant part that a "servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower no later than the 36th day of a borrower's delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent."[39]

The Final Rule also provides more detail on what the Bureau considers to be "good faith efforts." New Commentary language based on a previous Bureau bulletin indicates that the length of a borrower's delinquency, as well as a borrower's failure to respond to a servicer's repeated attempts at communication, are relevant circumstances to consider. "For example, whereas 'good faith efforts' to establish live contact with regard to a borrower with two consecutive missed payments might require a telephone call, 'good faith efforts' to establish live contact with regard to an unresponsive borrower with six or more consecutive missed payments might require no more than including a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication."[40] On the other hand, the preamble to the Final Rule rejects the likelihood of home retention as a consideration in deciding how much "good faith efforts" are required.[41]

There is also New Commentary language that explains that if the servicer has established and is maintaining ongoing contact with the borrower under the loss mitigation procedures, such as during completion of the loss mitigation application and evaluation of a complete loss mitigation application, then other attempts at live contact are not required. Moreover, if the servicer denied a borrower for all loss mitigation options, further attempts at live contact are not required. But if a borrower cures a delinquency and then becomes delinquent again, attempts at live contact must resume.[42]

B. WRITTEN EARLY INTERVENTION NOTICES

The Bureau has also made revisions to the timing of the written early intervention notice in order to "add more clarity."[43] A servicer must provide the written early intervention notice no later than the 45th day of the borrower's delinquency and again no later than 45 days after each payment due date so long as the borrower remains delinquent. But a servicer is not required to provide the written notice more than once during any 180-day period. If a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, the servicer must provide another notice no later than 180 days after the provision of the prior written notice. If a borrower is less than 45 days delinquent at the end of any 180-day period after the

servicer has provided the written notice, the servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent.[44]

New Commentary addresses the interaction of these notice requirements with servicing transfers. A transferee servicer is required to comply with the requirements regardless of whether the transferor servicer provided a written notice to the borrower in the preceding 180-day period. But a transferee servicer is not required to provide a written notice if the transferor servicer provided the written notice within 45 days of the transfer date.[45]

C. INTERACTION OF EARLY INTERVENTION REQUIREMENTS WITH OTHER FEDERAL AND STATE LAWS

The Bureau has narrowed the existing exemption from the early intervention requirements for a servicer that is subject to the FDCPA and has received an FDCPA cease communication request from the borrower.[46] If (1) a borrower has made a cease communication request, (2) at least one loss mitigation option is available, and (3) the borrower is not in bankruptcy, the servicer must send a written early intervention notice with specific customized language. This notice may not be sent more than once in any 180-day period.[47]

After further study of bankruptcy laws, the Bureau has also narrowed the existing exemption for borrowers in bankruptcy.[48] If (1) a borrower is in bankruptcy, (2) at least one loss mitigation option is available and (3) the borrower has not made a cease communication request under the FDCPA, the servicer will be required to provide a written early intervention notice with specific customized language not later than the 45th day after the borrower files a bankruptcy petition (or, if the borrower first becomes delinquent during bankruptcy, not later than the 45th day of the borrower's delinquency).[49] These requirements apply even if the servicer last provided a notice less than 180 days before, although no more than one notice is required during a single bankruptcy case. Compliance with the normal early intervention requirements must resume after the next payment due date after: (1) the bankruptcy case is dismissed or closed; (2) the borrower reaffirms personal liability for the mortgage loan; or (3) in certain narrow circumstances after a bankruptcy discharge.[50]

VI. Loss Mitigation

The Final Rule makes several additions and changes to the loss mitigation provisions set forth in § 1042.41 of the Mortgage Servicing Rules and their related Commentary.

A. SUCCESSORS IN INTEREST

In the preamble to the Final Rule, the Bureau expressed concern that successors in interest are particularly vulnerable consumers who often must make complicated decisions in a time of emotional distress. In an effort to prevent unnecessary foreclosures against such consumers, the Bureau amended the Commentary to provide specific guidance on how servicers must handle successors in interest during the loss mitigation process.

In particular, Revised Comment 41(b)-1.i provides guidance on how servicers must handle loss mitigation applications from a potential successor in interest before confirming his/her identity and property ownership. In such cases, the servicer may, but is not required to, review and evaluate the application in accordance with § 1024.41's procedures. Revised Comment 41(b)-1.i also states that if a servicer follows § 1024.41(i)'s procedures for a completed loss mitigation application submitted by a potential successor in interest, the rule's limitation on duplicative requests will apply so long as the confirmation of successor in interest status would not change the servicer's evaluation of the application. If the servicer's evaluation would have yielded a different result due to the confirmation of the potential successor in interest, the limitation on duplicative requests would not apply, and the servicer would need to comply with the § 1024.41 procedures for a subsequent loss litigation application submitted by the confirmed successor in interest.

If a servicer opts not to evaluate an application received from a potential successor in interest before confirming the person's status, once the servicer confirms the person's status, the servicer must review the application in accordance with § 1024.41 as if the servicer had received the application on the date it confirmed the successor in interest's status.[51] New Comment 41(b)-1.ii confirms that, consistent with the other Regulation X mortgage servicing rules, the foregoing provisions apply only if the subject property is the confirmed successor in interest's principal residence. New Comment 41(b)-1.ii also states that a servicer must preserve any loss mitigation application and related documents received from a potential successor in interest so that the servicer can review the application upon confirmation of the successor in interest's status. In such cases, for purposes of § 1024.41's timing requirements, the servicer must treat the loss mitigation as if it had been received on the date the servicer confirmed the successor in interest's status.

Finally, if (i) a loss mitigation application is incomplete at the time the servicer confirms the successor in interest's status because the documents submitted by the successor in interest became stale or invalid, and (ii) the status confirmation occurs 45 days or more before a foreclosure sale, the servicer must provide a notice in accordance with § 1024.41(b)(2) that identifies the documents that must be updated.[52]

B. COMPLETE LOSS MITIGATION APPLICATION

The amendments make two revisions to the Commentary provisions explaining a servicer's obligations to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application. Based on the Bureau's conclusion that the collection of documents and information that cannot affect the outcome of an application unnecessarily burdens both the servicer and the borrower, Revised Comment 41(b)(1)-1 states that a servicer may stop collecting documents and information for a particular loss mitigation option after confirming that the borrower is ineligible for that option.

Further, although a servicer may *not* stop collecting documents and information for a loss mitigation option based *solely* on the borrower's stated preference,[53] it *may* stop collecting them based on the borrower's stated preference combined with other information, as prescribed by investor requirements. If the servicer stops collecting material for a particular loss mitigation option based on the foregoing, it nevertheless must continue to obtain documents and information needed to evaluate all other available loss mitigation options. The Commentary provides two examples illustrating these requirements.

C. REVIEW OF LOSS MITIGATION APPLICATION SUBMISSION

The Mortgage Servicing Rules contain a timeline of requirements that a servicer must follow if it receives a loss mitigation application "45 days or more before a foreclosure sale."[54] To clarify the applicability of this requirement, the Bureau amended the Commentary to state that a loss mitigation application received *before a foreclosure sale is scheduled*, for purposes of the timeline requirements in § 1024.41(b)(2)(i), must be treated as having been received by the servicer "45 days or more before a foreclosure sale."[55]

D. TIME PERIOD DISCLOSURE

Under § 1024.41(b)(2)(ii) of the current Mortgage Servicing Rules, when a servicer receives an incomplete loss mitigation application, the servicer must disclose, in the notice acknowledging receipt of the application, "a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete.[56] The Current Commentary contains guidance on how servicers should set the "reasonable date," taking into consideration the four milestones[57] that correspond to specific protections under § 1020.41.[58]

The Bureau determined that servicers would benefit from additional guidance on how to select a reasonable date, and therefore adopted new Commentary language for purposes of § 1024.41(b)(2)(ii).[59]

Generally, the new language states that 30 days after the servicer provides the acknowledgment notice qualifies as a "reasonable date."[60] However, notwithstanding this general 30-day provision, the reasonable date must be *no later* than the *earliest* of the following four milestone dates:

1. The date that any document or information submitted by the borrower will be stale or invalid;
2. The date that is the 120th day of the borrower's delinquency;
3. The date that is 90 days before a foreclosure sale;
4. The date that is 38 days before a foreclosure sale.

Further, notwithstanding the timing described above, New Comment 41(b)(2)(ii)-3 provides that the reasonable date must *never* be less than seven days after the servicer provides the written acknowledgement. Stated differently, although the "reasonable date" generally must be at least 30 days after the servicer provides the acknowledgment notice, it must be no later than the nearest remaining milestone (even if it will occur earlier than 30 days), subject to a minimum of seven days after the servicer provides the acknowledgement notice.

E. EVALUATION OF INCOMPLETE LOSS MITIGATION APPLICATION

Generally, § 1024.41(c)(2)(i) prohibits servicers from evading the requirement to evaluate a complete loss mitigation application by offering the borrower a loss mitigation option based on evaluation of an incomplete application. An exception to this prohibition set forth in § 1024.41(c)(2)(iii) provides that a servicer may offer a borrower a short-term forbearance program based on an evaluation of an incomplete application. In such cases, the servicer may not initiate foreclosure or move for a foreclosure judgment or sale if the borrower is performing under the program.

The Final Rule revises § 1024.41(c)(2)(iii) to extend this exception to include short-term repayment plans, and to require the servicer to promptly provide a borrower who has not rejected an offer for a short-term forbearance program or repayment plan a notice that describes the term and duration of the program or plan, states that the offer was based on an incomplete application and states that other options may be available, and that the borrower can submit a complete loss mitigation application and be evaluated for all loss mitigation options regardless of whether the borrower accepts the program or plan. The revisions also note that the servicer may offer both a short-term forbearance program and repayment plan under these provisions.

The Final Rule also adds Commentary provisions to define the terms short-term forbearance program and short-term repayment plan, and states that servicers that offer such programs or plans must still comply with § 1024.41's requirements with respect to incomplete and complete loss mitigation applications, as applicable, and provide detail on how to comply with the timing and content requirements of the required notice. Among other things, the New Comments indicate that for purposes of the exemption for a short-term repayment plan, the plan must allow for the payment of no more than three months of past due payments and allow the borrower to repay the arrearages over a period lasting no more than six months.

F. FACIALLY COMPLETE APPLICATION

Current § 1024.41(c)(2)(iv) states that the application of a borrower who has provided all of the documents and information listed in the acknowledgment notice required in § 1024.41(b)(2)(i)(B) must be deemed "facially complete."[61] This is significant because if a servicer later discovers that other material is required to complete the application, certain of the § 1024.41 protections that apply as of the date the servicer receives a complete application continue to run from the date the application became facially complete and continue until the borrower has a reasonable opportunity to complete the application.

The Final Rule revises § 1024.41(c)(2)(iv) to describe additional circumstances in which an application will be deemed facially complete and sets forth additional timing provisions to address situations in which an application becomes facially complete more than once.

In particular, the Final Rule indicates that an application also will be considered facially complete when a servicer is required to provide the borrower with a written notice of complete application under § 1024.41(c)(3).[62] Further, if after an application qualifies as facially complete, the servicer later discovers that additional or corrected information is needed, the servicer must promptly request the missing or corrected documents and treat the application as facially complete for purposes of limiting foreclosure referrals[63] and limiting foreclosure sales[64] until the borrower has had a reasonable opportunity to complete the application.[65]

If the borrower completes the application within this period, the application shall be deemed complete as of the date it first became facially complete for purposes of denial of loan modification options, timing of borrower responses, limiting foreclosure referrals, limiting foreclosure sales, and appealing a loss mitigation denial. Further, if the borrower completes the application within this period, the application shall be deemed complete as of the date it actually became complete for purposes of evaluating loss mitigation applications.

If a servicer complies with § 1024.41(c)(2)(iv), it will be deemed to have complied with the notice requirements pertaining to the loss mitigation application acknowledgement notice in § 1024.41(b)(2)(i).

G. NOTICE OF COMPLETE APPLICATION

In response to concerns that borrowers are frequently uncertain about when a loss mitigation application is complete, the Bureau adopted in the Final Rule § 1024.41(c)(3), which requires servicers to provide borrowers with a notice of complete loss mitigation application. In the preamble to the Final Rule, the Bureau explained that because the foreclosure protections under § 1024.41(f)(2) [limiting foreclosure referrals] and (g) [limiting foreclosure sales] are triggered based on when the borrower submits a completed loss mitigation application, it is important for there to be clarity as to when the application is deemed received.

Accordingly, Final Rule § 1024.41(c)(3)(i) provides that, subject to the exceptions described, within five days (excluding legal public holidays, Saturdays and Sundays) after receiving a borrower's complete loss mitigation application, a servicer must provide the borrower a written notice stating:

a. That the loss mitigation application is complete;
b. The date the servicer received the complete application;
c. That the servicer expects to complete its evaluation within 30 days of the date it received the complete application;
d. That the borrower is entitled to certain foreclosure protections because the servicer has received the complete application, and, as applicable, either:
    1. The servicer has not yet made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process; therefore, the servicer cannot make the first notice or filing required to commence or initiate the foreclosure process under applicable law before evaluating the borrower's complete application; or
    2. Although the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and has begun the foreclosure process, the servicer cannot conduct a foreclosure sale before evaluating the borrower's complete application.
e. That the servicer may need additional information at a later date to evaluate the application, in which case the servicer will (1) request that information from the borrower, (2) give the borrower a reasonable opportunity to submit the requested information, (3) advise that the evaluation process may take longer, and (4) advise that the foreclosure protections could end if the servicer does not receive the information as requested; and
f. That the borrower may be entitled to additional protections under State or Federal law.

Final Rule § 1024.41(c)(3)(ii) provides an exception to this requirement. A servicer is not required to provide the notice described above if:

a. The servicer has already provided the borrower an acknowledgment of receipt of loss mitigation application notice pursuant to § 1024.41(b)(2)(i)(B) indicating that the application is complete, and the servicer has not subsequently requested additional information or a corrected version of a previously submitted document from the borrower;
b. The application was not complete or facially complete more than 37 days before a foreclosure sale; or
c. The servicer has already provided the borrower a notice indicating which loss mitigation options, if any, it will offer to the borrower.

H. INFORMATION NOT IN THE BORROWER'S CONTROL

Current § 1024.41(c)(1) generally requires servicers to evaluate a borrower's complete loss mitigation application within 30 days of receipt. For purposes of this requirement, a complete loss mitigation application is an application with respect to which the servicer has received all of the information it needs *from the borrower* to evaluate available loss mitigation options.[66] Although the current Mortgage Servicing Rules require servicers to exercise reasonable diligence in obtaining material required from the borrower to complete an application, they do not address information needed from other parties.

To address this gap, the Final Rule adds § 1024.41(c)(4)(i) to address situations in which a servicer needs information or documents from a third party, such as investor approval, property tax information, etc. In such cases, the Final Rule requires the servicer to exercise "reasonable diligence" in obtaining such documents or information.

Further, Final Rule § 1024.41(c)(4)(ii)(A) generally prohibits a servicer from denying a complete loss mitigation application solely because the servicer lacks required documents or information not in the borrower's control. However, if (i) a servicer has exercised reasonable diligence to obtain required documents or information from a third party, but (ii) the servicer has been unable to obtain such documents or information for a significant period of time following the 30-day period after the servicer received the borrower's complete application, and (iii) the servicer is unable to determine whether the borrower qualifies for loss mitigation without such documents or information, the servicer may deny the application.[67]

In such cases, the Final Rule requires the servicer to provide the borrower with a written notice, disclosing the determination of the loss mitigation application, as required by § 1024.41(c)(1)(ii) indicating that the borrower is not eligible for loss mitigation, as well as the notice described in § 1024.41(c)(4)(ii)(B), described below.

The Final Rule § 1024.41(c)(4)(ii)(B) states that if a servicer is unable to make a determination within 30 days of receiving a borrower's complete loss mitigation application because the servicer lacks information or documentation from a third party, the servicer must, within such 30-day period or shortly thereafter, provide a notice informing the borrower:

1. That the servicer has not received documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage;
2. The specific documents or information that the servicer lacks;
3. That the servicer has requested such documents or information; and
4. That the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the documents or information.

If a servicer must provide the notice described above, the servicer must *not* provide the borrower a written notice pursuant to § 1024.41(c)(1)(ii) [determination

of application] until the servicer receives the required documents or information referenced in item (2), above, except in the rare circumstances described in § 1024.41(c)(4)(ii)(A)(2) [servicer unable to obtain third-party documents]. Upon receiving required third-party documents or information, the servicer must promptly provide the borrower with the § 1024.41(c)(1)(ii) notice describing the servicer's determination of which loss mitigation options, if any, are available.

I. PROHIBITION ON FORECLOSURE REFERRAL

Generally, § 1024.41(f)(1) prohibits a servicer from making the first notice or filing to begin the foreclosure process unless the borrower is more than 120 days delinquent. However, the rule provides an exception to this prohibition for cases in which the servicer is joining the action of a subordinate lienholder.[68] The Final Rule revised § 1024.41(f)(1)(iii) to also provide a parallel exception for cases in which a servicer is joining the action of a superior lienholder.

J. PROHIBITION ON FORECLOSURE SALE

Currently, if a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing to begin the foreclosure process, but more than 37 days before a foreclosure sale, the servicer may not move for a foreclosure judgment or order of sale, or conduct a foreclosure sale, unless the borrower's loss mitigation application is properly denied or withdrawn, or the borrower does not perform on the loss mitigation agreement.[69] To provide clarity around this prohibition, the Bureau revised Current Comment 41(g)-3, addressing a servicer's responsibilities when acting through foreclosure counsel, and adopted New Comment 41(g)-5, clarifying the prohibitions on conducting a foreclosure sale. These revisions are designed to emphasize that the prohibition on conducting a foreclosure sale while a loss mitigation application is pending is absolute, regardless of whether the servicer is acting through a service provider, including foreclosure counsel.

In particular, Revised Comment 41(g)-3 states that the § 1024.41(g) prohibitions may require a servicer to act through the servicer's foreclosure counsel. If the servicer has received a complete loss mitigation application, unless the borrower has received a notice of loss mitigation ineligibility, rejects all loss mitigation offers or fails to perform on loss mitigation, the servicer must promptly instruct counsel not to make a dispositive motion for foreclosure judgment or order of sale. Where a dispositive motion is pending, the servicer must promptly instruct counsel to avoid a ruling on the motion or issuance of an order of sale. Where a sale is scheduled, the servicer must promptly instruct counsel to prevent the sale.

Additionally, the Final Rule has added New Comment 41(g)-5 stating that § 1024.41(g) prohibits a servicer from conducting a foreclosure sale, even if a person other than the servicer administers or conducts the foreclosure sale proceeding.

K. SERVICING TRANSFERS

Currently, the Mortgage Servicing Rules address mortgage servicing transfers only in brief Commentary provisions. These provisions generally indicate that servicing transfers should not deprive borrowers of their § 1024.41 protections, and that transferee servicers generally must stand in the shoes of transferor servicers.[70] During the rulemaking process, the Bureau determined that borrowers generally have no control over whether servicing rights are transferred, borrowers are at heightened risk when servicing is transferred in the midst of the loss mitigation process, and that both borrowers and servicers would benefit from additional clarity regarding how the Mortgage Servicing Rules should be applied in such cases. Accordingly, the Bureau added § 1024.41(k) and several related Commentary provisions to the Final Rule.

1. General Rule

The Final Rule provides that, subject to certain exceptions, as of the transfer date,[71] if a transferee servicer acquires servicing rights when a loss

mitigation application is pending, the transferee servicer must comply with the requirements of § 1024.41 for that loss mitigation application within the timeframes that were applicable to the transferor servicer based on the date the transferor servicer received the loss mitigation application. All rights and protections under § 1024.41 (c) through (h) to which a borrower was entitled before a transfer continue to apply notwithstanding the transfer.

For purposes of § 1024.41(k), New Comment 41(k)-1 states that a loss mitigation application is "pending" if it was subject to § 1024.41 and had not been fully resolved before the transfer date. A loss mitigation application would *not* be pending if a transferor servicer had denied a borrower for all options and the borrower's time for making an appeal, if any, had expired prior to the transfer date. Further, a pending application is a "pending complete application" if it was complete as of the transfer date under the transferor servicer's criteria for evaluating loss mitigation applications.

During the rulemaking process, the Bureau determined that transferee servicers often require loss mitigation applicants to resubmit documents that they previously submitted to the transferor servicer, even though § 1024.38(b)(4) is intended to avoid this. To address this, the Bureau adopted New Comment 41(k)(1)(i)-1.i requiring a transferor servicer to timely transfer, and a transferee servicer to obtain from the transferor servicer, documents and information submitted by a borrower in connection with a loss mitigation application, consistent with policies and procedures adopted pursuant to § 1024.38(b)(4). A transferee servicer must comply with the applicable requirements of § 1024.41 with respect to a loss mitigation application received as a result of a transfer, *even if the transferor servicer was not required to comply with § 1024.41 with respect to that application* (e.g., because § 1024.41(i) precluded a duplicative request). Further, if a loss mitigation application was not subject to § 1024.41 prior to a transfer, then for purposes of § 1024.41(b) and (c), a transferee servicer is considered to have received the loss mitigation application on the transfer date, and the application is subject to the timeframes set forth in § 1024.41(k).

New Comment 41(k)(1)(i)-1.ii provides that a transferee servicer must, in accordance with § 1024.41(b)(1), exercise reasonable diligence to complete a loss mitigation application, including a facially complete application, received as a result of a transfer. In such cases, "reasonable diligence" includes ensuring that a borrower is informed of any changes to the application process (e.g., address changes) and informing the borrower about which documents and information are necessary to complete the application.

New Comment 41(k)(1)(i)-1.iii indicates that borrowers may provide documents and information necessary to complete an application to a transferor servicer after the transfer date, and the transferor servicer must timely transfer, and the transferee servicer must obtain, such documents and information.

New Comment 41(k)(1)(i)-2 states that for purposes of § 1024.41(c) through (h), a transferee servicer must treat a complete application as having been received as of the date received by the transferor servicer, even if the application was received by the transferor servicer after the transfer date. Similarly, an application that was facially complete under § 1024.41(c)(2)(iv) with respect to the transferor servicer remains facially complete under § 1024.41(c)(2)(iv) with respect to the transferee servicer as of the date it was facially complete with respect to the transferor servicer.

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 under § 1024.41(c)(2)(iv) as of the date the application was complete with respect to the transferor servicer.

New Comment 41(k)(1)(i)-3 clarifies that a transferee servicer is not required to provide § 1024.41 notices that the transferor servicer provided prior to the transfer.

2. Acknowledgement Notices

The Final Rule adds provisions that address situations in which a transferor servicer receives a loss mitigation application and, before the deadline to provide the acknowledgment notice required by § 1024.41(b)(2)(i)(B), transfers the mortgage loan to a transferee servicer without providing the notice. The Bureau acknowledged that depending on the timing of the transfer, in such cases, the transferee servicer may not have time to provide the notice within five days of when the transferor servicer received the application.

In such cases, New § 1024.41(k)(2)(i) states that if a transferee servicer acquires the servicing of a mortgage loan for which the period to provide the acknowledgement notice required by § 1024.41(b)(2)(i)(B) has not expired as of the transfer date,[72] and the transferor servicer has not provided such notice, the transferee servicer must provide the notice within 10 days (excluding legal public holidays, Saturdays and Sundays) of the transfer date.

The Bureau recognized that even though most borrowers will not be impacted by the extension to the acknowledgment notice deadline described above, the delay in receiving the notice could affect a borrower's ability to meet certain deadlines under § 1024.41. To mitigate potential borrower harm in such cases, the Bureau adopted New § 1024.41(k)(2). Under this New Section, a transferee servicer that must provide the acknowledgment notice:

a. May not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until a date that is after the reasonable date disclosed to the borrower pursuant to § 1024.41(b)(2)(ii), notwithstanding § 1024.41(f)(1) [pre-foreclosure review period]. For purposes of § 1024.41(f)(2) [application received before foreclosure referral], a borrower who submits a complete loss mitigation application on or before the reasonable date disclosed to the borrower pursuant to § 1024.41(b)(2)(ii) must be treated as having done so during the pre-foreclosure review period provided for in § 1024.41(f)(1).
b. Must comply with §§ 1024.41(c) [evaluation of loss mitigation applications], (d) [denial of loan modification options] and (g) [prohibition on foreclosure sale] if the borrower submits a complete loss mitigation application to the transferee or transferor servicer 37 or fewer days before the foreclosure sale but on or before the reasonable date disclosed to the borrower pursuant to § 1024.41(b)(2)(ii).

The Bureau also added New Commentary, with examples, to further explain these requirements:[73]

New Comment 41(k)(2)(ii)-2 emphasizes that New § 1024.41(k)(2)(ii) provides *additional* protections for borrowers but does not remove any protections. Therefore, for example, a servicer that is subject to the § 1024.41(k)(2) protections in connection with a loan also must comply with § 1024.41(h) if the servicer receives a complete loss mitigation application 90 days or more before a foreclosure sale, and is prohibited from making the first notice or filing before the borrower's mortgage loan obligation is more than 120 days delinquent, even if that is after the reasonable date disclosed to the borrower pursuant to § 1024.41(b)(2)(ii).

New Comment 41(k)(2)(ii)-3 addresses how a servicer determines a "reasonable date" when no milestones remain.

3. Complete Loss Mitigation Application Pending at Transfer

New § 1024.41(k)(3) provides that if a transferee servicer acquires servicing and a complete loss mitigation application is pending as of the transfer date, the transferee servicer must comply with the applicable requirements of §§ 1024.41 (c)(1) and (4) within 30 days of the transfer date.

New Comments 41(k)(3)-1 and -2 explain how a servicer must handle variations of the situation described in § 1024.41(k)(3). First, if a transferee servicer acquires servicing, a complete loss mitigation application is pending as of the transfer date, but the transferee servicer determines that it needs additional or corrected information, the application is

considered facially complete under § 1024.41(c)(2)(iv) as of the date it was first facially complete or complete, as applicable, with respect to the transferor servicer. Once the transferee servicer receives the necessary information or corrections, the transferee servicer must provide a notice of complete application in accordance with § 1024.41(c)(3).[74]

Second, for purposes of § 1024.41(k)(3), if a borrower's loss mitigation application was incomplete based on the transferor servicer's criteria prior to transfer but is complete based upon the transferee servicer's criteria, the transferee servicer must treat the application as a pending loss mitigation application complete as of the transfer date and must comply with the applicable requirements of §§ 1024.41(c)(1) and (4) within 30 days of the transfer date. Consistent with New Comment 41(k)(1)(i)-2, for purposes of §§ 1024.41(c) through (h), the application is complete as of the date the transferor servicer received the complete application, and the transferee servicer must provide a notice of complete application that discloses the date the transferor servicer received the complete application.

4. Applications Subject to Appeal Process

In the preamble to the Final Rule, the Bureau indicates that a servicing transfer should not deprive a borrower of the right to appeal a servicer's denial of a loan modification option. Thus, New § 1024.41(k)(4) provides that if a transferee servicer acquires the servicing of a mortgage loan that, as of the transfer date, is subject to an unresolved appeal of the transferor servicer's determination, or if an appeal is timely filed after the transfer date, the transferee servicer must make a determination on the appeal if it is able to do so or, if it is unable[75] to do so, must treat the appeal as a pending complete loss mitigation application. Comment 41(k)(4)-2 states that a transferee servicer must allow a borrower to accept or reject any loss mitigation options offered by the transferor servicer, even if the transferee servicer does not offer that particular option.

In such cases, the transferee servicer must complete the determination and provide the notice required by § 1024.41(h)(4) within 30 days of the transfer date or 30 days of the date the borrower made the appeal, whichever is later.

A transferee servicer that is required to treat a borrower's appeal as a pending complete loss mitigation application under §1024.41(k)(4) must comply with the requirements of § 1024.41 with respect to that application, including evaluating the borrower for all loss mitigation options available to the borrower from the transferee servicer. For purposes of § 1024.41(c) or (k)(3), as applicable, such a pending complete loss mitigation application must be considered complete as of the date the appeal was received by the transferor servicer or the transferee servicer, whichever occurs first. For purposes of §§ 1024.41(e) through (h), the transferee servicer must treat such a pending complete loss mitigation application as facially complete under § 1024.41(c)(2)(iv) as of the date it was first facially complete or complete, as applicable, with respect to the transferor servicer.

5. Pending Loss Mitigation Offers

The Final Rule states that a servicing transfer does not affect a borrower's ability to accept or reject a loss mitigation option offered under § 1024.41(c) or (h).[76] If a transferee servicer acquires the servicing of a mortgage loan for which the borrower's time period under § 1024.41(e) or (h) for accepting or rejecting a loss mitigation option offered by the transferor servicer has not expired as of the transfer date, the transferee servicer must allow the borrower to accept or reject the offer during the unexpired balance of the applicable time period. The borrower's acceptance is effective whether it is sent to the transferor or transferee servicer, and the transferee servicer must provide the borrower with any timely accepted loss mitigation option, even if the borrower submitted it to the transferor servicer.[77]

L. DUPLICATIVE REQUESTS

Currently § 1024.41(i) states that a servicer is only required to comply with § 1024.41 for a single complete loss mitigation application from any given borrower. The Bureau was concerned, however, that this provision did not adequately protect borrowers who benefited from the protections provided by § 1024.41, became current on the loan, but subsequently became delinquent once again.

Accordingly, the Bureau revised § 1024.41(i) to require a servicer to comply with § 1024.41 even it has already done so for a completed loss mitigation application, so long as the borrower was current on payments at any time between the prior loss mitigation application and a subsequent loss mitigation application. Specifically, Revised § 1024.41(i) states that a servicer must comply with the requirements of § 1024.41 for a borrower's loss mitigation application, unless the servicer has previously complied with such requirements for a complete loss mitigation application submitted by the borrower and the borrower has been delinquent[78] *at all times* since submitting the prior complete application.

The Bureau also amended Commentary to § 1024.41(i). In particular, Revised Comment 41(i)-1 reiterates the revised § 1024.41 and provides the following compliance example: if the borrower has previously submitted a complete loss mitigation application and the servicer complied fully with § 1024.41 for that application, but the borrower then ceased to be delinquent and later became delinquent again, the servicer again must comply with § 1024.41 for any subsequent loss mitigation application submitted by the borrower. When a servicer is required to comply with the requirements of § 1024.41 for such a subsequent loss mitigation application, the servicer must comply with all applicable requirements of § 1024.41.[79] Revised Comment 41(i)-2 addresses the application of § 1024.41(i) in the context of servicing transfers, noting that because a transferee servicer and a transferor servicer are not the same servicer, a transferee servicer must comply with the applicable requirements of § 1024.41 upon receipt of a loss mitigation application from a borrower whose servicing the transferee servicer has obtained through a servicing transfer, even if the transferor servicer previously evaluated a complete loss mitigation from the same borrower.

VII. Payment Crediting

The Mortgage Servicing Rules impose requirements on how a servicer credits and processes borrower payments. The 2016 Mortgage Servicing Rule adds some New Commentary to clarify how servicers should process payments in particular circumstances.

The Final Rule adds New Comment 36(c)(1)(i)-4 to clarify how servicers must treat periodic payments from consumers who are performing under a temporary loss mitigation program. Under the New Commentary, even when a temporary loss mitigation program is in place, a periodic payment, for purposes of § 1026.36(c)(1)(i), is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle of the loan contract, irrespective of the payment due under the temporary loss mitigation program. Stated differently, servicers are not required to treat the payment due under a temporary loss mitigation program as the periodic payment; such payments should generally be treated as partial payments. This clarification makes clear that a consumer may continue to accumulate delinquencies according to the loan contract even if a temporary loss mitigation program is in place.

The Final Rule also adds New Comment 36(c)(1)(i)-5 regarding permanent loan modifications. The New Commentary clarifies that when a loan contract has been permanently modified, a periodic payment, for purposes of § 1026.36(c)(1)(i), is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the modified loan contract.

VIII. Periodic Statements

The Mortgage Servicing Rules impose requirements on servicers relating to providing borrowers with periodic statements. The Final Rule makes several changes to these requirements.

A. CONTENT AND LAYOUT

Section 1026.41(d) sets forth various requirements relating to the content and layout of the periodic statement. The Final Rule adds various Comments to this section to help servicers comply.

Section 1026.41(d) requires that several required disclosures be provided "in close proximity" to one another. The Final Rule amends Current Commentary to explain that items in close proximity may not have any "unrelated" text between them. This is a change from the Current Commentary, which states that items in close proximity may not have any "intervening" text between them. By relaxing this Commentary, the Bureau sought to provide servicers with additional flexibility to clarify or explain information on the periodic statement. The Final Rule explains that text is unrelated "if it does not explain or expand upon the required disclosures."[80]

The 2016 Mortgage Servicing Rule also provides Commentary on how a temporary loss mitigation program affects periodic disclosure requirements. It explains that, if a consumer has agreed to a temporary loss mitigation program, certain periodic statement disclosures regarding how payments will be and were applied must identify how payments are applied according to the loan contract, not under the temporary loss mitigation program.

The periodic statement requires disclosure of various amounts "since the last statement." For example, § 1026.41(d)(2)(ii) requires the disclosure on the periodic statement of the total sum of any fees or charges imposed since the last statement. Section 1026.41(e) lists exemptions that relieve a servicer of needing to provide a periodic statement. The Final Rule explains that, for purposes of the disclosures of amounts "since the last statement" following the termination of one of the exemptions in § 1026.41(e), the disclosure may be limited to account activity since the last payment due date that occurred while the exemption was in effect.

B. AMOUNT DUE

Section 1026.41(d)(1) requires the periodic statement to disclose the amount due, shown more prominently than other disclosures on the page. The Final Rule addresses how acceleration, temporary loss mitigation programs and permanent loan modifications affect this disclosure:

- If the balance has been accelerated, but the servicer will accept a lesser amount to reinstate the loan, the amount due disclosure must identify only the lesser amount that will be accepted, not the entire accelerated balance. In order to provide servicers with flexibility, the disclosure should indicate, if applicable, that the amount due is accurate only for a specified period of time, using language such as "as of [date]" or "good through [date]."
- If the consumer has agreed to a temporary loss mitigation program, the amount due disclosure may 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 amount due disclosure must identify only the amount due under the modified loan contract.

C. EXPLANATION OF AMOUNT DUE

Section 1026.41(d)(2) requires the periodic statement to include an explanation of the amount due by disclosing various items in close proximity to each other. As with disclosure of the amount due, discussed above, the Final Rule provides Commentary on how acceleration and temporary loss mitigation programs affect this disclosure.

If a mortgage loan has been accelerated, but the servicer will accept a lesser amount to reinstate the loan, the explanation of amount due must list both the reinstatement amount and the accelerated amount. This disclosure must include an explanation that the reinstatement amount will be accepted to reinstate the loan through a specific date, as applicable, along with any special instructions for

submitting payment, such as requiring payment by certified check or sent to a specific address. This information is not permitted to be provided in a separate letter.

If the borrower has agreed to a temporary loss mitigation program and, as permitted by the Final Rule discussed above, the amount due identifies the payment due under that program, the explanation of amount due must include both the amount due according to the loan contract and the payment due under the program. The statement must further explain that the amount due disclosure is different because of the temporary loss mitigation program.

D. BANKRUPTCY EXEMPTION

Section 1026.41(e)(5) currently exempts servicers from the periodic statement requirement while the consumer is a debtor in bankruptcy. The Final Rule makes myriad changes to this exemption.

The Final Rule now limits the circumstances in which a servicer is exempt from providing a periodic statement to a consumer who is a debtor in bankruptcy or has discharged personal liability for a mortgage loan through bankruptcy. Pursuant to the Final Rule, a servicer is exempt from providing the periodic statement with regard to a mortgage loan if two criteria are met.

First, a consumer on the loan must be a debtor in bankruptcy under title 11 or must have discharged personal liability for the loan pursuant to 11 U.S.C. §§ 727, 1141, 1228 or 1328. Second, one of the following conditions must apply with regard to any consumer on the loan: (1) the consumer requests in writing that the servicer cease providing the periodic statement; (2) the bankruptcy plan provides that the consumer will surrender the dwelling, provides for the avoidance of the lien securing the loan or otherwise does not provide for payment of pre-bankruptcy arrearage or the maintenance of payments due under the loan; (3) a bankruptcy court orders the lien avoided, lifting the automatic stay or requiring the servicer not to provide the periodic statement; or (4) the consumer files a statement of intention to surrender the dwelling and has not made any partial or periodic payment on the loan after commencement of the bankruptcy case.

The Final Rule also states that, if the modified exemption does not apply—and, thus, a servicer is required to provide a periodic statement or coupon book—a servicer may make various clarifications and modifications to the periodic statement.[81] These modifications, the Bureau states, ensure that the periodic statement takes into account the unique situation of a consumer in bankruptcy. For all borrowers in bankruptcy or who have discharged personal liability for the loan, the modified periodic statement may omit certain delinquency information, and it must include certain informational disclosures about bankruptcy. The Final Rule requires additional modifications to the periodic statement for borrowers in bankruptcy under Chapter 12 or 13.

IX. Small Servicers

Under current law, "small servicers" are exempted from various requirements of the Mortgage Servicing Rules. A small servicer is generally an entity that services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee, as of January 1 of each calendar year, as well as certain housing finance agencies and nonprofit entities.[82]

Certain categories of loans, including loans voluntarily serviced by the servicer for a non-affiliated creditor or assignee for which the servicer does not receive any compensation or fees, are not counted toward the 5,000-loan threshold.[83] The Final Rule removes the requirement that the non-affiliated entity for which the small servicer voluntarily services be a creditor or assignee.[84]

The Final Rule adds an additional category of loans that are not counted toward the 5,000-loan threshold, which are those for transactions serviced for a "seller financer."[85] For this purpose, a "seller financer" is generally a natural person, estate or trust that provides seller financing for the sale of only one

property in any 12-month period to purchasers of such property, which is owned by the natural person, estate or trust and serves as security for the financing. The seller financer must also meet certain other criteria described in the Final Rule.[86]

X. FDCPA Safe Harbor

Alongside its revisions to the Mortgage Servicing Rules, the CFPB issued a relatively brief interpretive rule regarding the interaction of the 2016 Mortgage Servicing Rules with the FDCPA.

This interpretive rule states that servicers subject to the FDCPA do not violate the FDCPA's prohibition on communicating with third parties by communicating with a confirmed successor in interest about a mortgage loan secured by property in which the confirmed successor in interest has an ownership interest, in compliance with the 2016 Mortgage Servicing Rules.[87]

It also indicates that in the limited circumstances where a servicer is subject to the FDCPA with respect to a borrower's mortgage loan and the borrower has invoked his or her cease communication right pursuant to the FDCPA, and where the servicer complies with the requirements of the modified written early intervention notice described above, the modified written early intervention notice does not violate the FDCPA's cease communication provision.[88]

Further, a borrower's invocation of the FDCPA's cease communication right generally does not prevent a servicer that is a debt collector from responding to borrower-initiated communications concerning loss mitigation, provided that the servicer's response is limited to a discussion of any potentially available loss mitigation option.[89]

The Bureau describes the interpretive rule as an "advisory opinion," meaning that acts done in good faith in conformity with the interpretive rule are not subject to civil liability under the FDCPA.[90] Servicers who wish to rely on this safe harbor should read the detailed language of the interpretive rule carefully.

Conclusion

The 2016 Mortgage Servicing Rule adds significant new requirements and complexities to residential mortgage servicers' compliance obligations. If you would like assistance with interpreting and implementing the Final Rule, please let us know.

Contacts

For further information about the content of this paper, please contact any of the following lawyers.


Melanie Brody
+1 202 263 3304
mbrody@mayerbrown.com


Jonathan D. Jaffe
+1 650 331 2085
jjaffe@mayerbrown.com


David A. Tallman
+1 713 238 2696
dtallman@mayerbrown.com


Keisha L. Whitehall Wolfe
+1 202 263 3013
kwhitehallwolfe@mayerbrown.com

Endnotes

[1] In Regulation X, 12 C.F.R pt. 1024, the amendments are as follows: § 1024.30(d) and related Comments 30(d)-1 through -3; § 1024.31 and related Comments 31 (Successor in interest) -1, -2; § 1024.32(c) and related Comments 32(c)(1)-1, 32(c)(2)-1, -2, 32(c)(4)-1; § 1024.35(e)(5); § 1024.36(d)(3), (i) and related Comments 36(i)-1 through -3; § 1024.38(b)(1)(vi) and related Comments 38(b)(1)(vi)-1 through -5; Comment 41(b)-1; Comment Appendix MS to pt. 1024-2. In Regulation Z, 12 C.F.R. pt. 1026, the amendments are as follows: § 1026.2(a)(11), (27) and related Comments 2(a)(11)-4, 2(a)(27)(i)-1, -2; Comment 20(e)(4)-3; § 1026.20(f); Comment 36(c)(1)(iii)-2; § 1026.39(f); Comment 41(c)-5; § 1026.41(e)(5), (f), (g).

[2] *See* Bureau of Consumer Financial Protection, Official Bureau Interpretations: Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (Aug. 4, 2016) [hereinafter *Interpretive Rule*], *available at* 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/.

[3] *See* 12 C.F.R. § 1024.38(b)(1)(vi).

[4] See Bureau of Consumer Financial Protection, CFPB Bull. No. 2013-12, Implementation Guidance for Certain Mortgage Servicing Rules (Oct. 15, 2013), available at http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.

[5] *See* 12 C.F.R. § 1024.38(b)(1)(vi).

[6] *See* 12 U.S.C. § 1701j-3.

[7] *See* 12 C.F.R. §§ 1024.30 *et seq.*

[8] *Id.* § 1024.17.

[9] *Id.* § 1026.20(c), (d).

[10] *Id.* § 1026.20(e).

[11] *Id.* § 1026.41.

[12] *Id.* § 1026.39.

[13] *See, e.g., id.* §§ 1024.17, 1024.33, 1024.34, 1024.37, 1024.39(b).

[14] *See, e.g., id.* §§ 1026.20(c), (d), (e), 1026.39, 1026.41.

[15] *Id.* § 1024.39(a).

[16] *See* 15 U.S.C. §§ 6801 *et seq.*

[17] *Id.* §§ 1692 *et seq.*

[18] *Id.* § 1692l(d).

[19] *Id.* § 1692c(b).

[20] *See* 12 C.F.R. *§ 1024.39(a), (b).*

[21] *See id. § 1024.40(a).*

[22] The new definition of delinquency in § 1024.31 applies only for purposes of the mortgage servicing rules in Regulation X. The Bureau made it clear that the definition is not intended to alter existing requirements imposed by other laws or regulations, and that servicers may use different definitions of "delinquency" for operational purposes.

[23] Three concepts—delinquency, delinquent borrower and delinquent mortgage loan obligation—are used interchangeably throughout Subpart C. *See, e.g.*, 12 C.F.R. § 1024.39(a) ("delinquent borrower"; "borrower's delinquency"); § 1024.39(b) (same); § 1024.41(f)(1)(i) ("A borrower's mortgage loan obligation is more than 120 days delinquent").

[24] *See* 12 C.F.R § 1024.31.

[25] Existing Comment to Section 1024.39(a) defines delinquency as [beginning] on the day a payment sufficient to cover principal, interest and, if applicable, escrow for a given billing cycle is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee.

[26] *See* Revised Comment 41(d)(8)-1.

[27] *See* Revised Comment 31 (Delinquency)-1.

[28] *See* Revised Comment 31 (Delinquency)-2.

[29] *See* Revised Comment 31 (Delinquency)-3.

[30] *See* Revised Comment 31 (Delinquency)-4.

[31] *See* 12 C.F.R § 1024.31.

[32] When the Dodd-Frank Act was enacted, it amended RESPA to add a section that required a servicer to provide information pertaining to the owner or assignee of a mortgage loan within ten business days of a borrower's request. Prior to the issuance of the 2016 Mortgage Servicing Rule, the commentary stated that a servicer is deemed to have complied with a borrower's request for information under § 1024.36(a) asking for the owner or assignee of a mortgage loan held by a trust in connection with a securitization transaction and administered by an appointed trustee, if the servicer's response identifies both the name of the trust and the name, address and appropriate contact information for the trustee. *See § 1024.36(a),* Comment 36(a)-2.

[33] *See* Revised Comment 36(a)-2.ii.A.

[34] *See* Revised Comment 36(a)-2.ii.B.

[35] *See* Revised Comment 36(a)-2.ii.C.

[36] *See* Comment 37(d)(4)-1.

[37] *Id.*

[38] *See* Final Rule at 203–06.

[39] *See* Final Rule at 792.

[40] *See* Final Rule at 826.

[41] *See* Final Rule at 209.

[42] *See* Final Rule at 828.

[43] *See* Final Rule at 216.

[44] *See* Final Rule at 825–33.

[45] *See* Final Rule at 829.

[46] *See* 12 C.F.R. § 1024.39(d)(2).

[47] *See* Final Rule at 794–95.

[48] *See* 12 C.F.R. § 1024.39(d)(1).

[49] *See* Final Rule at 793–95.

[50] *See* Final Rule at 792–94.

[51] *See* New Comment 41(b)-1.ii.

[52] *See* New Comment 41(b)-1.ii.

[53] In the preamble, the Bureau acknowledged this requirement may result in some borrowers having to submit additional documentation related to an option they indicated they do not want. The Bureau concluded that although this may present an additional burden to borrowers and servicers, in the long run it will produce the most efficient and optimal outcomes.

[54] *See* 12 C.F.R § 1024.41(b)(2).

[55] *See* Revised Comment 41(b)(2)(i)-1.

[56] *See* 12 C.F.R. § 1024.41(b)(2)(ii).

[57] After each milestone date, the borrower loses certain protections. The New Comment therefore seeks to preserve the borrower's § 1024.41 protections by prohibiting servicers from selecting a "reasonable date" that is later than any of the four milestone dates. *See* New Comment 41(b)(2)(ii)-2.

[58] *See* New Comment 41(b)(2)(ii)-1.

[59] *See* New Comments 41(b)(2)(ii)-1 through -3.

[60] *See* New Comment 41(b)(2)(ii)-1.

[61] *See* 12 C.F.R. § 1024.41(c)(2)(iv).

[62] *Id.*

[63] *See id.* § 1024.41(c)(2)(iv), (f)(2).

[64] *See id.* § 1024.41(c)(2)(iv), (g).

[65] *See id.* § 1024.41(c)(2)(iv).

[66] *See id.* § 1024.41(b)(1).

[67] *See id.* § 1024.41(c)(4)(ii)(B).

[68] *See* 12 C.F.R. § 1024.41(f)(1)(iii).

[69] *See id.* § 1024.41(g).

[70] *See, e.g.*, Comment 41(i)-2.

[71] The revisions state that the transfer date is the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to 12 C.F.R. § 1024.33(b)(4)(iv). Final Rule at 427. In the Comments, the Bureau clarified that the transfer date is not necessarily the same as the effective date as disclosed on the § 1024.33(b)(4)(i) transfer notice or the sale date in the servicing transfer agreement. For example, if the transfer date is June 10, but the borrower's mortgage payment is first due to the transferee servicer on July 1, the effective date of the transfer would be July 1. However, if the transferee servicer will begin accepting payments on June 10, June 10 is the transfer date. *See* Current Comment 41(k)(1)(ii)-1.

[72] Interestingly, the revisions do not require a transferee servicer to provide the acknowledgment notice if the deadline for the notice has expired on the transfer date, even if the transferor servicer failed to provide it. Rather, New Comment 41(k)(1)(i)-1.ii states that transferee servicers must exercise "reasonable diligence" to complete any incomplete applications, including those for which the transferee servicer failed to provide the acknowledgment notice. This New Comment is consistent with the new 12 C.F.R. § 1024.41(k)(3), described below.

[73] *See* New Comment 41(k)(2)(ii)-1.

[74] In the preamble to the Final Rule, the Bureau notes that it does not prohibit, but generally discourages, transferee servicers from requesting borrowers to resubmit information in the transferee servicer's specified format or with clerical corrections. If a transferee servicer makes such a request, it must still comply with the 30-day timeframe for evaluating a borrower's complete application; such a resubmission request would not render an application facially complete as opposed to complete, because it is *not* a request for new or corrected information.

[75] For example, a transferee servicer may be unable to make a determination on an appeal when the transferor denied the borrower for a loan modification option that the transferee servicer does not offer or when the transferee servicer receives the loan through an involuntary transfer in which the transferor failed to maintain records sufficient to permit review of the appeal. Current Comment 41(k)(4)-2.

[76] *See 1*2 C.F.R. § 1024.41(k)(5).

[77] *See* New Comment 41(k)(5)-1.

[78] For purposes of this requirement, "delinquency" is defined in Revised 12 C.F.R. § 1024.31.

[79] Revised Comment 41(i)-1 goes on to provide further illustration: "in such a case, the servicer's provision of the notice of determination of which loss mitigation options, if any, it will offer to the borrower under § 1024.41(c)(1)(ii) regarding the borrower's prior complete loss mitigation application does not affect the servicer's obligations to provide a new notice of complete application under § 1024.41(c)(3)(i) regarding the borrower's subsequent complete loss mitigation application."

[80] Final Rule at 524.

[81] Final Rule at 633.

[82] *See* 12 C.F.R §§ 1024.30(b)(1), 1026.41(e)(4).

[83] *See id.* § 1026.41(e)(4)(iii)(A).

[84] Final Rule at 857.

[85] *Id.*

[86] *See* 12 C.F.R § 1026.36(a)(5).

[87] Interpretive Rule at 9.

[88] *Id.* at 12.

[89] *Id.*

[90] See Interpretive Rule at 1; 16 U.S.C. § 1692k(e).

About Mayer Brown

Mayer Brown is a global legal services organization advising clients across the Americas, Asia, Europe and the Middle East. Our presence in the world's leading markets enables us to offer clients access to local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, CAC 40, DAX, Hang Seng and Nikkei index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory and enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

Please visit www.mayerbrown.com for comprehensive contact information for all Mayer Brown offices.