

# CFPB video guidance to the 2013 Mortgage Servicing Rules

## Transcript

My name is Mitchell Hochberg, senior counsel in the Office of Regulations at the Consumer Financial Protection Bureau, and this is the bureau's mortgage servicing final rule.

The mortgage servicing final rule amends Regulation Z, which implements the Truth in Lending Act, and Regulation X, which implements the Real Estate Settlement Procedures Act. Both the Truth in Lending Act and the Real Estate Settlement Procedures Act currently impose certain requirements on mortgage servicers. Sections 1418, 1420, 1463, and 1464 of the Dodd-Frank Act empower the bureau to address numerous problems relating to mortgage servicing by imposing certain requirements on mortgage servicers. To implement these requirements, the bureau amended Regulation Z and Regulation X to add additional requirements for mortgage servicers with respect to the servicing of mortgage loans.

Regulation Z includes three new requirements relating to mortgage servicing. The first is a requirement for servicers to provide a periodic statement for certain mortgage loans, second is for servicers to make certain adjustments to the disclosure requirements for adjustable rate mortgage loans, and the third is requirements relating to prompt crediting of mortgage borrower payments and providing borrowers with payoff statements.

The bureau's rules under Regulation X include five new requirements. These are requirements relating to error resolution and information requests, requirements relating to force-placed insurance for borrowers for which the servicer lacks a reasonable basis to believe the borrower's maintained hazard insurance, general servicing policies, procedures, and requirements relating to the servicing operations, early intervention and continuity of contact for borrowers that have become delinquent, and loss mitigation procedures for handling applications for loss mitigation options submitted by borrowers. The loss mitigation procedures also include protections related to dual tracking.

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The mortgage servicing rules include requirements for servicing of borrower accounts that are current as well as additional requirements for borrowers that become delinquent. The servicing requirements that are applicable for all borrowers, including borrowers that are current on their accounts, include the periodic statement requirements, the ARM interest rate adjustment notices, the error resolution and information request requirements, the general servicing policy and procedures, and certain requirements related to force-placed insurance.

The periodic billing statement requirement provides that creditors, assignees, and servicers must provide a periodic statement for each billing cycle containing certain content. That content includes information on payments currently due and previously made, fees imposed on the account, transaction activity, application of past payments, contact information for the servicer and housing counselors, and, where applicable, information regarding delinquencies. The periodic statement requirement is subject to certain exceptions. First, a periodic statement is not required for fixed-rate mortgage loans if a coupon book is provided. Second, certain types of mortgage loans are not subject to the periodic statement requirement. These include reverse mortgage transactions, and in addition time-share plans are not required to receive a periodic statement. The periodic statement requirement under the bureau's rules only applies to closed-end mortgage loans and does not apply to open-end mortgage loans. Open-end mortgage loans are subject to requirements set forth elsewhere in the Truth in Lending Act and Regulation Z. The periodic statements must meet the timing, form, and content requirements provided in the rule. The rule includes sample forms that servicers may use to assist in compliance with these requirements. The periodic statement requirement is also subject to a small servicer exemption. Small servicers – that is servicers that service, together with any affiliates, 5,000 or fewer mortgage loans, and only service mortgage loans for which the servicer or affiliate was the creditor-assignee – essentially these are mortgage loans that the servicer owns or originated – are not subject to periodic statement requirement.

In addition to the periodic statement requirement, servicers must provide certain notices to borrowers regarding the adjustment of the interest rate for adjustable rate mortgage transactions. The ARM interest rate adjustment notices include two requirements. The first is a new, one-time initial ARM notice. This is called the 20(d) notice and is implemented through Section 1026.20d of Regulation Z. The new one-time initial ARM notice must be provided 210 to 240 days prior to the first payment due after the mortgage loan interest rate first adjusts. The notice may contain an estimate of the new rate and the new payment and the mortgage servicing rules contain model and sample forms that servicers may use to assist in compliance with this requirement.

Servicers must also provide a new revised 20(c) ARM notice. The interest rate adjustment notice requirements also include a revised 20(c) ARM notice. The current 20(c) ARM notice – referred to as the 20(c) notice because it implements 1026.20C of Regulation Z – requires that a notice be provided 25 to 120 days before an interest rate adjusts. The new ARM notice requires that a notice be provided 60 to 120 days prior to the first payment due after the rate adjusts if payment will change. Notably, the amendments to the 20(c) notice move back the timing from 25 to 120 days to 60 to 120 days so that borrowers receive the revised 20(c) ARM notice earlier in time

before an interest rate adjustment causes a payment change. Further, the amendments to the 20(c) notice provide that notice is only required if the rate adjustment causes a payment change. A notice is no longer required when a rate adjustment does not result in a payment change. And the rule contains model and sample forms that servicers may use to comply with these requirements.

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The servicing rules also include protections with respect to error resolution and information request notices received from borrowers. These rules require that servicers acknowledge written error notices or information requirements generally within 5 days and in general responses to such notices are required within 30 days. The rule requires servicers to comply with the error resolution procedures for certain listed errors as well as any error related to the servicing of a mortgage loan. The procedures require that within 30 days, in response to a notice of error, a servicer must correct the error asserted or conduct an investigation and provide a notice in writing to the borrower that the servicer has determined that no error occurred. For information requests, the servicer must, within 30 days, provide the information requested by the borrower or explain, in writing, why such information is not available.

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The mortgage servicing rules also include provisions relating to general servicing policies, procedures, and requirements. Servicers are required to establish policies and procedures reasonably designed to achieve objectives specified in the rules. The rule sets forth objectives in a number of categories, including providing accurate information to borrowers, investors, and courts, and categories addressing servicing transfers and loss mitigation applications, among others.

Examples of the areas in which servicers must achieve objectives pursuant to the rules include the following bullets set forth. These are providing accurate and timely disclosures in response to borrowers request for information, investigating borrowers complaints, providing mortgage owners accurate information about their loans, submitting accurate documents during foreclosure, and transferring information properly during servicing transfers.

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The policies and procedures also set forth a number of requirements relating to loss mitigation. These include consulting with investors to identify available loss mitigation options upfront in the servicing relationship, providing borrowers accurate information about those options, and

evaluating borrowers application for loss mitigation options pursuant to requirements established by owners or investors of mortgage loans.

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The general servicing policies, procedures, and requirements also include requirements relating to document retention and the storage of mortgage servicing account information, including a requirement that certain account information must be compilable into a servicing file within a set period of time.

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Servicers are also subject to requirements with respect to obtaining force-placed insurance. A servicer may not impose a charge on a borrower for force-placed insurance coverage unless the servicer has a reasonable basis to believe that the borrower has failed to maintain hazard insurance required by the loan contract, and the servicer has provided certain notices required by the mortgage servicing rules to the borrower before the charge may be imposed. These notices include an initial notice, at least 45 days before charges may be imposed, and a reminder notice at least 30 days after the first notice, and at least 15 days before charges are imposed. These notices create the 45 day notice cycle before a borrower may be subject to a charge for force-placed insurance.

Charges for force-placed insurance must be for services that are actually performed and bear a reasonable relationship to the servicer's cost of providing those services. Notably, charges subject to state regulation as a business of insurance, for example insurance premiums, were authorized by federal law for flood insurance, are not subject to restrictions for charges relating to force-placed insurance. The rule contains model forms that servicers may use to assist in complying with these requirements.

The rules also impose additional obligations with respect to the servicing of borrower accounts where borrowers have escrowed for hazard insurance. A servicer may not obtain force-placed insurance if a servicer is able to maintain the delinquent borrower's existing coverage for hazard insurance. Essentially, if a borrower becomes delinquent on a mortgage loan, the current rule prior to the bureau's amendments provided that a servicer is not required to advance or disperse from an escrow account in the event that a borrower is more than 30 days overdue on the mortgage loan obligation. The amendments in the bureau's mortgage servicing rules provide that, notwithstanding the delinquency of the borrower, including for borrowers that are more than 30 days overdue, a servicer may not obtain hazard insurance if the servicer is capable of maintaining the borrower's existing coverage by advancing funds to an escrow account or

dispensing those funds from an escrow account. The servicer is considered unable to maintain the borrower's hazard insurance if the property is vacant, or if the insurance has been cancelled for reasons other than non-payment. The specific requirements relating to obtaining force-placed insurance for borrowers that have escrowed for hazard insurance contain an exemption for small servicers, as defined for purposes of the periodic statement exemption in Regulation Z.

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The rules relating to force-placed insurance for borrowers that have escrowed for hazard insurance contain an exemption for small servicers. Small servicers, as defined in Regulation Z, in connection with the periodic statement requirement, are exempt from the force-placed insurance rules for escrowed borrowers so long as any force-placed insurance obtained by such small servicer is less costly than the amount the servicer would be required to advance to maintain the borrower's hazard insurance.

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The mortgage servicing rules also impose obligations on servicers with respect to the servicing of accounts of borrowers that have become delinquent. These requirements are set forth in the early intervention, continuity of contact, and loss mitigation procedure provisions.

The early intervention requirement provides that, by the 36<sup>th</sup> day of a borrower's delinquency, a servicer must make good faith efforts to engage in live contact with borrowers, and further, by the 45<sup>th</sup> day of a borrower's delinquency, a servicer must provide written information to borrowers about loss mitigation options that may be available. This is intended to engage in contact with borrowers early in the delinquency process so as to inform borrowers of the availability of loss mitigation options that may be available to them.

Servicers must also provide for continuity of contact with the delinquent borrowers. The continuity of contact requirement provides that servicers must have policies and procedures to assign support personnel to assist delinquent borrowers with the process of applying for loss mitigation options. Those policies and procedures must ensure that such personnel can access borrower information and provide such information to decision makers with respect to the evaluation of a loss mitigation application.

Both the early intervention and the continuity of contact requirements provide an exemption for small servicers. In addition to the early intervention and the continuity of contact requirements, the mortgage servicing rules also include obligations with respect to the evaluation of loss mitigation applications.

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A loss mitigation application is an oral or written request for a loss mitigation option that is accompanied by any information required by a servicer for evaluation for a loss mitigation option. For any loss mitigation application received 45 days or more before a foreclosure sale, a servicer is required to review the application, determine if the application is complete or incomplete, and provide a written notice, within 5 days, stating the servicer's determination of completeness, and, if an application is incomplete, the information required to complete the information and a date by which such information should be provided. A servicer is required to exercise reasonable diligence in obtaining documents and information to complete the application. Upon review of the loss mitigation application, the servicer must provide a written decision to the borrower regarding whether the servicer will offer the borrower a loss mitigation option. A servicer that denies a borrower for any loan modification option must provide in the written notice a statement of the basis for the servicer's denial. A servicer may not simply state that an investor requirement was the basis for the denial but must provide specific information regarding why a borrower was denied for a loan modification option.

The rule includes additional information regarding how a servicer presents information relating to a denial based upon the net present value test, the use of decisioning waterfall, or other investor requirements.

If a complete loss mitigation application was received 90 or more days before a foreclosure sale, a borrower is also entitled to an appeal of the denial of any loan modification option. Such appeal must be reviewed within 30 days by independent servicer personnel.

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The loss mitigation procedures also include restrictions on the process of dual tracking. Dual tracking is the simultaneous evaluation of a borrower for a loss mitigation option while the borrower's foreclosure process proceeds. The bureau has implemented a restriction on dual tracking when a borrower submits a complete loss mitigation application. A servicer may not begin the foreclosure process when a borrower has submitted a complete loss mitigation application unless one of the following events has occurred: the servicer denies the application, and the time for any appeal has expired, the borrower declines or fails to accept the loss mitigation option, or the borrower fails to comply with the loss mitigation agreement.

In order to implement this protection on beginning the foreclosure process when the borrower has submitted a complete loss mitigation application, the bureau has also established a 120 day prohibition on beginning the foreclosure process. A servicer may not make the first notice or

filing required for a foreclosure on a borrower unless the borrower is more than 120 days delinquent. A servicer may not make the first notice or filing required for foreclosure for a borrower that is less than 120 days delinquent. This prohibition provides the borrower time to submit a complete loss mitigation application and receive an evaluation for a loss mitigation option.

Once the foreclosure process has started, the loss mitigation procedures provide restrictions on dual tracking with respect to the completion of the foreclosure process. After a foreclosure starts, if a borrower submits a complete application for a loss mitigation option more than 37 days before a scheduled foreclosure sale, a servicer may not complete the foreclosure until the servicer has evaluated the application for all available loss mitigation options, notified the borrower of the result, and one of the above-mentioned steps has occurred. These are specifically that the servicer denies the application and time for an appeal has expired, the borrower declines or fails to accept the loss mitigation option, or the borrower fails to comply with the loss mitigation agreement. A servicer is under an obligation to notify foreclosure counsel that a complete application has been received so as to effectuate the restrictions on dual tracking.

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The loss mitigation procedures, like the early intervention and continuity of contact requirements, are subject to an exemption for small servicers. As a reminder, those three requirements, as well as the periodic statement requirements set forth under Regulation Z, and the provisions relating to obtaining force-placed insurance for borrowers that have escrowed for hazard insurance, also include an exemption for small servicers. A small servicer services, together with any affiliates, 5,000 or fewer mortgage loans, all of which are owned by, or were originated by, the servicer or its affiliates. Small servicer determinations are made each January 1 for the remainder of the year, based on the number of loans serviced by the servicer and its affiliates.

There are two points to keep in mind with respect to the small servicer exemption. First, the small servicer exemption includes any housing finance agency regardless of the size of the servicing portfolio of any such agency. And second, for any loan, a master and any sub-servicer must each be a small servicer. Thus, if a servicer that is otherwise small hires a sub-servicer for a mortgage loan, and the sub-servicer does not meet the requirements for a small servicer, the master servicer and the small servicer must comply with the requirements of the rule and do not gain the benefit of the small servicer exemption for that mortgage loan.

In addition to the small servicer exemption, other exemptions apply to the requirements set forth under Regulation X. Reverse mortgage transactions and mortgage loans for which a lender is a qualified lender pursuant to the Farm Credit Act of 1971 are exempt from the general servicing policies, procedures, and requirements, the early intervention provisions, the continuity of contact provisions, and the loss mitigation procedures. Further, reverse mortgage transactions are exempt from the periodic statement requirement. Finally, ARMs with terms of one year or less, and certain unique transactions, are exempt from the ARM disclosure requirements.

The effective date for the mortgage servicing rules is January 10, 2014.

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Questions?

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