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Executive Summary of the 2016 Mortgage Servicing Rule

On August 4, 2016, the Consumer Financial Protection Bureau (Bureau) issued a final rule (2016 Mortgage Servicing Rule) amending certain mortgage servicing provisions in Regulation X and Regulation Z. Concurrently with the issuance of the 2016 Mortgage Servicing Rule, the Bureau issued an interpretive rule under the Fair Debt Collection Practices Act (FDCPA), relating to servicers' compliance with certain mortgage servicing provisions as amended by the 2016 Mortgage Servicing Rule.

The 2016 Mortgage Servicing Rule's key changes and the interpretive rule (2016 FDCPA Interpretive Rule) are summarized below. The key provisions affecting small servicers are highlighted in a separate table titled Small Servicers and Key Provisions of the 2016 Mortgage Servicing Rule, available at <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/mortserv>. This summary and the table provide high-level summaries of the 2016 Mortgage Servicing Rule, but are not substitutes for it. The 2016 Mortgage Servicing Rule, available at <http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/amendments-2013-mortgage-rules-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/>, is the definitive source regarding its requirements.

Successors in Interest

The 2016 Mortgage Servicing Rule makes several changes related to successors in interest.

First, it adds similar definitions of "successor in interest" to subpart C of Regulation X and to Regulation Z. The two definitions vary slightly to account for the different terms used in the two regulations (e.g., use of the term "borrower" in Regulation X and "consumer" in Regulation Z).

Generally, a person is a successor in interest for purposes of Regulation X¹ if a borrower transfers an ownership interest in a property securing a mortgage loan to the person by means of one of the types of transfers enumerated in the 2016 Mortgage Servicing Rule. These types of transfers are: (i) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety; (ii) a transfer to a relative resulting from the death of a borrower; (iii) a transfer where the spouse or children of the borrower become an owner of the property; (iv) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or (v) a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property. A person does not have to assume or otherwise be liable on the mortgage loan in order to be a successor in interest under the 2016 Mortgage Servicing Rule.

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

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

¹ For Regulation Z's definition of successor in interest, see 12 CFR 1026.2(a)(27)(i).

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

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

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

Unless a servicer is exempt from the loss mitigation requirements, it must review and evaluate a loss mitigation application received from a confirmed successor in interest in accordance with Regulation X's loss mitigation procedures if the property is the confirmed successor in interest's

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

These changes are effective 18 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*.

Definition of Delinquency

The 2016 Mortgage Servicing Rule defines "delinquency" to mean a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. It provides that a borrower and a borrower's mortgage loan obligation are 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. The 2016 Mortgage Servicing Rule applies this definition to specified mortgage servicing provisions of Regulation X and the periodic statement provisions for mortgage loans of Regulation Z.

These changes are effective 12 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*.

For more information on the definition of delinquency and how it applies, see the Factsheet on Delinquency and the 2016 Mortgage Servicing Rule, <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/mortserv>.

Requests for Information

The 2016 Mortgage Servicing 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. For any 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. For requests that do not expressly request the name or number of the trust or pool 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, the servicer complies by

providing the name and contact information for Fannie Mae or Freddie Mac, as applicable. However, if the request does expressly request the name or number of the trust or pool 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, the servicer must provide the name of the trust, and the trustee's name, address, and appropriate contact information.

These changes are effective 12 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*.

Force-Placed Insurance

The 2016 Mortgage Servicing Rule amends the force-placed insurance disclosures and model forms to account for situations when a servicer wishes to force-place insurance because the borrower has insufficient, rather than expiring or expired, hazard insurance on the property. Additionally, the 2016 Mortgage Servicing Rule gives servicers the option to include a borrower's mortgage loan account number on the force-placed insurance notices.

These changes are effective 12 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*.

Early Intervention

The 2016 Mortgage Servicing Rule clarifies a servicer's early intervention live contact and written notice obligations. It also revises the exemption from early intervention for borrowers who are in bankruptcy or who have invoked cease communication protection under the Fair Debt Collection Practices Act (FDCPA).

The 2016 Mortgage Servicing Rule clarifies that a servicer must establish or make good faith efforts to establish live contact so long as the borrower remains delinquent and must provide multiple early intervention written notices in certain circumstances. A servicer is not required to provide more than one written notice within a 180-day period. If the borrower is 45 days or more delinquent at the end of any 180-day period, a servicer must provide the written notice again no later than 180 days after providing the prior written notice. If the borrower is less than 45 days delinquent at the end of any 180-day period, a servicer must provide the written notice again no later than 45 days after the payment due date.

The 2016 Mortgage Servicing Rule exempts a servicer from the early intervention live contact requirements for a mortgage loan when ***either*** the following first or second condition is met: (1)

any borrower on the loan is in bankruptcy; or (2) the servicer is a debt collector under the FDCPA with respect to the mortgage loan, and any borrower on the loan has invoked the FDCPA's cease communication protection with respect to that loan.² If either the first or second condition is met, the servicer is also exempt from the written notice requirements for the mortgage loan if no loss mitigation option is available. If any loss mitigation option is available, the servicer must comply with modified written notice requirements for the mortgage loan, unless ***both*** the first and second conditions are met: (1) any borrower on the mortgage loan is a debtor in bankruptcy; ***and*** (2) the servicer is a debt collector under the FDCPA with respect to the mortgage loan, and any borrower on the loan has invoked the FDCPA's cease communications protection with respect to that loan.² If both of these conditions are met, the servicer is exempt from the written notice requirements for the mortgage loan.

Further, the 2016 Mortgage Servicing Rule requires that a servicer resume compliance with the early intervention requirements once the bankruptcy case is closed or dismissed, or the borrower reaffirms personal liability for the mortgage loan. For "ride through" borrowers who have discharged personal liability for a mortgage loan, a servicer is required to resume compliance with the written notice requirements if the borrower has made any partial or periodic payment on the mortgage loan after commencement of the borrower's bankruptcy case.

These changes are effective 12 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*.

Loss Mitigation

The 2016 Mortgage Servicing Rule revises and clarifies several of Regulation X's loss mitigation requirements.

First, it 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 a borrower's prior complete loss mitigation application and a subsequent loss mitigation application.

Second, it modifies an existing exception to the 120-day prohibition on foreclosure filing to allow a servicer to join the foreclosure action of either a superior or subordinate lienholder.

² Note that this second condition is not met unless the servicer is a debt collector subject to the FDCPA with respect to the mortgage loan for which the borrower invokes cease communications protection.

Third, it clarifies how servicers select the reasonable date by which a borrower should return documents and information to complete a loss mitigation application.

Fourth, it clarifies a servicer's obligations if a borrower submits a complete loss mitigation application more than 37 days before the foreclosure sale. The servicer must not move for a foreclosure judgment, move for an order of sale, or conduct a foreclosure sale, even where a third party conducts the sale proceedings, unless one of the specified circumstances is met (the borrower's loss mitigation application is properly denied, withdrawn, or the borrower fails to perform on a loss mitigation agreement). Absent one of the specified circumstances, conduct of the sale violates Regulation X. Additionally, the servicer must promptly instruct foreclosure counsel not to make any further dispositive motion, to avoid a ruling or order on a pending dispositive motion, or to prevent conduct of a foreclosure sale, unless one of the specified circumstances is met. Counsel's failure to follow these instructions does not relieve a servicer of its obligations not to move for foreclosure judgment or order of sale, or conduct a foreclosure sale.

Fifth, it requires a servicer to provide a written notice to a borrower within five days (excluding Saturdays, Sundays, or legal holidays) after it receives a complete loss mitigation application. The notice must indicate that the servicer has received a complete application and provide the date of completion, a statement that the servicer expects to complete its evaluation within 30 days from the date it received the complete application, and an explanation that the borrower is entitled to certain specific foreclosure protections and may be entitled to additional protections under state or federal law. The notice also must clarify that the servicer might need additional information later, in which case the evaluation could take longer and the foreclosure protections could end if the servicer does not receive the information as requested.

Sixth, it sets forth how servicers must attempt to obtain documents or information not in the borrower's control and evaluate a loss mitigation application while waiting for third party information. In particular, it requires that servicers exercise reasonable diligence to obtain the documents or information and prohibits servicers from denying borrowers solely because a servicer lacks them, except under limited circumstances. It also requires that servicers promptly provide a written notice to the borrower if the servicer lacks required third party information within 30 days after receiving the borrower's complete application and cannot determine which loss mitigation options, if any, it will offer the borrower. In this circumstance, the 2016 Mortgage Servicing Rule also requires servicers to complete all possible steps in the evaluation process within the 30 days, notwithstanding the lack of the required third party information. It

also requires servicers to notify borrowers of the loss mitigation determination in writing promptly upon receipt of the third party information it lacked.

Seventh, it clarifies that servicers may offer a short-term payment forbearance program or short-term repayment plan based upon an evaluation of an incomplete loss mitigation application. It also requires servicers to provide a written notice promptly after offering a short-term payment forbearance program or short-term repayment plan, unless the borrower has rejected the offer. The notice must state the specific payment terms and duration of the program or plan and include other specified information.

Eighth, it 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. It also 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 in conjunction with other information, as prescribed by requirements established by the owner or assignee of the mortgage loan.

Finally, it addresses and 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.

These changes are effective 12 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*.

Prompt Payment Crediting

The 2016 Mortgage Servicing Rule clarifies how servicers must treat periodic payments made by consumers who are performing under either temporary loss mitigation programs or permanent loan modifications. Periodic payments made pursuant to temporary loss mitigation programs must continue to be credited according to the loan contract and could, if appropriate, be credited as partial payments. Periodic payments made pursuant to a permanent loan modification must be credited under the terms of the permanent loan agreement.

These changes are effective 12 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*.

Periodic Statements

The 2016 Mortgage Servicing Rule clarifies certain periodic statement disclosure requirements relating to mortgage loans that have been accelerated, have been permanently modified, or are in temporary loss mitigation programs.

It also requires servicers to send modified periodic statements (or written notices, where servicers are otherwise permitted to send coupon books and written notices instead of periodic statements) to consumers who have filed for bankruptcy, subject to certain exemptions. The content will vary depending on whether the consumer is a debtor in a Chapter 7 or 11 bankruptcy case, or a Chapter 12 or 13 bankruptcy case. The 2016 Mortgage Servicing Rule includes sample forms that servicers may use for consumers in bankruptcy to ensure compliance.

The 2016 Mortgage Servicing Rule also exempts servicers from the periodic statement requirement for charged-off mortgage loans if the servicer will not charge any additional fees or interest on the account and provides a periodic statement including additional disclosures related to the effects of charge off.

The changes regarding the bankruptcy periodic statement exemption and modified statements for consumers in bankruptcy are effective 18 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*, and the other periodic statement changes are effective 12 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*.

Small Servicer

A small servicer includes a servicer that, together with any affiliates, services 5,000 or fewer mortgage loans for which the servicer (or an affiliate) is the creditor or assignee. The 2016 Mortgage Servicing Rule excludes certain seller-financed transactions and mortgage loans voluntarily serviced for a non-affiliate, even if the non-affiliate is not a creditor or assignee, from being counted toward the 5,000 loan limit.

This change is effective 12 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*.

Technical Corrections and Clarifications

In addition to the changes discussed above, the 2016 Mortgage Servicing Rule makes technical corrections and minor clarifications to wording throughout several provisions of Regulations X

and Z. Generally, these corrections and clarifications are not substantive in nature.

These technical corrections and minor clarifications are effective 12 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*.

Interpretive Rule

The 2016 FDCPA Interpretive Rule provides safe harbors from liability for servicers taking the following actions in compliance with Regulation X or Regulation Z, as amended by the 2016 Mortgage Servicing Rule: (1) communicating about a mortgage loan with a confirmed successor in interest as required or authorized by specified mortgage servicing rules in Regulation X or Z; (2) providing a written early intervention notice to a borrower who has invoked cease communication protection under the FDCPA; or (3) responding to borrower-initiated communications concerning loss mitigation after the borrower has invoked cease communication protection under the FDCPA.