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BUREAU OF CONSUMER FINANCIAL PROTECTION

Supervisory Highlights: Mortgage Servicing Special Edition 2016

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Supervisory Highlights; notice.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB) is issuing its eleventh edition of its Supervisory Highlights. In this issue, the CFPB shares findings from supervisory examination work in mortgage servicing between January 2014 and April 2016. The issue also discusses Supervision's approach mortgage to servicing exams, including a description of recent changes to the mortgage servicing chapter of the CFPB Supervision and Examination Manual.

DATES: The Bureau released this edition of the *Supervisory Highlights* on its web site on June 22, 2016.

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SUPPLEMENTARY INFORMATION:

1. Introduction

Mortgage servicers play a central role in homeowners' lives by managing their mortgage loans. Servicers collect and apply payments, work out modifications to loan terms, and handle the difficult process of foreclosure. As the financial crisis made clear, weak customer support, lost paperwork, and mishandled accounts can lead to many wrongful foreclosures and other serious harm. Since consumers do not choose their mortgage servicers they cannot take their business elsewhere.

To improve practices in the servicing market, the Dodd-Frank Act Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) imposed new requirements on servicers and gave the Consumer Financial Protection Bureau (CFPB) the authority to implement those new requirements and adopt additional rules to protect consumers. The CFPB released rules, effective January 10, 2014, to improve the information consumers receive from their servicers, to enhance the protections available to consumers to address servicer errors, and to establish baseline servicing requirements that provide additional protections for consumers who have fallen behind on their mortgage payments. Supervisory examinations of mortgage servicers now generally focus on reviewing for compliance with these servicing rules and for unfair, deceptive, and abusive acts or practices.

To assist industry in its efforts to comply Federal consumer financial law, this Special Edition of *Supervisory Highlights* discusses recent supervisory examination observations in mortgage servicing. To provide additional context for readers, we integrate these recent observations with observations from previous editions of *Supervisory Highlights* by subject matter.[1]

The magnitude and persistence of compliance challenges since 2014, particularly in the areas of loss mitigation and servicing transfers, show that while the servicing market has made investments in compliance, those investments have not been sufficient across the marketplace. Outdated and deficient servicing technology continues to pose considerable risk to consumers in the wider servicing market. These shortcomings are compounded by lack of proper training, testing, and auditing of technology-driven processes, particularly to handle more individualized situations related to delinquencies and loss mitigation processes. None of these problems is

[1] Observations shared in previous editions of *Supervisory Highlights* will be footnoted. Questions or comments may be directed to CFPB_Supervision@cfpb.gov.

insurmountable, however, with the proper focus on making necessary improvements, especially in the information technology systems necessary for effective implementation. Supervisory examinations do show that some servicers have significantly improved their compliance positions, and this edition concludes by sharing how these servicers have strengthened their compliance.

2. Our approach to mortgage servicing examinations

To determine which mortgage servicers to examine, we use a prioritization framework that considers a broad range of factors to predict the likelihood of consumer harm.[2] For instance, because a servicer's market share corresponds to the number of consumers affected, we prioritize relatively larger servicers with a more dominant market presence over comparatively smaller servicers.

Our prioritization approach counterbalances this size consideration with what we call field and market intelligence. We consider qualitative and quantitative factors for each servicer such as the strength of compliance management systems, the existence of other regulatory actions, findings from our prior examinations, servicing transfer activity, the number, severity and trends of consumer complaints, as well as input from housing counselors and other stakeholders about institutional performance based on their experience.

In fall 2011, we published the initial mortgage servicing chapter of the CFPB Supervision and Examination Manual. We update the manual periodically, most recently in May 2016, to reflect regulatory changes, to make technical corrections and to update examination priorities.[3] In the latest version, we enhance the section related to consumer complaints to highlight that for

[2] See *Supervisory Highlights*: Summer 2013, Section 3.2.3, input from housing counselors and other stakeholders.
[3] See CFPB Supervision and Examination Manual, *available at* http://files.consumerfinance.gov/f/201401_cfpb_mortgage-servicing-exam-procedures.pdf

mortgage servicers, examiners will be reviewing whether the servicer has an adequate process for expedited evaluation of complaints or notices of error for borrowers or borrower advocates alleging regulatory compliance issues where the borrower is facing imminent foreclosure. The possibility of foreclosure puts even more weight on the importance of an appropriate complaint escalation process, which is essential to any compliance management system.[4]

Generally, our examinations review compliance management systems and evaluate compliance through transaction testing of specific loan files. In many instances, examiners conduct specific transaction testing based on consumer complaints submitted to housing counselors or the CFPB's Office of Consumer Response, particularly where the servicer did not provide a sufficient response or remedy. The scope for the content of our examinations reflects the size and risk profile of each servicer, and as a result, the content of our transaction testing may vary across market participants.

Our supervisory work also has included use of the Equal Credit Opportunity Act (ECOA) Baseline Modules, which are part of the CFPB Supervision and Examination Manual. Examination teams use these modules to conduct ECOA Baseline Reviews, which evaluate how well institutions' compliance management systems identify and manage fair lending risks. The module 4, covering fair lending risks related to servicing, includes questions on such topics as fair lending training of servicing staff, fair lending monitoring of servicing, and servicing consumers with Limited English Proficiency. Based on the information gathered through these ECOA Baseline Reviews, and other inputs used in our prioritization process, Supervision will be conducting more comprehensive ECOA Targeted Reviews of mortgage servicers in 2016.

[4] See page CMR 10 "Consumer Complaint Response" in the CFPB Supervision and Examination Manual, *available at*: http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf

Where we observe more significant violations during an examination, we may refer matters to our Action Review Committee.[5] The committee uses a deliberative and rigorous process to determine whether matters that originate from our examinations will be resolved through confidential supervisory action, such as a board resolution or memorandum of understanding, or through a public enforcement action. In determining the appropriate action, the committee considers a variety of factors, including the magnitude of consumer harm, whether the violation was self-identified, and the timeliness and scope of remediation.

Additionally, we have identified potential risk areas and provided general compliance suggestions related to mortgage servicing by publishing several compliance bulletins. The bulletins issued to date have covered the following topics: Permanent Change of Station Orders,[6] Mortgage Servicing Transfers,[7] and Private Mortgage Insurance Cancellation and Termination.[8]

3. Supervisory observations

In examining for compliance with the servicing rules, Supervision has addressed issues across servicing business areas, and most extensively in the areas of loss mitigation acknowledgement notices (3.1); loss mitigation offers and related communications (3.2); loan modification denial notices (3.3); policies and procedures (3.4); and servicing transfers (3.5). The following findings reflect information obtained from supervisory activities as captured in

[5] See *Supervisory Highlights*: Summer 2015, Section 3.1.4, *available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf.

[6] See Interagency Guidance on Mortgage Servicing Practices Concerning Military Homeowners with Permanent Change of Station Orders, *available at* http://files.consumerfinance.gov/f/201206_cfpb_PCS_Orders_Guidance.pdf.

[7] See CFPB Bulletin 2014-01 (Aug. 19, 2014), *available at* http://files.consumerfinance.gov/f/201408_cfpb_bulletin_mortgage-servicing-transfer.pdf

[8] See CFPB Bulletin 2015-03 (Aug. 4, 2015), *available at* http://files.consumerfinance.gov/f/201508_cfpb_compliance-bulletin_private-mortgage-insurance-cancellation-and-termination.pdf.

examination reports or supervisory letters. In some instances, not all corrective actions, including through enforcement, have been completed at the time of this report's publication.

3.1. Loss mitigation acknowledgement notices

Before the new servicing rules, gaps in servicer communication and coordination kept many distressed consumers in the dark about available options to avoid foreclosure. Consumers who applied for such options sometimes found themselves stuck in a cycle of lost paperwork and redundant document requests while their foreclosure dates grew nearer.

To address this set of issues, the servicing rules now require that if a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, it must notify the borrower in writing within five days to acknowledge receipt of the application and whether it is complete or incomplete.[9] If incomplete, the notice must state the additional documents and information the borrower must submit to complete the application and a reasonable date by which the borrower should submit those documents and information.[10]

CFPB examiners have found multiple violations related to these critical process requirements. Examiners found that one or more servicers failed to send any loss mitigation acknowledgment notices due to a repeated loss mitigation processing platform malfunction over a significant period of time. Supervision cited the servicer(s) for violating Regulation X and directed the servicer(s) to remediate affected borrowers, including for interest, fees, and any additional harm incurred.[11] Supervision also directed the servicer(s) to fix and monitor the

[9] 12 CFR 1024.41(b)(2)(i)(B).

[10] Id. The acknowledgment notice also must include a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options

[11] 12 CFR 1024.41(b)(2)(i)(B). Previously discussed in the Summer 2015 edition of *Supervisory Highlights*, *available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf

servicing platform for compliance weaknesses. Supervision later confirmed that the servicer(s) undertook appropriate corrective actions.

Supervision also found deceptive statements in loss mitigation acknowledgement notices. One or more servicers sent acknowledgement notices that represented homes would not be foreclosed on before the deadline passed for submitting missing documents. But the servicer(s) foreclosed on homes before the submission deadline. Supervision determined the representations to be deceptive, independent of whether or not the servicing rules permitted the servicer(s) to foreclose on the specific borrower(s) at that time. Supervision directed the servicer(s) to undertake remedial and corrective actions which are under review.[12]

Supervision also observed deficiencies with the timeliness and content of acknowledgment notices. One or more servicers sent acknowledgement notices more than five days after receiving a borrower's loss mitigation application. And at one or more servicers, the noncompliant acknowledgment notices for incomplete loss mitigation applications:

- Failed to state the additional documents and information for borrowers to submit to complete the application, such as income and tax forms that the servicer's internal records showed were necessary at that time,. Instead, the servicer(s) separately requested the necessary documents several weeks after the acknowledgment notice.
- Requested documents, sometimes dozens in number, inapplicable to borrower circumstances and which were not needed to evaluate borrowers for loss mitigation.[13]
- Requested documents that borrowers already submitted.

[12] 12 U.S.C. 5536(a)(1)(B).

[13] Previously discussed in the Summer 2015 edition of *Supervisory Highlights, available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf

- Failed to include any reasonable date by which borrowers must return additional documents and information.
- Gave borrowers 30 days to submit additional documents, but the servicer(s) then denied borrowers' applications for loss mitigation before 30 days.[14]
- Failed to include a statement that borrowers should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

Supervision cited the servicer(s) above for violating Regulation X and directed them to revise deficient acknowledgement notices to meet Regulation X requirements.[15]

3.2 Loss mitigation offer letters and related communications

Supervision also found serious violations of Federal consumer financial law with servicer loss mitigation offer letters, loss mitigation offers, and related communications. In offering proprietary modifications, one or more servicers engaged in deceptive and abusive practices in connection with communicating whether and when outstanding fees, charges, and advances would be assessed. Specifically, one or more servicers engaged in a deceptive practice by misrepresenting to borrowers that it would defer such charges to the maturity date of the loan, when in fact it often assessed hundreds of dollars in these charges after the borrowers signed and returned the permanent modification agreements. Additionally, one or more servicers took unreasonable advantage of borrowers' lack of understanding of the material risks of the loan modification and took unreasonable advantage of borrowers' inability to protect their interests in selecting or using the modification because the language in the proprietary modification offer

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[14] Previously discussed in the Fall 2015 edition of *Supervisory Highlights, available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf

[15] 12 CFR 1024.41(b)(2)(i)(B).

made it impossible for a borrower to understand the true nature of how and when these charges would be assessed. Without such knowledge, a borrower could not have understood the material risks of the modification, nor could he adequately protect himself from the potential payment shock from the assessment of such charges. Supervision cited the servicer(s) for deceptive and abusive practices and required the servicer(s) to provide accurate information regarding fee assessment practices about its proprietary loss mitigation options to borrowers.[16]

Furthermore, one or more servicers sent loss mitigation offer letters with response deadlines that had already passed or were about to pass by the time the borrower received the letter. The servicer(s) generated the letters in timely fashion, but delayed sending them to borrowers for a substantial number of days. Supervision cited this practice as unfair and directed the servicer(s) to undertake remedial and corrective actions which are under review.[17]

With respect to permanent modification agreements, one or more servicers sent agreements to some borrowers that did not match the terms approved by its underwriting software. Many borrowers signed and returned the agreements, but then the agreements were not executed by the servicer(s). Instead, after substantial delays, the servicer(s) sent updated modification agreements with materially different terms to the borrowers. These misrepresentations about the available terms affected the ultimate payments the borrowers would make, influencing both whether they would accept the modification and how they could subsequently budget based on their expected payment. Supervision determined that the

[16] 12 U.S.C. 5536(a)(1)(B)

[17] 12 U.S.C. 5536(a)(1)(B).

servicer(s) engaged in a deceptive practice in connection with these modifications and directed the servicer(s) to undertake remedial and corrective actions, which are under review.[18]

One or more servicers represented in loan modification trial period plans that borrowers would receive a permanent modification after making three trial payments. However, after borrowers made the required trial payments, the servicer(s) could still deny the permanent modification based on the results of a title search. The servicer(s) did not communicate to borrowers that permanent loan modifications were contingent on a title search in the trial period offer letter. Supervision determined the practice to be deceptive and directed the servicer(s) to provide accurate information to borrowers about loss mitigation options.[19]

Against investor guidelines, one or more servicers treated borrower self-employed gross income as net income when evaluating loss mitigation applications. The practice inflated borrower income and may have led to less affordable modifications. Supervision traced the practice to an underwriting error and cited the servicer(s) for violating Regulation X.[20] It directed the servicer(s) to conduct training for loss mitigation personnel to calculate self-employment income according to investor guidelines.

One or more servicers failed to convert a substantial number of trial modifications to permanent modifications timely after borrowers successfully completed trial modifications. The delays harmed borrowers who then owed higher amounts of accrued interest under the finalized permanent modifications than they would have owed under a timely conversion. During the delay, the interest accrued at the original contractual rate, rather than at the lower rate provided

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[18] 12 U.S.C. 5536(a)(1)(B). Previously discussed in the Fall 2014 edition of *Supervisory Highlights, available at* http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf

[19] 12 U.S.C. 5536(a)(1)(B).

[20] 1024.41(c)(1)(i).

under the modification's terms. The servicer then capitalized the additional interest into the principal balance owed under the permanent modification. The servicer(s) also continued to report borrowers that had been delinquent at the beginning of their trial modifications as delinquent to the consumer reporting agencies during the length of the delay. Some affected borrowers filed complaints with the CFPB's Office of Consumer Response describing how the uncertainty of the loan modification decisions hurt their ability to plan for the future. Supervision determined that the substantial delays, combined with the negative consequences attributable to the delays, constituted an unfair practice and directed the servicer(s) to undertake remedial and corrective actions which are under review.[21]

Supervision found a deceptive practice related to how one or more servicers disclosed the terms of a payment plan that deferred mortgage payments for daily simple interest mortgage loans.[22] The communications included misleading representations about the deferments, which represented that deferred interest would be repayable at the end of the loan term when, in fact, the servicer collected the deferred interest from consumer immediately after the deferment ended. Supervision directed the servicer(s) to clearly disclose how interest accrues while on the plan and its impact on monthly payments after the deferment period concludes.

Supervision found that one or more servicers sent notices warning that foreclosure would be imminent to borrowers who were current on their low-balance home equity lines of credit (HELOCs) and no monthly payment due. Supervision cited the practice as deceptive and

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[21] 12 U.S.C. 5536(a)(1)(B). Previously discussed in the Fall 2014 edition of *Supervisory Highlights, available at* http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf

[22] 12 U.S.C. 5536(a)(1)(B). Previously discussed in the Summer 2015 edition of *Supervisory Highlights, available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf

directed servicer(s) to cease sending collection letters that misled consumers into believing that the loans were delinquent.[23]

Additionally, Supervision has repeatedly identified waivers of consumer rights in loss mitigation agreements. Regulation Z states that a "contract or other agreement relating to a consumer credit transaction secured by a dwelling . . .may not be applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of any Federal law."[24] Examiners found one or more servicers required borrowers to sign waivers agreeing that they would have no "defenses, set-offs, or counterclaims to the indebtedness of borrowers pursuant to the Loan Document" in order to enter mortgage repayment and loan modification plans. Defenses, set-offs, and counterclaims pertain to a contract or other agreement to a consumer credit transaction secured by a dwelling. As borrowers were likely to read the waiver as barring them from bringing claims — including Federal claims — related to their mortgage, Supervision cited the waiver language as deceptive and directed the servicer(s) to remove it from all loss mitigation agreements.[25]

3.3 Loan modification denial notices

Where servicers deny complete loss mitigation applications for any trial or permanent loan modification option, denial notices help borrowers understand the reasons and, where appropriate, provide relevant information about the appeals process. Generally, the servicing rules require that denial notices provide the specific reason or reasons for denying the borrower the trial or permanent loan modification option and, if applicable, that the borrower was not

[23] 12 U.S.C. 5536(a)(1)(B). Previously discussed in the Summer 2015 edition of *Supervisory Highlights, available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf

[24] 12 CFR 1026.36(h)(2).

[25] 12 U.S.C. 5536(a)(1)(B). Previously discussed in the Fall 2015 edition of *Supervisory Highlights, available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf

evaluated on other criteria. The rules enable a borrower to appeal a denial of a trial or permanent loan modification option so long as the borrower's complete loss mitigation application is received 90 days or more before a foreclosure sale or during the pre-foreclosure review period.[26]

Supervision found that denial notices at one or more servicers failed to state the correct reason(s) for denying a trial or permanent loan modification option as required by Regulation X.[27] For example, the notices' denial reason stated that the borrower "did not provide the requested additional information needed to complete the workout review." However, the servicer(s) platform indicated that the borrower's application was complete and was instead denied for a specific reason related to the borrower's income.

One or more servicers' notices also stated "Not Available*" as the reason for denying loss mitigation applications. The asterisk elaborated: "Not Available means this program was not considered due to an eligibility requirement or requirements not met."

Supervision cited the two practices above for violating Regulation X and directed the servicer(s) to state the specific reason or reasons for its denial of each trial or permanent loan modification option and, if applicable, that the borrower was not evaluated on other criteria.[28]

When a borrower has the right to appeal the denial of a trial or permanent loan modification, a servicer must, in its notice after evaluating the borrower's complete loss mitigation application, inform the borrower of the appeal right and the amount of time the borrower has to file the appeal.[29] One or more servicers sent denial notices that failed to communicate a borrower's specific right to appeal. The notices instead generically stated that

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[26] 12 CFR 1024.41(d), (h).

[27] 12 CFR 1024.41(d).

[28] 12 CFR 1024.41(d).

[29] 12 CFR 1024.41(c)(1)(ii).

the borrower may have a right to appeal if the borrower met certain requirements. Supervision cited servicer(s) for violating Regulation X and directed the servicer(s) to include more specific appeal language in their denial letters where appropriate, rather than only generic appeal language in all instances.[30]

3.4 Servicing policies, procedures, and requirements

To undergird the loss mitigation application process, Regulation X requires servicers to maintain policies and procedures reasonably designed to achieve specific objectives that include: providing timely and accurate information; properly evaluating loss mitigation applications; facilitating oversight of and compliance by service providers; and facilitating transfer of information during servicing transfers.[31] In reviewing for these requirements, Supervision found that one or more servicers violated Regulation X because their policies and procedures were not reasonably designed to achieve the following objectives:

- Providing a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan. One or more servicers failed to provide information and loss mitigation application forms to a substantial number of borrowers who called in to request such information.[32]
- Upon the death of a borrower, promptly identifying and facilitating communication with the successor in interest of the deceased borrower with respect to the property secured by

[30] 12 CFR 1024.41(c)(1)(ii). Previously discussed in the Fall 2015 edition of *Supervisory Highlights, available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf

[31] 12 CFR 1024.38(a), (b).

[32] 12 CFR 1024.38(b)(1)(iii)

the deceased borrower's mortgage loan.[33] One or more servicers required probate for borrowers to establish themselves as successors in states where probate was not required.

- Identifying with specificity all loss mitigation options for which a borrower may be eligible pursuant to any requirements established by an owner or assignee of the borrower's mortgage loan.[34] One or more servicers sent letters to borrowers soliciting loss mitigation applications when internal records showed that the borrowers were not eligible for any loss mitigation option.[35]
- Providing prompt access to all documents and information submitted by a borrower in connection with a loss mitigation option to servicer personnel assigned to assist the borrower under the rules.[36] One or more servicers failed to identify and process material submitted by borrowers to complete a loss mitigation application. The servicer(s) permitted borrowers to send material through fax, but lacked policies and procedures for date-stamping, cataloging and distributing loss mitigation material to appropriate departments, which resulted in servicer personnel assigned to assist the borrower under the rules being unable to access relevant information in a timely way.
- Properly evaluating a loss mitigation application for all options for which the borrower may be eligible based on the loan owner's requirements.[37] One or more servicers

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[33] 12 CFR 1024.38(b)(1)(vi).

[34] 12 CFR 1024.38(b)(2)(ii).

[35] Reported in the Fall 2015 edition of *Supervisory Highlights, available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf

[36] 12 CFR 1024.38(b)(2)(iii).

[37] 12 CFR 1024.38(b)(2)(v).

evaluated applications only for the loss mitigation options preselected by servicer personnel and not for all options available to the borrower.[38]

- Facilitating the sharing of accurate and current information regarding the status of any evaluation of a borrower's loss mitigation application and the status of any foreclosure proceeding among appropriate servicer personnel, including service provider personnel. One or more servicer(s)' foreclosure attorneys sent a foreclosure referral letter to the borrower after the borrower entered into a loss mitigation agreement with the servicer.[39]
- As a transferee servicer, ensuring that it can identify necessary documents or information that may not have been transferred by a transferor and obtain such documents from the transferor servicer. One or more transferee(s) failed to identify necessary documents, including loss mitigation agreements and mortgage notes not transmitted by the transferor.[40]

In the above cases where Supervision detected policies, procedures, or requirements not in compliance with Regulation X, Supervision directed servicers to implement policies, procedures, and requirements compliant with the Rule and to monitor for their effectiveness.

3.5 Servicing transfers

Transferring loans during the loss mitigation process heightens risks to consumers, including the risk that documents and information might not be accurately transferred.[41] While Supervision has observed more attention to pre-transfer planning by transferor and transferee

[38] Reported in the Fall 2015 edition of *Supervisory Highlights, available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf

[39] 12 CFR 1024.38(b)(3)(iii). Reported in the Fall 2015 edition of *Supervisory Highlight, available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf

[40] 12 CFR 1024.38(b)(4)(ii).

[41] *See* CFPB Bulletin 2014-01 (Aug. 19, 2014), *available at* http://files.consumerfinance.gov/f/201408_cfpb_bulletin_mortgage-servicing-transfer.pdf

servicers since 2014, Supervision found that at one or more servicers incompatibilities between servicer platforms led, in part, to transferees failing to identify and honor in-place loss mitigation after receiving the loans.

Additionally, one or more servicers failed to honor the terms of in-place trial modifications after transfer. Some borrowers who completed trial payments with the new servicer nevertheless encountered substantial delays before receiving a permanent loan modification. Supervision concluded that the delay caused substantial injury as trial payments were less than the amounts required by the promissory note, and consumers continuing to make trial payments while waiting for the permanent modification accrued interest on the unpaid principal balance. Such delays were exacerbated by the transferee(s)' failure to obtain timely access to an online workout tool required by the investor. Supervision cited this practice as unfair and directed the transferee servicers(s) to develop and implement policies, procedures, training, and audits to promptly identify and honor prior loss mitigation agreements, whether completed or in-flight at the time of transfer.[42]

Supervision also observed some servicers improve transfer policies, procedures, and practices. For example, in response to Supervision's direction to one or more transferee servicers to identify in-flight modifications, the transferee(s) began to use certain tools generally available to industry participants–the HomeSavers Solutions Network and the HAMP Reporting Tool–to reconcile loan data during transfer. Supervision noted that this approach gave transferee(s) the ability to identify more in-flight modifications. Despite this improvement, Supervision observed that transferee(s) still failed to recognize modifications not registered by the transferor or not

[42] 12 U.S.C. 5536(a)(1)(B). Previously discussed in the Sumer 2015 edition of Supervisory Highlights , *available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf

otherwise in the databases and could benefit from conducting a post-transfer review for in-flight loss mitigation. The transferee(s) agreed to further enhance transfer protocols.

Also in connection with servicing transfers, one or more transferee(s) found that delays in honoring in-flight modifications were caused by their dependence on the information technology department to manually override data fields whenever the servicing platform rejected transferor data. By granting override authority to loss mitigation staff, the transferee(s) reduced the time required to honor in-flight modifications.

4. **Conclusion**

While Supervision continues to be concerned about the range of legal violations identified at various mortgage servicers, it also recognizes efforts made by certain servicers to properly staff effective compliance management programs. Some servicers have made significant improvements in the last several years, in part by enhancing and monitoring their servicing platforms, staff training, coding accuracy, auditing, and allowing for greater flexibility in operations. More generally, Supervision found compliance audits that thoroughly assessed the business unit's internal control environment, clearly identified issues with compliance, detailed management's response, set a target date for resolving the identified issues, and completed the necessary adjustments promptly. At one or more servicers, these audits included reviews of service providers and were part of a wider and appropriately resourced compliance framework. One or more servicers also conducted formal reviews of information technology structures that identified the root causes of earlier compliance weaknesses, including platform outages. These reviews led the servicer(s) to replace outdated technology, such as document management systems.

Supervision also observed that servicers are actively reviewing complaints for allegations of law violations. One or more servicers used analytic tools to search, review, and track complaint records with content indicating regulatory violations. One or more servicers also created a complaint governance committee to oversee all customer complaints to ensure they receive appropriate engagement, including remediation as appropriate. One or more servicers also designated management level employees as primary contacts for Federal and State regulators and other government bodies for discussing complaints and inquiries from borrowers who are in default or have applied for loan modifications.

As the above observations show, improvements and investments in servicing technology, staff training, and monitoring can be essential to achieving an adequate compliance position. However, such improvements have not been uniform across market participants and Supervision continues to observe compliance risks, particularly in the areas of loss mitigation and servicing transfers. A growing point of emphasis for Supervision in achieving needed improvements in servicer compliance will be to require servicers to submit specific and credible plans describing how changes in their information technology systems will offer assurance that they can systematically and effectively implement the changes made to resolve the issues identified by Supervision.

6. Regulatory Requirements

This *Supervisory Highlights* summarizes existing requirements under the law, summarizes findings made in the course of exercising the Bureau's supervisory and enforcement authority, and is a non-binding general statement of policy articulating considerations relevant to the Bureau's exercise of its supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Bureau has determined that this *Supervisory Highlights* does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq*.

Dated: June 22, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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