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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1024 and 1026

[Docket No. CFPB-2014-0033]

RIN 3170-AA74

Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z); Correction

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final Rule; Official Interpretation; Correction.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is making several corrections to the final rule it issued in August 2016 (2016 Mortgage Servicing Final Rule) amending certain of the Bureau's mortgage servicing rules. First, the Bureau is correcting two typographical errors relating to the early intervention requirements. Second, the Bureau is making corrections relating to the effective date of official commentary relating to servicers' ability to remove certain language in periodic statement sample forms as an option when, for example, communicating with confirmed successors in interest; sample periodic statement forms that servicers may use for certain consumers in bankruptcy; and official commentary relating to the bankruptcy periodic statement exemptions and modified statements. The corrected effective date for the sample periodic statement forms and commentary will be April 19, 2018. Third, the Bureau is amending the Bureau's authority citation for Regulation Z.

DATES: This correction is effective October 19, 2017. The effective date of amendatory instructions 24.d at 81 FR 72390 and 25.d.ii, vii through xvi, xix, xx, and xxi through xxiv at 81

FR 72396 is being corrected from October 19, 2017, to April 19, 2018.

Pursuant to this correction, beginning April 19, 2018: proper use of the sample forms in appendices H-30(E) and H-30(F) will comply with the form and layout requirements of 12 CFR 1026.41(c) and (d); and compliance with comment 41(c)-5 of 12 CFR 1026.41(c) and commentary to 12 CFR 1026.41(e)(5) and (f) is required.

FOR FURTHER INFORMATION CONTACT: Joel L. Singerman, Counsel; or Laura A. Johnson, Senior Counsel; Office of Regulations, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Background

On August 4, 2016, the Bureau issued the 2016 Mortgage Servicing Final Rule amending certain of the Bureau's mortgage servicing rules.¹ The amendments cover nine major topics and focus primarily on clarifying, revising, or amending provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements under Regulation X's servicing provisions; and prompt crediting and periodic statement requirements under Regulation Z's servicing provisions. The amendments also address 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

¹ See Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 81 FR 72160 (Oct. 19, 2016).

Collection Practices Act. The Bureau makes the following corrections to the 2016 Mortgage Servicing Final Rule.

A. Regulation X

Model clause MS-4(D)—typographical error.

Model clause MS-4(D) in the 2016 Mortgage Servicing Final Rule contains a typographical error. It provides, in part, “We have a right to invoke foreclosure based on the terms of your mortgage contact.” The Bureau intended the sentence to read, “We have a right to invoke foreclosure based on the terms of your mortgage contract.” The Bureau is correcting this typographical error.

Comment 39(d)(2)-1—typographical error.

Regulation X comment 39(d)(2)-1 in the 2016 Mortgage Servicing Final Rule discusses a servicer’s obligations relating to the written early intervention notice, generally required under § 1024.39(b), when the borrower has provided a notice under section 805(c) of the Fair Debt Collection Practices Act and while any borrower on the mortgage loan is a debtor in bankruptcy under title 11 of the U.S. Bankruptcy Code. The comment refers to an example in comment 39(c)(1)(ii)-1.ii but should have referenced comment 39(c)(1)(ii)-2.ii. The relevant example is set forth in comment 39(c)(1)(ii)-2.ii. The Bureau is correcting this typographical error.

B. Regulation Z

Effective date stated in the amendatory instruction relating to comment 41(c)-5 in Regulation Z.

The Bureau is correcting the amendatory instruction for comment 41(c)-5 in Regulation Z. Comment 41(c)-5 relates to servicers’ ability to remove language from sample periodic statement forms that could suggest liability under the mortgage loan agreement if such language

is not applicable, for example, in the case of a confirmed successor in interest who is not liable on the mortgage loan obligation.² Although the Bureau specified an effective date for this comment of April 19, 2018, in the DATES section of the 2016 Mortgage Servicing Rule, it did not do so in the relevant amendatory instruction. The Bureau corrects this error and applies an effective date of April 19, 2018, to comment 41(c)-5.

Effective date for sample periodic statement forms and commentary relating to bankruptcy periodic statements.

The Bureau is correcting the effective date of the (1) sample periodic statement forms that servicers may use for consumers in bankruptcy to ensure compliance with Regulation Z § 1026.41, and (2) commentary to Regulation Z § 1026.41(e) and (f) relating to the bankruptcy periodic statement exemption and modified statements. In the 2016 Mortgage Servicing Final Rule, the Bureau finalized rules relating to a servicer's obligation to provide a periodic statement to certain consumers in bankruptcy. First, it amended § 1026.41(e)(5) and associated commentary generally to limit the circumstances in which a servicer is exempt from periodic statement requirements with respect to a consumer who is a debtor in bankruptcy or has discharged personal liability for a mortgage loan through bankruptcy.³ Second, it amended § 1026.41(f) and associated commentary generally to allow servicers to make various

² 81 FR 72300.

³ 81 FR 72310-11.

clarifications and modifications to the periodic statement requirements with respect to consumers in bankruptcy or who have discharged personal liability for a mortgage through bankruptcy.⁴

Third, it issued sample forms for periodic statements for certain consumers in bankruptcy.⁵

The Bureau intended all of these amendments relating to the bankruptcy periodic statement exemptions and modified statements to take effect on April 19, 2018, 18 months after publication in the *Federal Register*.⁶ Although the Bureau specified an 18-month implementation period for the regulatory text of § 1026.41(e)(5) and (f), it specified only a 12-month implementation period for the commentary to those provisions and the bankruptcy periodic statement sample forms in appendices H–30(E) and H–30(F). The Bureau corrects this error and applies an effective date of April 19, 2018, to the commentary to § 1026.41(e)(5) and (f) and the sample forms in appendices H–30(E) and H–30(F).

Authority citation for Regulation Z to include 12 U.S.C. 3353.

The Bureau is correcting an omission in the authority citation in the 2016 Mortgage Servicing Final Rule. The Bureau did not include 12 U.S.C. 3353 in the authority citation for amendments to Regulation Z. The Bureau is correcting the authority citation to part 1026 to include the citation to 12 U.S.C. 3353.

⁴ 81 FR 72330.

⁵ 81 FR 72348.

⁶ 81 FR 72349.

II. Regulatory Requirements

The Bureau finds that there is good cause to publish these corrections without seeking public comment.⁷ Public comment is unnecessary because the Bureau is correcting inadvertent, technical errors about which there is minimal, if any, basis for substantive disagreement. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.⁸ The Bureau has determined that these corrections do 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.*

List of Subjects

12 CFR Part 1024

Condominiums, Consumer protection, Housing, Insurance, Mortgages, Mortgagees, Mortgage servicing, Reporting and recordkeeping requirements.

⁷ *See* 5 U.S.C. 553(b)(B).

⁸ 5 U.S.C. 603(a) and 604(a).

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Correction

For the reasons set forth above, the Bureau makes the following corrections to the final rule FR Doc. No. 2016-18901, published on October 19, 2016, at 81 FR 72160:

1. On page 72376, in the third column, under amendatory instruction 16, revise added MS-4(D) to read as follows:

APPENDIX MS-4 TO PART 1024—MODEL CLAUSES FOR THE WRITTEN EARLY INTERVENTION NOTICE

* * * * *

**MS-4(D)—WRITTEN EARLY INTERVENTION NOTICE FOR SERVICERS SUBJECT TO FDCPA
(§ 1024.39(D)(2)(III))**

This is a legally required notice. We are sending this notice to you because you are behind on your mortgage payment. We want to notify you of possible ways to avoid losing your home. We have a right to invoke foreclosure based on the terms of your mortgage contract. Please read this letter carefully.

2. On page 72382, in the third column, under amendatory instruction 17.g.vii, revise added paragraph 1 under added heading *Paragraph 39(d)(2)* to read as follows:

1. *Borrowers in bankruptcy.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer’s communications with a borrower and

the borrower has provided a notification pursuant to FDCPA section 805(c) notifying the servicer that the borrower refuses to pay a debt or that the borrower wishes the servicer to cease communications, with regard to that mortgage loan, § 1024.39(d)(2) exempts a servicer from providing the written notice required by § 1024.39(d) while any borrower on the mortgage loan is also a debtor in bankruptcy under title 11 of the United States Code. For an example, see comment 39(c)(1)(ii)-2.ii.

3. Revise amendatory instruction 18 and its regulatory text appearing on page 72388, first column, to read as follows:

“18. The authority citation for part 1026 is revised to read as follows:

AUTHORITY: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*”

4. Revise amendatory instruction 24.d appearing on page 72390, third column, to read as follows:

“d. Effective April 19, 2018, adding H-30(E) and H-30(F).”

5. Revise amendatory instruction 25.d.ii appearing on page 72396, first column, to read as follows:

“ii. Effective April 19, 2018, under *41(c) Form of the periodic statement*, paragraph 5 is added.”

6. Revise amendatory instructions 25.d.vii through xvi and 25.d.xix and xx, appearing on page 72396, first column, to read as follows:

“vii. Effective April 19, 2018, after the entry for *41(d)(8)*, the heading *41(e) Exemptions* is added.”

“viii. Effective April 19, 2018, the heading for *41(e)(5)* is revised, and under that heading paragraphs 1 through 3 are revised, and paragraph 4 is added.”

“ix. Effective April 19, 2018, the heading *41(e)(5)(i) Exemption* is added, and paragraph 1 under that heading is added.”

“x. Effective April 19, 2018, the heading *Paragraph 41(e)(5)(i)(B)(2)* is added, and paragraph 1 under that heading is added.”

“xi. Effective April 19, 2018, the heading *Paragraph 41(e)(5)(i)(B)(4)* is added, and paragraph 1 under that heading is added.”

“xii. Effective April 19, 2018, the heading *41(e)(5)(ii) Reaffirmation or consumer request to receive statement or coupon book* is added, and paragraph 1 under that heading is added.”

“xiii. Effective April 19, 2018, the heading *41(e)(5)(iv) Timing of compliance following transition* is added.”

“xiv. Effective April 19, 2018, the heading *41(e)(5)(iv)(A) Triggering events for transitioning to modified or unmodified statement or coupon book* is added, and paragraphs 1 and 2 under that heading are added.”

“xv. Effective April 19, 2018, the heading *41(e)(5)(iv)(B) Transitional single-billing-cycle exemption* is added, and paragraph 1 under that heading is added.”

“xvi. Effective April 19, 2018, the heading *41(e)(5)(iv)(C) Timing of first modified or unmodified statement or coupon book after transition* is added, and paragraphs 1 through 3 under that heading are added.”

* * * * *

“xix. Effective April 19, 2018, the heading *41(f) Modified periodic statements and*

coupon books for certain consumers in bankruptcy is added, and paragraphs 1 through 6 under that heading are added.”

“xx. Effective April 19, 2018, the heading *41(f)(3) Chapter 12 and chapter 13 consumers* is added, and paragraphs 1 through 3 under that heading are added.”

7. Revise amendatory instructions 25.d.xxi through xxiv, appearing on page 72396, second column, to read as follows:

“xxi. Effective April 19, 2018, the heading *41(f)(3)(ii) Amount due* is added, and paragraph 1 under that heading is added.”

“xxii. Effective April 19, 2018, the heading *41(f)(3)(iii) Explanation of amount due* is added, and paragraph 1 under that heading is added.”

“xxiii. Effective April 19, 2018, the heading *41(f)(3)(v) Pre-petition arrearage* is added, and paragraph 1 under that heading is added.”

“xxiv. Effective April 19, 2018, the heading *41(f)(4) Multiple obligors* is added, and paragraphs 1 and 2 under that heading are added.”

Dated: June 26, 2017.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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