CFPB Bulletin 2014-01 Compliance and Policy Guidance: Mortgage Servicing Transfers
August 2014

The CFPB issued Bulletin 2014-01 to provide guidance to residential mortgage servicers and sub-servicers. This guidance replaces CFPB Bulletin 2013-01 (Mortgage Servicing Transfers), which was released in February 2013.

The Bulletin outlines compliance expectations for the Real Estate Settlement Procedures Act (RESPA) new servicing rule, which took effect on January 10, 2014. The rule requires servicers to maintain policies and procedures that facilitate the transfer of information during mortgage servicing transfers and to properly evaluate loss mitigation applications, among other things. Although most credit unions are not subject to CFPB's direct examination authority, this guidance may be helpful in understanding the regulation and its corresponding supervisory expectations.

Credit unions that service mortgage loans must comply with the RESPA servicing rule for certain mortgage loans. However, small servicers that, together with any affiliates, service 5,000 or fewer mortgages and are the creditor or assignee for all of them are exempt from certain provisions of the mortgage servicing rule.

A. General Transfer-Related Policies and Procedures

Regulation X only requires that policies and procedures be "reasonable designed" to facilitate the transfer of information during servicing transfers.[1] Specific policies are not prescribed, and the CFPB notes that policies and procedures should be reviewed as a whole, in light of the servicer's facts and circumstances, in determining whether they satisfy the rule's requirements. Nevertheless, the guidance provides a list that examiners may consider as contributing to meeting the rule's requirements, including:

- Ensuring that contracts require the transferor to provide all necessary documents and information at loan boarding;
- Engaging in quality control work after the transfer of preliminary data to validate that the data on the transferee's system matches the data submitted by the transferor; and
- Implementing a post-transfer process for validating data to ensure it transferred correctly and is functional, as well as developing procedures for identifying and addressing data errors for inbound loans.

The guidance also notes that there is a heighted risk inherent in transferring loans during loss mitigation, and states that CFPB examiners will be paying particular attention to transfers of loans with pending loss mitigation applications or approved trial modification plans. Servicers are expected to flag all loans in loss mitigation and review transferred documents to ensure that borrowers are not required to resubmit loss mitigation application materials after the transfer. For the full list of example policies and procedures for transferring information and handling loans in loss mitigation, refer to the full guidance bulletin available here.

[1] 12 CFR 1024.38(b)(4).

B. Applicability of Other Parts of the New Servicing Rule to Transfers

The guidance also outlines how some of the other requirements under the new servicing rule implicate servicing transfers specifically. Both transferors and transferees have responsibility to ensure that the regulatory requirements for transferred loans are met, and that borrowers are not harmed by delays attributable to the transfer. The guidance highlights requirements specific to transfers in the following sections:

- Error Resolution and Requests for Information (1024.35 and .36)
  - Transferee must respond to borrowers within the regulatory timeframes even if the Transferor was servicing the loan at the time of the error or event in inquiry.
  - Transferor must respond to notices of error and information requests for up to one year after the loan is transferred.[2]
- Force Placed Insurance (1024.37 and .17(k))
  - Transferee need not resend notices sent by the Transferor, but must ensure all required notices were sent within applicable timeframes and have a reasonable basis to conclude that the borrower has failed to maintain the required hazard insurance.
- Early Intervention (1024.39)
  - Transferee servicers must begin or continue good faith efforts to establish live contact with a delinquent borrower and comply with all written notice requirements, regardless of whether the delinquency began while the loan was being serviced by the transferor.
- Continuity of Contact (1024.40)
  - Transferee servicers should have policies and procedures in place to assign personnel to assist delinquent borrowers when delinquent loans are transferred and consider how best to inform delinquent borrowers that this service is available.
- Loss Mitigation (1024.41)
  - CFPB examiners will carefully scrutinize loss mitigation evaluations that take longer than 30 days from the date the ***Transferor*** received the completed application.
  - Transferee must try to obtain necessary information from the transferor before contacting the borrower. All applicable loss mitigation information should be sent to the Transferee by the date of transfer to minimize the risk of delays or other non-compliance with 12 CFR 1024.41.

C. Protections under Federal Consumer Financial Law

The guidance goes on to address a variety of other consumer financial laws beyond the new servicing rule that could apply to mortgage servicing transfers. The Fair Credit Reporting Act (FCRA), Fair Debt Collection Practices Act (FDCPA), and the Dodd-Frank Act's prohibitions on unfair, deceptive, or abusive acts or practices (UDAAPs), among others, impose various obligations and restrictions on mortgage servicers. The CFPB expects mortgage servicers to maintain robust Compliance Management Systems in order to prevent, detect, and correct any violations of federal consumer financial law.

D. Plans for Handling Servicing Transfers

[2] 12 CFR 1024.35(g)(1)(iii) and 12 CFR 1024.36(f)(1)(v).

The CFPB plans to require, as appropriate, servicers under their jurisdiction and engaged in significant servicing transfers to prepare and submit written plans detailing how they will manage the consumer risks associated with mortgage servicing transfers. CFPB will use the plans to assess risk in the marketplace and inform examination planning. Servicers will not need approval from the CFPB before conducting servicing transfers, unless specifically required by consent order.

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