

CFPB Mortgage Servicing Rules Published

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With the Oct. 19. publication of the Consumer Financial Protection Bureau's (CFPB) mortgage servicing rules in the Federal Register, the 12-month clock has started for lenders and servicers to implement most of the broad-range rules for fair treatment of homeowners, struggling borrowers and property heirs. The "successor in interest provisions" and the "bankruptcy periodic statement provision" will not become effective for 18 months. The CFPB unveiled the 900-page rules in August, capping its extensive effort to address a number of servicing concerns.

The finalized rules provided detailed direction and clarification to servicers on a number of important servicing issues. The rules define a delinquency as beginning on the date a periodic payment sufficient to cover principal, interest, and (if applicable) escrow becomes due and unpaid. It continues until such time that no periodic payment is due and unpaid. Under the rule, a loan may be considered delinquent on the date the payment is due, even if the loan documents provided a grace period. The CFPB further clarified that a breach of the mortgage contract, for something other than a failure to make the monthly payment, does not begin a delinquency under the rules. In the event of a contractual breach, a servicer may accelerate payment if permitted by the loan documents and applicable law.

The 2016 rules further address a significant number of issues regarding periodic statements. With respect to charge-offs, periodic statements will no longer be required if the servicer will not charge any additional fees or interest on the account. The servicer also must provide a notice clearly labeled "Suspension of Statements & Notice of Charge Off - Retain This Copy for Your Records" within 30 days of the charge-off or most recent statement. The notice should inform the borrower of the following:

- The mortgage was charged off.
- The service will no longer provide periodic statements.
- The lien remains in place and the borrower remains liable for same.
- The balance is not being canceled or forgiven, and the borrower may be required to pay the balance in the future.
- The loan may be purchased, transferred or assigned.

The rules previously included exemptions from certain borrower communication requirements when a borrower is in bankruptcy. The latest rules partially remove those exemptions and will require servicers to provide statements under certain parameters. Servicers must generally provide periodic statements to borrowers in bankruptcy who intend to retain their home, but not to borrowers who will be surrendering it. Consumers in bankruptcy who do not want to receive periodic statements may opt out. Consumers in bankruptcy may also opt in to receiving statements even

when they may be exempt from receiving them. In conjunction with the rule, the CFPB published sample periodic statement forms with modified disclosures for consumers in bankruptcy.

The 2016 rules also tackle the difficult situation services often encounter with successors in interest - someone who acquires an ownership interest as a result of transfer in instances like death of a partner or relative, when a spouse or children of a borrower becomes an owner, divorce or other potential changes. A person does not need to assume liability for the loan to be a confirmed successor, as the rules create a new information request for potential successors to confirm successor in interest status. Servicers need to implement policies and procedures to adequately handle these requests. Once a confirmed successor, the person is considered a consumer under the Truth in Lending Act for periodic statements, payment processing, mortgage transfer disclosures and interest rate/escrow notices. Servicers should carefully consult the newest rules to understand and implement the necessary procedures for these accounts.

The 2016 rules also include a number of changes and clarifications to the existing 2014 loss mitigation rules. Now, servicers must comply with loss mitigation requirements for more than one loss mitigation application over the life of a loan for borrowers who become current at any time after submitting a complete loss mitigation application.

The 2016 mortgage servicing rules are complex and extensive, and the highlighted changes are just some of the key components of the rules. Servicers are urged to review the rules in detail over the coming months as many policies and procedures regarding early intervention, loss mitigation, bankruptcy and general servicing will require updates.

For help in reviewing the new rules, contact Joseph P. Schalk at Barley Snyder at jschalk@barley.com or at 717-399-1562.