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Regulation Z - Mortgage Servicing Rule Amendments

In January 2014, the Consumer Financial Protection Bureau's (CFPB) rule that addressed a wide variety of loan servicer obligations became effective. In August 2016, the CFPB issued a new final rule to amend certain provisions. The new final rule was later published in the Federal Register, which established the effective date for these changes. In June, 2017, policy guidance addressed the effective date for the rule. Subsequently, other rules were published to correct errors and amend certain provisions.

Updated Alert Date: April 6, 2018

Status: Effective October 19, 2017, except for certain amendatory instructions and commentary that are effective on April 19, 2018 (see policy guidance and 07/05/17 rule below)

Links: [Final Rule - 10/19/16](#)
[Policy Guidance - 06/30/17](#)
[Final Rule - 07/05/17](#)
[Final Rule - 03/12/18](#)

Pursuant to the Dodd-Frank Act, the CFPB issued a final rule in 2013 amending Regulation Z, which implements Truth in Lending. That rule amended the regulation by addressing a variety of servicer obligations. In 2016, the CFPB issued a rule to amend certain mortgage servicing provisions. At a high level, this new rule clarifies, revises, or amends Regulation Z provisions related to:

- Prompt payment crediting
- Periodic statements
- Small servicer determination

The rule also addresses compliance when a person is a successor in interest, is a debtor in bankruptcy or sends a cease communication request under the Fair Debt Collection Practices Act. Other technical corrections are included.

On June 30, 2017, the CFPB's policy guidance related to the effective date of this rule was published in the Federal Register. It was noted that the effective dates both fall on a Thursday. After hearing concerns from the industry that these midweek effective dates can pose operational challenges, the CFPB published guidance related to early compliance. Based on these concerns, the CFPB stated that they do not intend to take supervisory action for violations of existing Reg. X or Reg. Z resulting from a servicer's compliance with the new rule occurring up to 3 days before applicable effective dates, which means:

- For the 10/19/17 effective date – the period of Monday 10/16/17 through Wednesday 10/18/17, and
- For the 4/19/18 effective date – the period of Monday 4/16/18 through Wednesday 4/18/18.

On July 5, 2017, the CFPB published a final rule making corrections related to the effective date of commentary as well as the effective date of sample periodic statement forms that may be used for consumers in bankruptcy. As noted in the rule, the CFPB intended all of these amendments relating to the bankruptcy periodic statement exemptions and modified statements to take effect on April 19, 2018.

In March 2018, the CFPB published another final rule to amend certain provisions. More specifically, after receiving feedback related to unintended challenges with implementing the 2016 mortgage servicing rule, the CFPB is making adjustments to the timing for servicers to transition to providing modified or unmodified periodic statements and coupon books in connection with a consumer's bankruptcy, as reflected in the final rule linked above.

How is the "Small Servicer" Determination Being Adjusted?

Currently, the mortgage servicing rules contain certain exemptions for a servicer that qualifies as a "small servicer", pursuant to Regulation Z. That exemption generally applies to servicers who service 5,000 or fewer mortgage loans for all of which the servicer is the creditor or assignee. The final 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, allowing servicers that would otherwise qualify for small servicer status to retain their exemption while servicing those transactions.

Who is a Successor in Interest?

The CFPB is finalizing rule changes related to successors in interest. It is important to note that in the new final rule, a confirmed successor in interest shall be considered a consumer for purposes of:

- Rate Adjustments and Escrow Account Cancellations (Reg. Z's 1026.20(c) through (e)),
- Servicing Practices (Reg. Z's 1026.36(c)),
- Mortgage Transfer Disclosures (Reg. Z's 1026.39), and
- Periodic Statements (Reg. Z's 1026.41).

A **successor in interest** is defined as a person to whom an ownership interest in a dwelling securing a closed-end consumer credit transaction is transferred from a consumer (provided the transfer meets certain requirements). A **confirmed successor in interest** means that the servicer has confirmed the successor's identity and ownership interest in the dwelling.

How Are Prompt Payment Crediting Provisions Amended?

Currently, Regulation Z contains requirements for the crediting of payments. This new final rule clarifies how servicers must treat periodic payments made under either temporary loss mitigation programs or permanent loan modifications. Periodic payments made under a temporary loss mitigation program must continue to be credited according to the loan contract and could, if appropriate, be credited as partial payments, while periodic payments made pursuant to a permanent loan modification must be credited under the terms of the permanent loan agreement. Further, the CFPB agrees that potential successors in interest can make payments during the confirmation process, which are to be credited as of the date of receipt.

What Changes Are Being Made to Periodic Statement Provisions?

This new rule contains a variety of amendments related to periodic statements for residential mortgage loans, as follows:

- **General Comment** – A technical change is being made to an example in the commentary, replacing “husband and wife” with “spouses” and clarifies statements in instances of joint obligors.
- **Content and Layout** – The new rule clarifies certain periodic statement disclosure requirements relating to mortgage loans that have been accelerated, are in temporary loss mitigation programs, or have been permanently modified, to conform generally the disclosure of the amount due with the CFPB's understanding of the legal obligation in each of those circumstances, including that the amount due may only be accurate for a specified period of time when a loan has been accelerated.
- **Periodic Statement Sample Forms** – Currently, Reg. Z's Appendix H contains periodic sample forms (H-30). The new rule clarifies that sample forms may be modified to remove certain language when not applicable, clarifies the “close proximity” standard and provides other clarifications.
- **Small Servicer Exemption** – As referred to above, amendments address the small servicer determination.
- **Debtors in Bankruptcy** – Currently, a servicer is exempt from these requirements for a mortgage loan while the consumer is a debtor in Title 11 bankruptcy. However, under the new rule, servicers will be required to send modified periodic statements (or coupon books) to consumers who have filed for bankruptcy, subject to certain exceptions. 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.
- **Charged-off Mortgage Loans** – The new provisions exempt 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.
- **New Subsection** – A new subsection (g) is added to citation 1026.41 (Periodic Statements) that addresses successors in interest.

What Other Adjustments are Included in This Rule?

The following bullets reflect other areas of impact to Regulation Z as a result of the new rule:

- **Prohibited Acts or Practices (1026.36)** – A technical change further clarifies coverage of closed-end consumer transactions secured by the consumer's principal dwelling.
- **Mortgage Transfer Disclosures (1026.39)** – A new section addresses the handling of notices for confirmed successors in interest.

- **Escrow Account Cancellation Notice (1026.20(e) for H-29)** – A new comment addresses modifying language in the escrow account cancellation notice to accommodate particular circumstances not addressed by the form.
- **Closed-End Model Forms & Clauses** – Adjustments impact the following:
 - H-4(C) – variable-rate model clauses are adjusted to reflect language in revised commentary
 - H-14 – variable-rate mortgage sample form is adjusted to reflect language in revised commentary
 - H-30(C) – sample form of periodic statement for a payment-option loan includes a slight technical change
 - H-30(E) & H-30(F) – sample forms for periodic statements for certain consumers in bankruptcy

What is the Effective Date for These Changes?

The CFPB included the following summary for effective dates of certain provisions. For ease of our readers, we have removed Reg. X related information so that applicable Reg. Z related information remains:

*“...the Bureau is adopting an effective date of **one year after publication** for all provisions, except for an effective date of **18 months after publication** for the **bankruptcy periodic statement exemption and modified statements** (§ 1026.41(e)(5) and (f)) and for the following regulation text and commentary provisions specifically addressing **successors in interest**: ...*

Regulation Z, § 1026.2(a)(11) and (27) and related comments 2(a)(11)-4 and 2(a)(27)(i)-1 and -2; comment 20(e)(4)-3; § 1026.20(f); comment 36(c)(1)(iii)-2; § 1026.39(f); comment 41(c)-5; and § 1026.41(g).”

Recommendations for Next Steps

By October 19, 2017:

1. As needed, review for possible classification as a “small servicer” according to adjusted criteria in Reg. Z
2. Review TILA and/or other mortgage lending-related policies as they relate to mortgage servicing obligations. Depending on the level of detail within a policy, this may or may not result in any changes.
3. Review mortgage-related servicing procedures and update to address the new requirements. This will involve various provisions; which, at a high level impact:
 - a. Handling of payments under either temporary loss mitigation programs or permanent loan modifications
 - b. Periodic statement content and layout and possible relief from requirements for charged off loans
4. Train applicable staff on the requirements of the new final rule and internal policies and procedures.
5. As needed, work with impacted service providers that support these functions.

By April 19, 2018:

1. Review TILA and/or other mortgage lending-related policies as they relate to mortgage servicing obligations. Depending on the level of detail, this might include new successors in interest and bankruptcy-related provisions.
2. Review mortgage-related procedures and update to address new provisions for consumers in bankruptcy and periodic statements, as well as successor in interest provisions.
3. Review for implementation of model clauses and forms for successor in interest provisions and requirements for certain consumers in bankruptcy, including modified statements and coupon books. This may involve working with service providers that support these disclosures.
4. Train applicable staff on the requirements and procedures related to new provisions.