

# 2016 Amendments to the Mortgage Servicing Rules

Five Star Conference – September 12, 2016



Consumer Financial  
Protection Bureau

# Amendments – Why?

In January 2014, comprehensive changes to the mortgage servicing requirements in Regulations X and Z became effective. In the months that followed, the Bureau received many industry and consumer suggestions to improve the clarity and effectiveness of the rules. Many of the changes in these amendments implement those suggestions. Additionally, these amendments include new consumer protections for borrowers in bankruptcy and for successors in interest who inherit or receive mortgaged properties from borrowers.

# The 2016 Amendments Include:

---

- Definition of Delinquency
- Periodic Statements
- Loss Mitigation
- Early Intervention
- Servicing Transfers
- Bankruptcy
- Successors in Interest
- Force-Placed Insurance and Information Requests
- Small Servicer Definition

# Definition of Delinquency

The 2016 Amendments include a definition of delinquency for the purpose of counting the period of time applicable for certain loss mitigation requirements in Regulation X, such as early intervention and the 120-day prohibition on making a referral to foreclosure. The new definition also applies to calculating days of delinquency for certain disclosures on monthly periodic statements required in Regulation Z. Finally, because the delinquency definition only addresses monetary defaults, the new rule clarifies that a servicer may still accelerate the loan in accordance with the mortgage based on other contractual breaches.

# Delinquency Defined

---

**Delinquency** - begins on the date a periodic payment sufficient to cover principal, interest, and (if applicable) escrow becomes due and unpaid and continues until such time as no periodic payment is due and unpaid.

**Grace Period** - A loan is considered delinquent under the rule on the date the payment is due but unpaid even if the servicer allows a grace period.

# Application of Payments

---

- 1. Oldest Unpaid Installment** - If a servicer applies borrower payments to the oldest unpaid installment, the servicer must advance the date that the next payment is due or the date that the delinquency began, as applicable.
- 2. Rolling Delinquency** - If a borrower who is 1 or 2 months delinquent subsequently makes a full PITI payment each month but never brings the loan current, it could result in a rolling delinquency. The loan could be delinquent for many months but never become more than 120 days delinquent.

# Payment Tolerance

---

**Payment Tolerance** - A servicer may accept a payment that is less than the full amount due without considering the loan delinquent, but then must not consider the loan delinquent for any other provision under the rule.

**Example** - A borrower's payment of \$1010 per month is due on January 1 but the borrower sends a check for \$1001. If the servicer agrees to accept the \$1001 and advances the due date for the next payment, the early intervention requirements would not apply because the loan is considered current. The servicer may contact the borrower to collect the \$9. However, if the servicer tries for three months but is unable to collect the \$9, the servicer can't decide in April that the borrower was actually delinquent on January 1.

# Other Contractual Breaches

---

- A breach of the mortgage contract, other than the failure to make the periodic payment, does not begin a delinquency under the rule.
- In the event of another contractual breach (i.e. waste or abandonment), a servicer may accelerate payment if permitted by the mortgage loan and applicable law.
- The amount due after acceleration would be the new periodic payment for purposes of calculating the period of delinquency.
- Delinquency begins on the day the borrower fails to remit the accelerated payment.

# Periodic Statements

The 2016 Amendment clarifies certain periodic statement disclosure requirements relating to mortgage loans that are in temporary or permanent loss mitigation programs, have been accelerated or have been charged off. The rule also clarifies how to show payments and expenses that may have accrued while a loan was temporarily exempt from the requirement to send periodic statements. In all cases where the periodic statement includes information based on length of delinquency, the period **must be calculated based on the new delinquency definition.**

# Temporary Plans and Permanent Modifications

---

1. **Temporary Repayment Plans** – short term repayment or trial modification
  - a. A partial payment received under a temporary payment plan may be held in suspense until the servicer receives a full contractual payment, then it must be promptly credited to the account.
  - b. The amount due section of the periodic statement may show *either* the temporary payment or the contractual payment.
  - c. If the amount due section of the periodic statement shows the temporary payment, the contractual payment must also be included in the explanation of amount due on the statement.
2. **Permanent Modifications** – If the loan contract has been permanently modified, the periodic statement must show only the modified payment.

# Accelerated Loans

---

**Accelerated Loans** – When a loan has been accelerated the periodic statement must:

- Generally, show the accelerated amount in the amount due section.
- If the servicer is willing to accept a reinstatement amount that is less than the accelerated amount, the lesser amount **MUST** be shown as the amount due, though the accelerated amount must also be shown on the periodic statement.
- Servicers may use a “good through” or “as of” date when disclosing the reinstatement amount.

# Charge-Offs

---

**Charge Offs** – Periodic statements are not required following charge off of a loan if the servicer will not charge any additional fees or interest on the account and, within 30 days of the charge off or the most recent statement, the servicer provides a notice clearly and conspicuously labeled “Suspension of Statements & Notice of Charge Off - Retain This Copy for Your Records” that states, among other things:

- The mortgage loan has been charged off;
- The servicer will no longer provide a periodic statement for each billing cycle;
- The lien remains in place and the consumer remains liable for the loan and any obligations which may include property taxes;
- The balance is not being canceled or forgiven, and the consumer may be required to pay the balance on the account in the future; and
- The loan may be purchased, assigned, or transferred.

# Post Exemption Statements

---

Some loans are exempt from the requirement to provide periodic statements (i.e. certain loans in bankruptcy). If an exemption expires, the 2016 amendments clarify that servicers are only required to provide transaction activity since the final payment due date during the exemption period.

**Example:** Assume that a consumer was in Chapter 13 bankruptcy for 2 years and during that time the account was exempt from the requirement to send periodic statements. If the exemption ends on July 10, the first periodic statement would include a summary of transaction activity through July 1, rather than a breakdown of monthly activity for the prior 2 years.

# Loss Mitigation

The 2016 Amendments include both changes to and clarifications of the 2014 loss mitigation rules. Perhaps the most significant change extends the loss mitigation protections under the rule to consumers more than once during the life of the loan. Many of the amendments - for example, those relating to the 120 day rule, reasonable date for document collection, and use of short term repayment plans - are responsive to constructive industry feedback.

# Overview of Loss Mitigation Changes

---

- Loss mitigation protections available more than once
- Exception to 120 day rule
- Use of short term repayment plans
- Reasonable date for submission of borrower documents and information
- Clarification on reasonable diligence
- Written notice of complete application
- Missing non-borrower information
- Clarification of foreclosure prohibition in § 1024.41(g)

# Loss Mitigation Expansion and Exception

---

1. **Expansion of Protections** – Servicers must comply with the loss mitigation requirements in § 1024.41 for more than one loss mitigation application over the life of a loan for borrowers who becomes current at any time after submitting a complete loss mitigation application.

**Example:** Assume a borrower received a loan modification in 2014 and kept the loan current for 4 years. If, in 2018, the same borrower becomes partially disabled and falls behind on the payments, the borrower would be able to submit a new loss mitigation application and would be protected under the loss mitigation rules for a subsequent loss mitigation application.

2. **120 Day Exception** – Servicers are not required to wait until a borrower is more than 120 days delinquent before joining the foreclosure action of a superior or subordinate lien holder.

# Short Term Repayment Plans

---

The rule expressly provides that servicers may offer short term repayment plans to borrowers before evaluation of a complete loss mitigation application if:

- The plan allows for the repayment of no more than 3 months of past due payments,
- The plan is structured to bring the loan current in no more than 6 months, and
- The servicer provides the borrower a written notice promptly after making the offer, stating the specific repayment terms and other disclosures.

The final rule also requires a similar written notice for short-term payment forbearance programs-offered based upon an evaluation of an incomplete loss mitigation application.

# Reasonable Date

---

**Reasonable Date** – Upon receipt of an application, servicers must send an acknowledgment notice within five business days that includes a reasonable date by which the borrower should return any documents and information necessary to make the application complete.

Generally, under the 2016 Amendments, a servicer complies by selecting a date 30 days from the date it provides the notice. However, servicers may not select a date later than the next milestone unless the next milestone is less than 7 days away.

# Reasonable Date Example

---

**Example** – A borrower who is 60 days delinquent submits an incomplete loss mitigation application. Within 5 business days, the servicer provides an acknowledgment notice stating the additional documents and information the borrower must submit to complete the application. The notice also includes a reasonable date by which the borrower should submit the documents and information. No documents or information submitted by the borrower will be considered stale within the next 30 days. The “reasonable date” can be 30 days from the date the servicer provides the notice because it will not be later than any milestone. In this scenario, 30 days is before the date that is the 120th day of the borrower’s delinquency (and therefore 90 days and 38 days before a foreclosure sale). If however, the borrower is already 95 days delinquent, 30 days after provision of the notice is not a reasonable date, as it could be after the loan passed the 120 day milestone. In this case, the servicer might select 15 days as a reasonable date for return of the needed documents or information.

# Document / Information Collection

---

**Document/Information Collection** - Servicers may stop collecting documents and information from a borrower for a particular loss mitigation option after receiving information confirming that, pursuant to any requirements established by the owner or assignee of the mortgage loan, the borrower is not eligible for that option. Servicers can't stop collecting documents based **solely** on a borrower's stated preference (e.g. a preference for a short sale or to not retain the property) but may do so based on a borrower's preference in conjunction with other information, as prescribed by any requirements established by the owner or assignee.

# Document Collection Example

---

**Example** - A servicemember submits a loss mitigation application and states a preference for a short sale. The servicer couldn't stop collecting documents and information needed to evaluate the application for other loss mitigation options based **solely** on the borrower's stated preference. However, if requirements established by the owner or assignee provide that a borrower stating such a preference is ineligible for home retention options if the borrower has received permanent change of station orders, once the servicer receives information confirming the PCS orders, the servicer may stop collecting documents needed for home retention options.

# Notice of Complete Application

---

**Notice of Complete Application** - Servicers must notify a borrower in writing within 5 business days of receiving a complete loss mitigation application. The notice must include:

- The date the application became complete,
- A statement that the servicer expects to complete its evaluation of the application within 30 days of the date it was received, and
- Other disclosures about the application process and borrower's rights.

# Notice Of Missing Non-Borrower Information

---

**Non-Borrower Information** - If a servicer needs information from a party other than the borrower to make a loss mitigation decision, the servicer must exercise reasonable diligence to obtain it. If the servicer doesn't have essential third-party information within 30 days of receiving a complete application from the borrower, the servicer must delay the loss mitigation decision and must provide the borrower a written notice that states, among other things:

- The specific documents or information the servicer lacks,
- That the servicer has requested the documents or information, and
- That the servicer will complete the evaluation promptly upon receipt.

# Clarification of Foreclosure Prohibition

---

**Foreclosure Prohibition** - If a servicer has made the first notice or filing required under applicable law for a judicial or non-judicial foreclosure process and a borrower submits a complete loss mitigation application more than 37 days before the foreclosure sale, the servicer must not conduct a foreclosure sale or allow it to be conducted until the application has been evaluated and one of several conditions has been satisfied.

The 2016 Amendments also clarify that servicers are responsible for the actions of their foreclosure counsel.

# Early Intervention

Regulation X requires servicers to reach out to borrowers early in the delinquency with both live contact and in writing and to maintain borrower contact throughout the delinquency. The 2016 Amendment clarifies that servicers have significant flexibility in providing early intervention. It retains existing exemptions from the live contact early intervention requirement and eliminates some exemptions from the requirement for written early intervention. In all cases, the timing for early intervention **must be calculated based on the new delinquency definition.**

# Clarification of Early Intervention Obligations

---

1. **Live Contact** – Servicers have significant flexibility to satisfy the live contact requirement:
  - a. Through contact established by the borrower,
  - b. By sending written or electronic requests for contact, or
  - c. By providing information about loss mitigation in letters or during collection calls.
  
2. **Prolonged Delinquency** – Servicers must exercise good faith to establish live contact throughout the delinquency, however, what constitutes good faith may be influenced by circumstances.

**Example:** in the case of an unresponsive borrower with six or more consecutive delinquencies, good faith efforts to establish live contact might include adding a sentence in the borrower’s periodic statement or another communication encouraging the borrower to contact the servicer.

# Early Intervention and FDCPA

---

When a servicer is acting as a debt collector under the FDCPA and any borrower on the loan has invoked the FDCPA cease communication protections:

- **Live Contact** – The servicer is exempt from the early intervention live contact requirements.
- **Written Notice** – The servicer must provide modified written early intervention notices if:
  - a. any loss mitigation option is available, and
  - b. no borrower on the loan is a debtor in bankruptcy.

# Safe Harbor

---

Concurrent with publication of the 2016 Servicing Amendments, the Bureau issued an Advisory Opinion, creating a safe harbor from liability under FDCPA section 805(c) when servicers that are debt collectors subject to the FDCPA:

- Provide modified written early intervention notices as required by the new rule; and
- Respond to borrower-initiated communications concerning loss mitigation after the borrower has invoked the cease communication right.

# Servicing Transfers

Servicing transfers should be seamless for borrowers. Generally, transferee servicers must comply with the loss mitigation requirements of the servicing rules within the same timeframes that were applicable to the prior servicer. Knowing that this can be challenging when loss mitigation applications are received shortly before transfer or are pending evaluation at the time of a transfer, the 2016 Amendments define transfer date and revise requirements for compliance with certain loss mitigation rules when loans are transferred.

# Transfer Date and Acknowledgment Notice

---

1. **The transfer date** - is defined as the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv).
2. **5 Day Acknowledgment Notice** – if an application for loss mitigation was received within five days prior to the transfer date and the transferor servicer did not provide the acknowledgment notice prior to transfer, the transferee servicer must provide the notice within 10 days after the transfer date (excluding legal public holidays, Saturdays, and Sundays).

# Review of Complete Application

---

**Complete Application** - if a complete loss mitigation application was received by the transferor servicer prior to transfer and remains pending as of the transfer date, the transferee servicer must complete its evaluation of the application and provide written notice of its decision to the borrower within 30 calendar days of the transfer date.

If the transferee determines that it needs additional documents or information to evaluate the application, the application is “facially complete” as of the day it was received by the prior servicer and the borrower is entitled to applicable foreclosure protections as of that date.

# Review of Complete Application Example

---

**Example** - Assume that a borrower started a loss mitigation application with Servicer A, sent all the documents requested in the five day acknowledgment notice, and the documents were received by Servicer A on March 15.

- Servicer A provides the borrower a written notice of complete application on March 20 but then transfers the loan to Servicer B on April 10 without having evaluated the application.
- Servicer B must evaluate the application and notify the borrower of its decision within 30 days of the transfer date or May 10.
- If Servicer B needs more information to complete its evaluation, Servicer B must request that information by May 10 and must treat the application as if it was complete on March 15, the date the facially complete application was received by Servicer A.

# Pending Offers and Appeals

---

- Pending Offers** - A transfer does not affect a borrower's ability to accept or reject a loss mitigation offer. A transferee servicer must allow a borrower to accept, reject, or when applicable, appeal, a loss mitigation offer extended by the transferor servicer, during the unexpired time stated in the offer or allowable under regulations.
- Appeals** - If, during a servicing transfer, a borrower submits a timely appeal of a loss mitigation decision, the transferee servicer must provide notice of its determination on the borrower's appeal by the later of:
  - 30 days from the date the borrower made the appeal, or
  - 30 days from the transfer date.

# Bankruptcy

The mortgage servicing rules include exemptions from certain borrower communication requirements when a borrower is in bankruptcy. The 2016 Amendments partially remove those exemptions so that bankrupt borrowers who intend to keep their homes are provided with loan and other information that they need to do so.

# Early Intervention During Bankruptcy

---

- 1. Live Contact** - A servicer is exempt from the early intervention live contact requirements while any borrower on the mortgage loan is a debtor in bankruptcy-or any borrower on the mortgage loan has discharged personal liability for the mortgage loan through bankruptcy.
- 2. Written Notice** – Servicers must provide a single written early intervention notice to any delinquent borrower who files bankruptcy unless:
  - a. No loss mitigation option is available, or
  - b. Any borrower on the mortgage loan has invoked cease communication rights under the FDCPA.
- 3. Resuming Compliance** - Servicers must comply with both live contact and written early intervention requirements once the bankruptcy case is dismissed, closed, or the borrower reaffirms personal liability for the loan. Servicers must only comply with the written early intervention requirement if the borrower discharged the loan but continues to make mortgage payments.

# Periodic Statements During Bankruptcy

---

- Servicers generally must provide periodic statements to borrowers in bankruptcy who intend to retain their home, but not to borrowers who intend to surrender it.
- Consumers in bankruptcy who do not wish to receive periodic statements may opt out.
- A consumer in bankruptcy generally may also opt in to receiving statements even when the exemption would otherwise apply.
- The rule includes sample periodic statement forms with modified disclosures for consumers in bankruptcy.

**Mortgage Statement**  
Statement Date: 8/20/2015

**Springside Mortgage**  
Customer Service: 1-800-555-1234  
[www.springsidemortgage.com](http://www.springsidemortgage.com)

Jordan and Dana Smith  
4700 Jones Drive  
Memphis, TN 38109

Account Number 1234567  
Payment Date 9/1/2015  
Payment Amount \$3,839.13

**Explanation of Payment Amount**

Principal	\$386.46
Interest	\$1,048.07
Escrow (Taxes and Insurance)	\$235.18
<b>Regular Monthly Payment</b>	<b>\$1,669.71</b>
Total Fees and Charges	\$160.00
Past Unpaid Amount	\$2,009.42
<b>Total Payment Amount</b>	<b>\$3,839.13</b>

**Account Information**

Outstanding Principal	\$265,544.78
Interest Rate (Until October 2015)	4.75%
Prepayment Penalty	Yes

**Bankruptcy Message**

Our records show that either you are a debtor in bankruptcy or you discharged personal liability for your mortgage loan in bankruptcy.

We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.

If you want to stop receiving statements, write to us.

**Transaction Activity (7/20 to 8/19)**

Date	Description	Charges	Payments
8/13/15	Partial Payment Received*		\$1,000.00
8/16/15	Late Fee (charged because full payment not received by 8/15/2015)	\$160.00	

**Past Payments Breakdown**

	Paid Last Month	Paid Year to Date
Principal	\$0.00	\$2,268.95
Interest	\$0.00	\$6,338.23
Escrow (Taxes and Insurance)	\$0.00	\$1,411.08
Fees	\$0.00	\$160.00
Partial Payment (Unapplied)*	\$1,000.00	\$1,490.00
<b>Total</b>	<b>\$1,000.00</b>	<b>\$11,668.26</b>

**\*\*Account History\*\***

Recent Account History

- Payment due 5/1/15: Fully paid on time
- Payment due 6/1/15: Fully paid on 7/3/15
- Payment due 7/1/15: Unpaid balance of \$339.71
- Payment due 8/1/15: Unpaid balance of \$1829.71
- Current payment date 9/1/15: \$1,669.71
- **Total: \$3,839.13 unpaid amount that, if paid, would bring your loan current.**

If You Are Experiencing Financial Difficulty: See back for information about mortgage counseling or assistance.

**Important Messages**

\*Partial Payments: Any partial payments that you make are not applied to your mortgage, but instead are held in a separate suspense account. If you pay the balance of a partial payment, the funds will then be applied to your mortgage.

**Springside Mortgage**

Springside Mortgage  
P.O. Box 11111  
Los Angeles, CA 90010

**Payment Amount**

Payment Date: 9/1/2015  
Payment Amount: \$3,839.13

Additional Principal \$ .  
Additional Escrow \$ .  
**Total Amount Enclosed \$ .**

If you are making a payment, make your check payable to Springside Mortgage.

1234567 34571892

342359127 DN

For use in a Chapter 7 bankruptcy or when a consumer has discharged personal liability for the mortgage loan through bankruptcy

# For use in an active Chapter 13 Bankruptcy

## Springside Mortgage

Customer Service: 1-800-555-1234  
www.springsidemortgage.com

Jordan and Dana Smith  
4700 Jones Drive  
Memphis, TN 38109

## Mortgage Statement

Statement Date: 8/20/2015

Account Number	1234567
Payment Date	9/1/2015
Payment Amount	\$3,569.88

<b>Explanation of Payment Amount (Post-Petition Payment)</b>	
Principal	\$511.63
Interest	\$1,053.31
Escrow (Taxes and Insurance)	\$375.00
<b>Regular Monthly Payment</b>	<b>\$1,939.94</b>
Total Fees and Charges	\$190.00
Past Unpaid Amount	\$1,439.94
<b>Total Payment Amount</b>	<b>\$3,569.88</b>

*The Payment Amount does not include any amount that was past due before you filed for bankruptcy.*

**Bankruptcy Message**  
Our records show that you are a debtor in bankruptcy. We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.

If your bankruptcy plan requires you to send your regular monthly mortgage payments to the Trustee, you should pay the Trustee instead of us. Please contact your attorney or the Trustee if you have questions.

**If you want to stop receiving statements, write to us.**

<b>Account Information</b>	
Outstanding Principal	\$269,126.91
Interest Rate (Until October 2015)	4.75%
Prepayment Penalty	Yes

<b>Transaction Activity (7/20 to 8/19)</b>	
Date	Description
8/10/15	Partial Payment Received*
8/13/15	Partial Payment Received*
8/16/15	Late Fee (charged because full payment not received by 8/15/15)

<b>Breakdown of Past Payments</b>		
	Paid Last Month	Paid Year to Date
Principal	\$0.00	\$3,926.91
Interest	\$0.00	\$8,592.62
Escrow (Taxes and Insurance)	\$0.00	\$3,000.00
Fees	\$0.00	\$0.00
Partial Payment (Unapplied)*	\$836.43	\$1,251.53
<b>Total</b>	<b>\$836.43</b>	<b>\$16,771.06</b>

**Important Messages**  
We have not received all of your mortgage payments due since you filed for bankruptcy.

This statement may not show recent payments you sent to the Trustee that the Trustee has not yet forwarded to us. Please contact your attorney or the Trustee if you have questions.

**\*Partial Payments:** Any partial payments listed here are not applied to your mortgage, but instead are held in one or more separate suspense accounts. Once we receive funds equal to a full monthly payment, we will apply those funds to your mortgage.

<b>Summary of Amounts Past Due Before Bankruptcy Filing (Pre-Petition Arrearage)</b>	
Paid Last Month	\$336.43
Total Paid During Bankruptcy	\$1,345.72
Current Balance	\$10,765.88

This box shows amounts that were past due when you filed for bankruptcy. It may also include other allowed amounts on your mortgage loan. The Trustee is sending us the payments shown here. These are separate from your regular monthly mortgage payment.

**Springside Mortgage**  
Springside Mortgage  
P.O. Box 11111  
Los Angeles, CA 90010

If your bankruptcy plan requires you to send your regular monthly mortgage payments to the Trustee, do not send your payment to us. Instead, you should send your payment to the Trustee.

<b>Payment Amount</b>	
Payment Date:	9/1/2015
Payment Amount:	\$3,569.88
Additional Principal	\$
Additional Escrow	\$
<b>Total Amount Enclosed</b>	<b>\$</b>

If you are sending us a payment, make your check payable to Springside Mortgage.

1234567 34571892

342359127 DN

# Successors In Interest

When a borrower dies or otherwise transfers an interest in a mortgaged property to someone else, it may be difficult for the successors to establish their ownership of the property and obtain information needed to protect their financial interest. The 2016 Amendments define successors in interest, provide a basic structure for effective communication between successors and mortgage servicers, and extend to confirmed successors the same rights that borrowers and consumers have under the Regulation X and Z mortgage servicing rules.

# Who Are Successors?

---

The 2016 Amendments generally define a successor in interest as someone who has acquired an ownership interest as a result of a transfer:

- On the death of a joint tenant or tenant by the entirety,
- On the death of a relative,
- When the spouse or children of the borrower become an owner,
- Resulting from a divorce or legal separation, or
- Through an inter-vivos trust in which the borrower is and remains a beneficiary and retains occupancy rights.

A person does not have to assume or otherwise be liable for the loan in order to be confirmed as a successor.

# Confirming Successors

---

1. **Information Requests** – The 2016 Amendments create a new information request that allows potential successors to obtain a description of the documents the servicer reasonably requires for confirmation. Servicers must respond no later than the deadlines for other information requests.
2. **Communication and Evaluation** – Servicers must establish policies and procedures reasonably designed to ensure that they can:
  - a. Promptly facilitate communication with potential successors upon notice of a borrower death or property transfer.
  - b. Promptly provide a potential successor with a description of the documents the servicer reasonably requires for confirmation, and
  - c. Promptly notify a potential successor of the servicer’s confirmation decision.

# Reasonable Document Requirement Example

---

**Example** - Joe Smith and his friend Walt own a home as joint tenants but only Joe is on the mortgage. When Joe dies, Walt contacts the mortgage servicer and asks for loan information. The state where the property is located uses a recorded deed listing the parties as joint tenants as evidence of ownership. In this case, the servicer could reasonably require:

- A copy of the recorded deed (if the servicer does not already have it); and
- A death certificate.

# Borrower or Consumer Status Under the Rules

---

## **TILA / Reg Z**

Confirmed successors are considered consumers re:

- Prompt payment processing
- Periodic statements
- Mortgage transfer disclosures
- Interest rate adjustment notices
- Escrow cancellation notices

## **RESPA / Reg X**

Confirmed successors are considered borrowers re:

- Error and information requests
- Early intervention and continuity of contact
- Loss mitigation
- Escrow and force-placed insurance provisions
- Mortgage servicing transfers

# Successors and the Debt

---

- Confirmed successors are not liable for repayment of the debt unless and until they assume the loan obligation under State law.
- Confirmed successors are entitled to receive communications about the loan that discuss repayment.
- Servicers have various options to ensure these disclosures do not suggest that successors are liable if that is not accurate:
  - Substitutions to remove language that might imply liability.
  - Adding a separate disclosure to each mailing or communication that disclaims successor responsibility for the debt.
  - Providing an optional notice and acknowledgment upon confirmation

# Optional Notice with Acknowledgment

---

Servicers may provide a confirmed successor who is not liable an initial written notice and acknowledgment stating that:

- The servicer has confirmed the successor.
- The successor is not liable for the mortgage debt.
- The successor may be entitled to receive certain notices if the successor signs the acknowledgment.
- Receipt of the notices does not make the successor liable for the debt.
- A successor who does not sign the acknowledgment still has certain rights, like the right to submit notices of error and information requests.
- A successor may sign and return the notice at any time.

# Successors and Privacy

---

1. **Sensitive Information** - Servicers may withhold certain types of sensitive information when responding to notices of error or information requests that are submitted by confirmed successors or that request information about potential or confirmed successors in interest.
2. **Safe Harbor** - Concurrent with the release of the 2016 Servicing Amendments, the Bureau issued an advisory opinion interpreting “consumer” in FDCPA section 805 to include anyone defined in Regulations X and Z as a confirmed successor. This provides a safe harbor from liability under FDCPA section 805(b) for communications by a servicer to a confirmed successor about the mortgage loan in compliance with Regulations X and Z.

# Loss Mitigation Applications

---

- The 2016 Servicing Amendments allow but do not require servicers to evaluate loss mitigation applications received from potential successors prior to confirmation of successor-in-interest status.
- When a servicer elects not to evaluate a loss mitigation application from a potential successor, the servicer must retain the application, consider it received as of the confirmation date, and evaluate it promptly following confirmation.
- Nothing in the rule prohibits a servicer from requiring assumption as a condition of a loss mitigation offer. However, a servicer cannot condition evaluation of a loss mitigation application on a confirmed successor's assumption of the mortgage.

# Other Successor Facts

---

- Servicers are not required to conduct a search for a potential successor if they have not received actual notice of the potential successor's existence.
- Servicers are generally not required to provide notices to more than one borrower or confirmed successor on each loan. However, confirmed successors may obtain loan information through a Request for Information.

# Force-Placed Insurance and Information Requests

---

- 1. Force-Placed Insurance** – The rule amends the force-placed insurance disclosures and model forms to account for situations when the borrower has insufficient, rather than expiring or expired, hazard insurance on the property and gives servicers the option to include a borrower’s mortgage loan account number on the force-placed insurance notices.
- 2. Information Requests** - When a borrower requests information about loan ownership and either Fannie Mae or Freddie Mac is the owner of the loan or trustee of the securitization trust that holds it, the servicer may provide the name and contact information for the GSE but is not required to give the trust name and contact information unless the borrower specifically asks for it.

# Small Servicer Definition

A small servicer, defined as a servicer that, together with any affiliates, services 5,000 or fewer mortgage loans for which the servicer (or affiliate) is the creditor or assignee, is exempt from certain requirements under the rules. The 2016 Amendments modify the definition of small servicer so that loans serviced for a non-affiliate will not count towards the 5,000 limit if they are serviced voluntarily and without compensation. The amendments also exclude transactions serviced by a seller financier that meet all of the criteria identified in the definition provided under § 1026.36(a)(5) of Regulation Z.

# Effective Dates

---

- Bankruptcy
- Successors in Interest
- All other changes
- March 2018
- March 2018
- September 2017

# Helpful Resources

---

- Regulatory Implementation Help:  
<http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/>
- Link to E Regs:  
<http://www.consumerfinance.gov/eregulations/>
- Submit a question: **CFPB\_reinquiries@cfpb.gov**
- [Laurie.Maggiano@cfpb.gov](mailto:Laurie.Maggiano@cfpb.gov)
- [Laura.Johnson@cfpb.gov](mailto:Laura.Johnson@cfpb.gov)