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Mortgage Servicing Regulation Update

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Outline of Presentation

- » Servicing Rules
 - Background/Effective Dates
 - Discussion of Main Topics Covered by 2016 Servicing Amendments/Subsequent Changes
 - List of CFPB Guidance Documents
- » Other Mortgage Servicing Topics

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Background/Ancient History

- » **July 2010** – Dodd-Frank enacted, arguably giving CFPB authority to adopt Servicing Rules
- » **January 2013** – “2013 Servicing Rules” adopted (amending Regulations X and Z)
- » **July and September 2013** – Amendments adopted
- » **October 2013** – Interim Final Rule/Bulletin issued (clarifying rules relating to successors-in-interest, consumers in bankruptcy, consumers who sent FDCPA “cease communications” notices)

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Background/More Recent History

- » **August 2016** – “2016 Amendments” adopted (81 FR 72160)
- » **June 2017** – “2017 Policy Guidance” on Enforcement Priorities regarding Early Compliance
- » **July 2017** – Technical Amendments/Corrections adopted
- » **October 2017** – “2017 Interim Rule” adopted re timing of early intervention notices to borrowers who sent FDCCA “cease communications” notices
- » **March 2018** – “2018 FAQs” issued
- » **March 2018** – “2018 Amendments” relating to timing for servicers to transition to providing modified or unmodified periodic statements and coupon books to consumers in bankruptcy

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Effective Dates

Servicing Rules now fully in effect–

- » 2013 Servicing Rules generally took effect on January 10, 2014
- » 2016 Amendments took effect on October 19, 2017, except that–
 - Bankruptcy periodic statement exemption and bankruptcy modified periodic statements took effect on April 19, 2018.
 - Successor in interest provisions took effect on April 19, 2018
- » 2017 Policy Guidance → servicers may start to comply up to 3 business days before effective date without fear of supervisory or enforcement action

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Main Topics Addressed in 2016 Amendments

- » Successors in interest
- » Definition of Delinquency
- » Prompt payment crediting
- » Periodic statements
- » Small servicer exemptions
- » Notices of Error/Requests for Information
- » Force-placed insurance
- » Early intervention
- » Loss mitigation

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Successors in Interest

2013 Servicing Rules:

» Servicers must have policies and procedures reasonably designed to ensure that, upon notification of a borrower's death, servicer would "promptly identify and facilitate communication with" deceased borrower's successor in interest ("SI") with respect to secured property.

2016 Amendments:

» Clarify and revise many of the changes that were made by the 2013 Interim Rule.

- Define SIs and "confirmed" SIs ("CSIs")
- Requires CSIs to be treated as "borrower"/"consumer" for certain purposes under Servicing Rules
- Imposes new disclosure requirements relating to SIs and CSIs
- Requires more robust policies and procedures relating to SIs and CSIs
- Prohibits servicers from imposing unreasonable requirements on SIs when attempting to make loan payments

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Successors in Interest – Treatment of CSIs

» If servicer sends optional CSI acknowledgement form ("CSI Form") to CSI, it need not send notices to or engage in early intervention with CSI unless and until CSI returns executed CSI Form to servicer or assumes the mortgage loan obligation under State law.

» If servicer is providing any of these notices to another borrower/consumer, it need not provide the same notice(s) to the CSI.

» Notwithstanding that borrower does not return signed CSI Form to servicer, servicer must still respond to notices of error and information requests from SIs.

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Successors in Interest – CSI Form

» Servicer may provide CSI Form to SI after confirming SI's identity and ownership interest in property.

» Among other things, CSI Form must:

- Tell SIs that they have been confirmed as a CSI
- State that CSIs are not liable on the loan unless and until they assume the loan obligation under State law or are otherwise liable on it
- Give CSIs right to request servicer to send them notices and communications relating to secured property.

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Definition of Delinquency

»Why important?

- Date of "delinquency" triggers start of:
 - 36-day period for servicer to establish live contact with borrower
 - 45-day period for servicer to send "early intervention" notice
 - 120-day period that must precede commencement of foreclosure process

»Loan is "delinquent" when periodic payment (principal, interest and escrow, if applicable) is due but has not been paid (in full) and until no payment is "due and unpaid".

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Definition of Delinquency (continued)

»Note that-

- Doesn't matter if there is a grace period before late fee may be charged
- Payment by delinquent borrower moves date of delinquency forward
 - *Example:* Payment due 1st of every month; borrower does not make January 1 payment until February 3; borrower is 30 days delinquent on January 31 but only 3 days delinquent on February 3
- Loan not "delinquent" even in situation where outstanding payment not paid if no periodic payment is due, such as where borrower is performing on a permanent loan modification

»However, if servicer chooses not to treat borrowers as delinquent when they remit partial payment that is only slightly less than amount due, he/she not "delinquent" for purposes of rule.

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Periodic Statements

»Bankruptcy Exemption from Delivery of Statements

- Exemption ceases to apply if consumer reaffirms personal liability for loan or any consumer on the loan requests Statements in writing, or bankruptcy court orders, that servicer provide periodic statement or coupon book.
- Servicer may establish exclusive address to which consumer may send written request to stop providing periodic statement or coupon book, but must notify consumer of address using "reasonable manner designed to inform."

»Requirement to Provide Modified Periodic Statement/Coupon Book

- Servicer must provide modified periodic statement/coupon book while any consumer is in bankruptcy or has received discharge from personal liability on mortgage loan under Chapter 7, 11, 12 or 13.
- New sample forms for modified periodic statements for consumers in Chapter 7 or 11 (H-30E) or Chapter 12 or 13 (H-30(F))

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Periodic Statements (continued)

- » Transitioning between modified and unmodified periodic statements
 - Servicers must do so when–
 - Mortgage loan becomes, or ceases to be, subject to requirement to provide modified periodic statement, or
 - Servicer ceases to be exempt from requirement to provide periodic statement
- » Timing requirements for transitions (2018 Amendments)
 - When transition event occurs, servicer is exempt from providing modified or unmodified periodic statement for the next periodic statement that would otherwise be required ("single-statement exemption").
 - After single-statement exemption, servicer must begin providing the modified or unmodified periodic statements, as required.

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Periodic Statements (continued)

Example #1: Assuming loan payments due on first of every month with 15-day courtesy period–

- » If transition event occurs on October 6 (before end of 15-day courtesy period) and servicer has not yet provided periodic statement for billing cycle with November 1 due date →
 - Servicer exempt from providing periodic statement for that billing cycle
 - Servicer must resume providing modified or unmodified periodic statements, as applicable, for billing cycle with December 1 due date within reasonably prompt time after November 1 or end of 15-day courtesy period for November 1 due date

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Periodic Statements (continued)

Example #2: Assuming loan payments due on first of every month with 15-day courtesy period–

- » If transition event occurs on October 20 (after end of 15-day courtesy period) and servicer timely provided periodic statement for billing cycle with November 1 due date →
 - Servicer not required to correct that periodic statement
 - Servicer exempt from providing periodic statement for billing cycle with December 1 due date
 - Servicer must resume providing modified or unmodified periodic statement, as applicable, for billing cycle with January 1 due date within reasonably prompt time after December 1 or end of 15-day courtesy period provided for December 1 due date

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Periodic Statements (continued)

- » If servicer provides coupon books instead of periodic statements—
 - Same transitioning requirements apply but only to extent servicer has not already provided coupon book that covers the upcoming billing cycle
- » Single-statement exemption may be applicable more than once
 - Example: Consumer files for bankruptcy on April 14; bankruptcy plan says consumer will surrender dwelling; consumer exits bankruptcy on November 2 without discharge of personal liability for mortgage loan (under chapter 7, 11, 12 or 13) → single-statement exception would apply again beginning November 2.

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Periodic Statements (continued)

Charge-off exemption

- » Exemption for charged-off loans on which servicer will not charge additional fees or interest, provided it sends borrower prescribed form of final periodic statement within 30 days of charge-off or most recent periodic statement.
- » Servicer must resume sending periodic statements if it reneges; may not retroactively charge fees or interest

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Guidance for Responding to Certain Types of QWRs

Responding to information requests about loans in securitization trusts:

- » If Fannie/Freddie is owner or trustee and request does not ask for name or number of trust or pool, servicer may provide only name and contact information for Fannie/Freddie.
- » If Fannie/Freddie is not owner or trustee, or request asks for name or number of trust or pool, servicer must provide name of trust, and name, address and contact information for trustee (e.g., "Mortgage Loan Trust, Series ABC-1, and name, address, and contact information for XYZ Trust Co.")

Responding to information requests about loans not in securitization trusts:

- » Servicer must provide name of person on whose behalf it receives payments from borrower
- » Servicer not considered owner of loan if it holds title to loan, or if title is assigned to it, *solely for administrative convenience* of servicer in servicing the loan

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Force-Placed Insurance Clarifications

»Servicer must notify borrower, in writing, that hazard insurance coverage is expiring, has expired or is insufficient, that servicer does not have evidence of new insurance, and the type of insurance for which the servicer lacks coverage.

»No "extra" information allowed on notice of missing or insufficient insurance, except mortgage loan account number.

»Servicer must provide a reminder notice that includes much of same information found in the initial notice and must utilize the special formatting, including bolded text, that appears in model form.

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Early Intervention

»Servicer exempt from early intervention notice requirement only if:

- No loss mitigation option available, and borrower (1) is debtor in bankruptcy or (2) has sent servicer (acting as debt collector) FDCPA "cease communication" notice; OR
- Borrower is debtor in bankruptcy and has sent servicer (acting as debt collector) FDCPA "cease communication" notice.

»Early intervention requirements may be reinstated in certain circumstances.

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Early Intervention (continued)

»Servicer must send modified early intervention notice to non-exempt borrowers-in-bankruptcy:

- At least 45 days after filing of bankruptcy petition, if borrower delinquent when petition filed, or at least 45 days after delinquency, if borrower not delinquent when petition filed.
- Notice may not contain request for payment.
- Notice must be provided not more than once during the bankruptcy case, and
- Notice is required notwithstanding that one was provided within the previous 180-day period.

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Early Intervention (continued)

» Servicer must send modified early intervention notice (model form MS-4(D)) to non-FDCPA-exempt borrowers:

- Notice may not include request for payment or be sent more than once during any 180-day period, and
- Notice must include statement that servicer may or intends to foreclose.

» **Timing Requirements/10-day window (2017 Amendments)**

- If borrower is delinquent ≥ 45 days at end of 180-day period → servicer must provide notice no later than 190 days after giving prior notice.
- If borrower is delinquent < 45 days at end of 180-day period → servicer must provide notice no later than 45 days after delinquent payment due date or 190 days after giving prior notice, whichever is later.

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Loss Mitigation

Complete Application

» Within 5 days after receipt of complete application, servicers must provide borrower with written notice including specified details ("5-day notice").

Information Not In Borrower's Control

» Servicer:

- Must exercise "reasonable diligence" in obtaining info
- May not deny app solely because it has not obtained info
- Must send borrower prescribed form of written notice if, despite reasonable diligence, info cannot be obtained within 30-day deadline for action on complete app and is necessary to determine which loss mitigation options, if any, to offer
- May deny application if it cannot obtain info for "significant period" after 30-day deadline (and, if it denies, must provide borrower with written notice of denial and copy of 5-day notice).

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Loss Mitigation (continued)

Prohibition on foreclosure referral

» Servicer may commence foreclosure process despite borrower being delinquent for < 120 days if joining foreclosure action of superior (not just subordinate) lienholder.

Duplicative Requests

» Servicer must comply with loss mitigation review requirements in §1024.41 for subsequent loss mitigation app(s) from a borrower unless it complied with requirements for prior complete application and borrower has been delinquent continually since.

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CFPB Guidance Documents

- »Small Entity Compliance Guide (Version 3.1) → https://www.consumerfinance.gov/documents/6394/cfpb_mortserv_guide_v3.1.pdf.
- »Coverage Chart → https://www.consumerfinance.gov/documents/6380/cfpb_mortgage-servicing-coverage-chart.pdf.
- »Executive Summary of 2016 Amendments → https://www.consumerfinance.gov/documents/805/08042016_cfpb_Mortgage_Servicing_Executive_Summary.pdf.
- »Small Servicers/Key Provisions of 2016 Amendments → https://www.consumerfinance.gov/documents/809/08042016_cfpb_Mortgage_Servicing_Small_Servicers_and_Key_Provisions.pdf.
- »Fact Sheet on Delinquency/2016 Amendments → https://www.consumerfinance.gov/documents/807/08042016_cfpb_Mortgage_Servicing_Factsheet_on_Delinquency.pdf.
- »2018 FAQs → https://www.consumerfinance.gov/documents/6342/cfpb_mortgage-servicing_frequently-asked-questions.pdf.

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Other Mortgage Servicing Topics

- »Pennsylvania Mortgage Servicing Legislation
- »Washington Mortgage Servicing Regulation
- »Filed Rate Doctrine/Force Placed Insurance Case: *Patel v. Specialized Loan Servicing, LLC* (11th Circuit, Sept 2018)

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QUESTIONS ?

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Leonard Bernstein



Leonard A. Bernstein is a Philadelphia financial services attorney who focuses on financial regulatory and banking matters. He provides consumer credit compliance advice on federal, Pennsylvania and New Jersey laws and regulations to banks, mortgage bankers and finance companies. He advises clients on credit card, auto finance, deposit, residential mortgage and other retail finance products.

With in-depth knowledge of the federal Truth in Lending Act, Real Estate Settlement Procedures Act, Equal Credit Opportunity Act, Fair Credit Reporting Act and similar laws, Mr. Bernstein regularly helps clients review documents and disclosures, and otherwise maximize compliance. He handles bank regulatory issues and exams, and works with litigators to defend class actions and individual claims against financial services providers. He has been elected to the American College of Consumer Financial Services Lawyers.

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