Comment Call (15-1)
CFPB: Amendments to 2013 Mortgage Servicing Rules under Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z)

Impact: Federal and State Chartered Credit Unions
Relevant Department: Lending and Collections / CEO
Priority Level: ***Medium***

Background/Credit Union Summary

The Consumer Financial Protection Bureau (CFPB) has proposed amendments and is seeking comments to its 2013 Mortgage Servicing Rules under the Truth in Lending Act (Regulation Z) and the Real Estate Settlement Practices Act (Regulation X).

The proposed amendments seek to clarify, amend, and revise provisions regarding force-placed insurance policies and procedures, early intervention, and loss mitigation requirements under Regulation X's servicing provisions as well as periodic statements under Regulation Z's servicing provisions. Additionally, the proposed amendments will address proper compliance regarding servicing requirements for when a consumer is a potential or confirmed successor in interest, is in bankruptcy, or sends a cease communications request under Fair Debt Collection Practices Act.

In total, the proposed amendments and commentary address nine major topics: successors in interest, definition of delinquency, request for information, force-placed insurance, early intervention, loss mitigation, prompt payment crediting, periodic statements and small servicer.

The proposal can be found here.

Comments must be received on or before **March 16, 2015.**

Summary and Request for Comments

After the January 10, 2014 effective date of the 2013 Mortgage Servicing Rules, the CFPB continued to engage and monitor the industry, consumer advocacy groups, trade groups, mortgage servicers, bankruptcy attorneys, bankruptcy trustees and other stakeholders. As a result of these efforts, the CFPB is proposing changes to the following areas and is seeking comments. Summaries of the proposed changes are provided below. Additionally, the CFPB is generally seeking comments on the proposed revision as well specific comments outlined below.

1. **Successor in Interest.** The CFPB is proposing three sets of rule changes with regards to successors in interest, referring to people who inherit or receive property when there is still an outstanding mortgage on the property.

a. The CFPB is proposing to apply all of the 2013 Mortgage Servicing Rules to successors in interest once a servicer confirms that a person is a successor in interest.
b. The CFPB is also providing rules relating how a mortgage servicer confirms successor in interests.
c. The CFPB is proposing that to the extent Mortgage Servicing Rules would apply to successors in interest, the rules would also apply to successors in interest who acquired an ownership interest in a transfer protected from acceleration and foreclosures, under Federal Law.

The proposed definition for successor in interest would be expanded to align with protected transfers under the Garn-St. Germain Act. Such protected transfers include homeowners who receive real property from an inheritance from a family member or upon the death of a joint tenant, through a divorce or legal separation, through a family trust, or through a transfer from a spouse or from a parent to a child.

Additionally, the proposed rule would require that servicers maintain policies and procedures that are reasonably designed to ensure that a servicer, upon the death of a borrower, promptly identify and facilitate communication with any potential successor in interest regarding the property as well as maintain policies and procedures that upon identification of potential successor in interest to promptly provide such person with a description of documents required to confirm the person's identity and ownership interest in the property and how the person may submit a written request

Comments: *The CFPB is seeking comments on whether mortgage servicing rules under Regulation X should apply to all successors in interests. Additionally, the CFPB is seeking comments whether any privacy concerns exist when providing information to successors in interest under 1024.35 and 1024.36 and whether servicers should be permitted to withhold any information from successors in interest. The CFPB is also seeking comments whether provisions under Regulation X should apply to successors in interest whom have not been confirmed and alternatively, are there any provision within Regulation X that should not apply to confirmed successors in interest.*

2. **Definition of Delinquency.** The CFPB is proposing to add a general definition of delinquency that would apply to all of the servicing provisions of Regulation X as well as provision regarding periodic statements for mortgage loans under Regulation Z. The proposed definition, a borrower and borrower's mortgage would be considered delinquent beginning on the date a payment sufficient to cover principal, interest and if applicable, escrow, becomes due and unpaid and the borrower remains delinquent until such time that a payment is made. Under the proposed definition, a borrower's failure to pay a late fee, would not trigger a delinquency.

   Comments: *The CFPB is soliciting comments on whether there are any alternative ways to articulate the definition delinquency that may improve uniform interpretation and implementation.*

3. **Requests for Information.** For loans in a trust for which Fannie Mae or Freddie Mac is a trustee, investor or guarantor, the CFPB is proposing to allow the mortgage servicer to respond to requests for information and asking the owner or assignee of the loan with the name and contact information for Fannie Mae or Freddie Mac, as applicable (unless the borrower expressly requests the name and number of the trust or pool.)

4. **Force-Placed Insurance.** The CFPB is proposing to amend the notice disclosures for force-placed insurance when a servicer desires to force-place insurance because the borrower has insufficient coverage rather than expiring or expired, hazard insurance covering the property. The CFPB is also proposing to giver servicers the option to include the borrower's mortgage loan number on the notice.

   Comments: *The CFPB is seeking comments on whether other necessary or appropriate modifications are needed regarding force-placed insurance notices in circumstances when a servicer needs to force-place* *insurance for reasons other than expired or expiring coverage. Additionally, the CFPB is seeking comments regarding the flexibility of a servicer to include the mortgage loan account number on a notice as well as other information on a notice that would not obscure the required disclosure or provide an information overload.*

5. **Early Intervention.** The CFPB is proposing to clarify the early intervention live contact obligations and written early intervention notice obligations that require a servicer to contact a borrower that become delinquent. Additionally, the CFPB is looking to provide early intervention notices to certain borrower who may be in bankruptcy or who have invoked their cease communication rights under the Fair Debt Collection Practices Act.

6. **Loss Mitigation.** The CFPB is proposing amendments to loss mitigation procedures that servicers must follow for a mortgage loan secured by a borrower's principal residence. The CFPB is proposing three categories of amendments impacting loss mitigation.
   - **a.** The CFPB is proposing requirements for servicers collecting loss mitigation applications and evaluating. Under the proposed amendments, a servicer would be required to notify a borrower in writing when a servicer receives a borrower's complete loss mitigation application. The amendments would also clarify a servicer's flexibility to set a reasonable timeframe for which borrowers must complete a loss mitigation application. It would also clarify that if a servicer lacks third party information thirty (30) days after receiving an application, the servicer cannot deny the application but must send a notice to the borrower and complete the evaluation promptly upon receipt of such information. The proposal would also allow servicers to offer short term repayments plans upon the evaluation of an incomplete application that would allow a borrower to repay past due amounts over a specified period of time until the mortgage loan is brought current. The proposal would also allow a mortgage servicer to stop collecting documents and information from a borrower pertaining to loss mitigation option after receiving information confirming that the borrower is not eligible to for that option. The proposal would also require servicers to evaluate borrowers more than once for loss mitigation during the life of the loan for borrower who have brought their loan current at any time since the last loss mitigation.
   - **b.** The CFPB is proposing rules to address dual tracking prohibitions under the current rules and the ability of a subordinate lien holder to join a foreclosure action filed by a senior lien holder. The proposed rule would require a subordinate lien holder to join the foreclosure action of a senior lienholder, even if the borrower is not 120 days delinquent on the subordinate lien and the subordinate servicer would otherwise be barred from initiating foreclosure. With dual tracking, the rules currently prohibit a servicer from proceeding to foreclosure once a servicer received a complete loss mitigation application from a borrower. The CFPB is seeking to provide clarifying steps that servicers and foreclosure counsel must take to protect borrowers from wrongful foreclosure sale. The proposal would also require that servicers who do not take all reasonable affirmative steps, either directly or through foreclosure counsel, to delay the sale, must dismiss the foreclosure action, if necessary to avoid the sale.
   - **c.** The CFPB is proposing rules that would address and clarify how loss mitigation procedures and timeliness apply when a mortgage is transferred from one service provider to another during a loss mitigation process. The proposed revisions would provide that a transfer from one servicer to another should not affect a borrower's loss mitigation rights and foreclosure protections under Regulation X. Under the proposal, the transferee service must comply with the loss mitigation requirements within the same timeframes that applied to the transferor servicer. Under the proposed ruled, transferee servicers would be given an additional five (5) days to provide notice the acknowledgment notice. If the borrower's application was completed prior to the transfer, the transferee servicer must evaluate the application within 30 days of when the transferor received the application. In the case of involuntary transfers, the proposal would allow the transferee servicer at least fifteen (15) days after the transfer date to evaluate the complete application. If the

transferee servicer needs more information in order to evaluate the application, the borrower would retain most foreclosure protections while the application is being evaluated.

7. **Prompt Payment Crediting.** The CFPB is proposing to clarify how servicers must treat periodic payments made by borrowers who are performing under either temporary loss mitigation programs or permanent loan modifications. For borrowers performing under temporary loss mitigation programs, periodic payments would continue to be applied as specified in the loan contract, so that the payments made under the temporary loss mitigation program could be applied as partial payments. For permanent loan modifications, periodic payments would be applied as specified under the permanent loan modifications so that payments made in accordance with the terms of the permanent loan modification could not be applied as partial payments.

8. **Periodic Statements.** The CFPB is proposing several clarifications and additional requirements regarding servicer obligations to provide periodic statements under mortgage servicing rules.
   - **a.** The CFPB is proposing clarification regarding certain periodic statement disclosure requirements relating to mortgage loans that have been accelerated, are in a temporary loss mitigation process, or have been permanently modified. In general, the proposal would provide that, for loans that have been accelerated, if the servicer will accept a lesser amount to reinstate the loan than the entire balance, the "amount due" on the periodic statement must identify only the lesser amount that will be accepted to reinstate the loan and not the entire accelerated balance. For loans in temporary loss mitigation program, the "amount due" could identify either the payment due under the temporary loss mitigation program or the amount due according to the loan contract. For loans that have been permanently modified, the proposal would require the "amount due" must identify only amount under the modified loan contract.
   - **b.** The CFPB is proposing that servicers be required to send periodic statements or coupon books (where servicers are otherwise permitted instead of periodic statements) to consumers who have filed for bankruptcy, subject to certain exemptions. Sample periodic statements are being proposed for servicers to utilize in order to ensure compliance with consumers in bankruptcy and the CFPB is planning on conducting consumer testing on the proposed forms.
   - **c.** The CFPB is also proposing to exempt servicer from issuing periodic statements for charged-off loans if the servicer will not be charging any additional fees or interest on the account and provides a final notice of the charge-off to the borrower.

9. **Small Servicer.** The CFPB is proposing to make certain changes to the small servicer definition. Generally, the small servicer definition applies to servicers who service 5,000 or fewer mortgage loans for which they are a creditor or an assignee. However, the proposed rule would seek to exclude certain seller-financed transactions from being counted within the 5,000 loan limit, and would allow servicers that would otherwise qualify as a small creditor.

The proposed rule also makes technical corrections to several provisions of Regulations X and Z.

The **effective date** of the proposed changes would occur 280 days after publication of a final rule in the Federal Register except for changes to made to 1026.41(e)5 and 1026.41(f), which would become effective one year after a publication of a final rule in the public register.

Comment Letters

Identify your comments with Docket No. CFPB-2014-0033 or RIN 3170-AA49, by any of the following methods:

Please submit a mailed Comment Letter to:

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Electronically: http://www.regulations.gov Follow the instructions for submitting comments.

Please submit to the MCUL a copy of your response to the attention of:

Ken Ross
Executive Vice President
Michigan Credit Union League & Affiliates
38695 W. Seven Mile Road, Suite 200
Livonia, MI 48152-7097

E-mail: MaryJo.White@mcul.org
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We Appreciate Your Response