

## **CFPB Bulletin 2013-01**

**Date:** February 11, 2013

**Subject:** Mortgage Servicing Transfers

The Consumer Financial Protection Bureau (CFPB) is issuing this guidance to residential mortgage servicers and subservicers (collectively, servicers), to address potential risks to consumers that may arise in connection with transfers of servicing. The CFPB's concern in this area is heightened due to the number and size of recent servicing transfers. As described below, servicers engaged in significant servicing transfers should expect that the CFPB will, in appropriate cases, require them to prepare and submit informational plans describing how they will be managing the related risks to consumers.

A mortgage servicer, among other things, collects and processes loan payments on behalf of the owner of the mortgage note. Servicing transfers are common and may occur in several ways. The mortgage owner may sell the rights to service the loan, called the Mortgage Servicing Right (MSR), separately from the note ownership. The owner of the loan or MSR may, rather than servicing the loan itself, hire a vendor – typically called a subservicer – to take on the servicing duties. MSR owners frequently sell MSRs outright as an asset. Servicing transfers may also occur through whole loan servicing transfers or whole loan portfolio transfers, rather than through sales of MSRs. In this bulletin, we are using the term “transfer” broadly to cover transfers of servicing rights as well as transfers of servicing responsibilities through subservicing or whole loan servicing arrangements.

### ***Protections under Federal Law***

The CFPB advises mortgage servicers that its examiners will be carefully reviewing servicers' compliance with federal laws applicable to servicing. These may include, among others, the Real Estate Settlement Procedures Act (RESPA), the Fair Credit Reporting Act (FCRA), the Fair Debt Collection Practices Act (FDCPA), and prohibitions on unfair, deceptive, or abusive acts or practices (UDAAPs). In general (and subject to certain exceptions), if the servicer changes on a first-lien mortgage loan,<sup>1</sup> RESPA's implementing regulation, Regulation X, requires that both the transferee and transferor<sup>2</sup> servicers deliver a written Notice of Transfer containing specific

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<sup>1</sup> RESPA's mortgage servicing transfer requirements apply to “mortgage servicing loan,” as defined in Regulation X, subject to the exemptions in § 1024.5, when the mortgage loan is secured by a first lien. See 12 C.F.R. § 1024.21(a).

<sup>2</sup> **Transferee** servicer means a servicer who obtains or who will obtain the right to perform servicing functions pursuant to an agreement or understanding. 12 C.F.R. § 1024.21(a). **Transferor** servicer means a servicer,

information.<sup>3</sup> In addition, during the 60-day period beginning on the effective date of transfer, if the transferor (rather than the transferee servicer that should properly receive payment on the loan) receives payment on or before the applicable due date (including any grace period allowed under the loan documents), a late fee may not be imposed on the borrower with respect to that payment. Moreover, the payment may not be treated as late for any other purpose.<sup>4</sup>

The FCRA provides protection for consumers by prohibiting the furnishing of information to a consumer reporting agency that the furnisher knows or has reasonable cause to believe is inaccurate.<sup>5</sup> A servicer that furnishes information to consumer reporting agencies must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information furnished considering applicable federal guidelines and must periodically review the policies and procedures and update them as necessary to ensure their continued effectiveness.<sup>6</sup> The FCRA also gives consumers the ability to dispute credit reporting information with consumer reporting agencies and directly with their furnishers.<sup>7</sup> Servicers, like other furnishers, must appropriately investigate such disputes.<sup>8</sup>

The FDCPA imposes obligations on servicers to the extent they act as debt collectors within the meaning of the FDCPA.<sup>9</sup> Among other obligations, the FDCPA requires that within five days after the initial communication with a borrower in connection with collecting a debt, a debt collector must send the borrower a notice including the amount of the debt, to whom the debt is owed, the borrower's right to request verification of the debt, and other required information.<sup>10</sup> The FDCPA also prohibits deceptive representations, the use of unfair or unconscionable means, and abusive conduct in debt collection.<sup>11</sup>

In addition to the notice requirements and other consumer protections described above, servicers must avoid engaging in UDAAPs. The CFPB emphasizes that conduct that does not violate one of the specific prohibitions in the laws discussed above may nonetheless constitute a UDAAP.<sup>12</sup>

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including a table funding mortgage broker or dealer on a first lien dealer loan, who transfers or will transfer the right to perform servicing functions pursuant to an agreement or understanding. *Id.*

<sup>3</sup> 12 C.F.R. § 1024.21(d)(1). The transferor and transferee servicers may combine their notices into one notice. 12 C.F.R. § 1024.21(d)(2)(i)(C).

<sup>4</sup> 12 C.F.R. § 1024.21(d)(5).

<sup>5</sup> 15 U.S.C. § 1681s-2(a)(1)(A).

<sup>6</sup> 12 C.F.R. § 1022.42.

<sup>7</sup> 15 U.S.C. §§ 1681i(a)(1), 1681s-2(a)(8); 12 C.F.R. § 1022.43.

<sup>8</sup> 15 U.S.C. § 1681s-2(a)(8), (b).

<sup>9</sup> 15 U.S.C. § 1692a(6).

<sup>10</sup> 15 U.S.C. § 1692g(a). The requirement does not apply if the information is contained in the initial communication or the consumer has paid the debt. *Id.*

<sup>11</sup> 15 U.S.C. §§ 1692d, 1692e, 1692f.

<sup>12</sup> The CFPB Supervision and Examination Manual provides further guidance on how the UDAAP prohibition applies to supervised entities. That examination manual is available at <http://www.consumerfinance.gov/guidance/supervision/manual>.

### ***Further Actions***

If the CFPB determines that a servicer has engaged in any acts or practices that are unfair, deceptive, or abusive, or that otherwise violate Federal consumer financial laws and regulations, it will take appropriate supervisory and enforcement actions to address violations and seek all appropriate corrective measures, including remediation of harm to consumers.

### ***Areas of Focus***

The CFPB has particular concerns related to servicing transfers that arise from consumer complaints and supervisory work related to servicing transfers. Among other complaints, consumers have complained about service interruptions when their loans are transferred during the loss mitigation process. It appears transferee servicers sometimes fail to honor the terms of trial loan modifications provided by predecessor servicers because relevant documents are not transferred to the transferee servicer, or the transferee servicer does not take adequate steps to identify mortgages subject to trial loan modifications. The CFPB is making these and other servicing transfer-related issues a focus of supervisory activities in the mortgage servicing area.

As explained in CFPB's Servicing Examination Procedures, CFPB examiners will assess risks to consumers like those described above, in connection with servicing transfers. During the course of supervision, examiners are assessing the policies, procedures, systems, and controls that servicers have established to address the risks to consumers in connection with servicing transfers. Moreover, examiners are assessing whether mortgage servicers are adequately staffed and are ensuring that their employees are trained to handle consumer communications in the context of servicing transfers.

The CFPB advises servicers that examiners will direct particular attention to the following areas in connection with servicing transfers:

1. How a transferor servicer has prepared for the transfer of servicing rights and/or responsibilities, including:
  - a. What steps it takes before the transfer to ensure that information is transferred in a manner that is compatible with the transferee's servicing system;
  - b. What procedures it had in place, before the transfer, to ensure that it would provide adequate information to the transferee servicer to facilitate that servicer's complying with its obligations without unnecessary interruption in servicing; and
  - c. In what manner and how timely, after the transfer, the transferor intends to respond to inquiries from the transferee or the consumer about transferred loans.



2. How a transferee servicer handles the files transferred to it, including:
  - a. What due diligence the transferee performs to ensure that it conveys accurate information to consumers, including, for example, information regarding amounts they owe and their delinquency status, if applicable;
  - b. What procedures the transferee had in place to identify loss mitigation in process (*e.g.*, trial or permanent modifications, forbearance plans, or short sale/deed-in-lieu agreements) at the time of transfer;
  - c. What due diligence the transferee performs to ensure that the servicing platform or other systems it employs accurately reflect all account-level information including, for example, fees assessed to a borrower's mortgage loan account;
  - d. What training the transferee conducts to ensure that all staff who will have operational access to the servicing platform are able to interpret, operate, manage, access, and utilize the transferred loan information; and
  - e. What post-transfer audits the transferee servicer conducts to confirm that all data were properly transferred, and whether the transferee servicer corrects any identified errors.
  
3. For loans with loss mitigation in process (*e.g.*, pending loss mitigation applications, trial modifications, forbearance plans, or short sale/deed-in-lieu agreements), what policies the transferor and transferee implemented, including what procedures they adopted to ensure that:<sup>13</sup>
  - a. The transferee receives information regarding which loans are in any state of loss mitigation prior to the effective date of the transfer;
  - b. The transferor sends, and the transferee receives, loss mitigation applications, financial documents, previous loss mitigation history (*e.g.*, borrower failed a loan modification previously) and executed copies of prior servicers' loss mitigation agreements and documents;

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<sup>13</sup> What policies and procedures are adequate may depend on the circumstances, including whether the transfer of the servicing was preceded by the termination of the contract for servicing for cause; commencement of proceedings for bankruptcy of the servicer; or commencement of proceedings by the Federal Deposit Insurance Corporation for conservatorship or receivership of the servicer or an entity that owns or controls the servicer.



- c. The transferee is properly applying, after transfer, payments due under an applicable loan modification agreement or other applicable payment modification agreement;
- d. The transferee properly considers applicable loan modification or forbearance agreements before demanding or collecting amounts due;
- e. The transferee has documented circumstances in which it will require new supporting documentation from the borrower to be considered for a trial modification or converted to a permanent modification; and
- f. The transferor or transferee accurately informs the borrower of the status of any loss mitigation application that remains pending at the time of transfer.

### ***Plans for Handling Servicing Transfer***

As part of its efforts to focus supervisory attention on the topics described above, the CFPB will, in appropriate cases, require servicers engaged in significant servicing transfers to prepare and submit written plans to the CFPB detailing how they will manage the associated consumer risks. The CFPB will use these plans to assess consumer risks and inform further examination planning. Servicers do not need approval from the CFPB before moving forward with servicing transfers.

The CFPB provides this guidance today to give servicers advance notice that it may require such plans in the course of its supervisory activities. What information should be included in the plan would depend on the circumstances of the particular transfer.

In general, however, the CFPB will want information regarding:

1. The number of loans involved in the transfer;
2. The total servicing volume being transferred (measured by unpaid principal balance);
3. The name(s) of the servicing platform(s) on which the transferor stored all relevant account-level information for transferred loans prior to transfer and information about compatibility with the transferee's systems;
4. A detailed description of the transaction and system testing to be conducted to ensure accurate transfer of electronic information and a description of the summary report to be generated as a result of this testing;
5. A description of how the transferee will identify and correct errors identified in connection with the transfer, including a specified time period for reviewing files and resolving errors;
6. A description of the training plan and actual training materials for staff involved in reviewing, assessing, utilizing, or communicating information regarding the transferred loans;

7. A customer-service plan specific to the transferred loans that provides for responding to loss mitigation requests or inquiries and identifying whether a loan is subject to a pending loss mitigation resolution or application.

### ***Servicing Rules***

On January 17, 2013, the CFPB issued servicing rules that will be effective on ***January 10, 2014***. Among other things, these rules will require servicers to maintain policies and procedures that are reasonably designed to achieve the objectives of facilitating the transfer of information during mortgage servicing transfers.<sup>14</sup> Those policies and procedures should be designed to ensure that the servicer can:

- (i) As a transferor servicer, timely transfer all information and documents in the possession or control of the servicer relating to a transferred mortgage loan to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred and that enables a transferee servicer to comply with the terms of the transferee servicer's obligations to the owner or assignee of the mortgage loan and applicable law.

The Official Bureau Interpretation further provides that:

- A transferor servicer's policies and procedures may provide for transferring documents and information electronically, provided that the transfer is conducted in a manner that is reasonably designed to ensure the accuracy of the information and documents transferred and that enables a transferee servicer to comply with its obligations to the owner or assignee of the loan and with applicable law. For example, a transferor servicer must have policies and procedures reasonably designed to ensure that data can be properly and promptly boarded by a transferee servicer's electronic systems and that all necessary documents and information are available to, and can be appropriately identified by, a transferee servicer.<sup>15</sup>

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<sup>14</sup> Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X), available at <http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/> (to be codified at 12 C.F.R. § 1024.38(a), (b)(4)).

A servicer that qualifies as a small servicer is exempt from the requirements just described. A small servicer is a servicer that either: (A) services 5,000 or fewer mortgage loans, all of which the servicer (or an affiliate) either originated or owns; or (B) is a Housing Finance Agency, as defined in 24 C.F.R. § 266.5.

<sup>15</sup> *Id.* (to be codified at 12 C.F.R. pt. 1024, Supp. I, Comment 1024.38(b)(4)-1).



- A transferor servicer’s policies and procedures must be reasonably designed to ensure that the transfer includes any information reflecting the current status of discussions with a borrower regarding loss mitigation options, any agreements entered into with a borrower on a loss mitigation option, and any analysis by a servicer with respect to potential recovery from a non-performing mortgage loan, as appropriate.<sup>16</sup>
- (ii) As a transferee servicer, identify necessary documents or information that may not have been transferred by a transferor servicer and obtain such documents from the transferor servicer.<sup>17</sup>

The Official Bureau Interpretation further provides that:

- A transferee servicer must have policies and procedures reasonably designed to ensure, in connection with a servicing transfer, that the transferee servicer receives information regarding any loss mitigation discussions with a borrower, including any copies of loss mitigation agreements. Further, the transferee servicer’s policies and procedures must address obtaining any such missing information or documents from a transferor servicer before attempting to obtain such information from a borrower. For example, assume a servicer receives documents or information from a transferor servicer indicating that a borrower has made payments consistent with a trial or permanent loan modification but has not received information about the existence of a trial or permanent loan modification agreement. The servicer must have policies and procedures reasonably designed to identify whether any such loan modification agreement exists with the transferor servicer and to obtain any such agreement from the transferor servicer.<sup>18</sup>

The CFPB plans to work with mortgage servicers to support implementation of the new rules. To help with compliance, the CFPB will be, among other things, issuing plain language summaries of the rules and, in coordination with other agencies, releasing materials that help servicers understand supervisory expectations. The CFPB will be reviewing, during future examinations, how servicers prepare to comply with the new requirements.

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<sup>16</sup> *Id.* (to be codified at 12 C.F.R. pt. 1024, Supp. I, Comment 1024.38(b)(4)-2).

<sup>17</sup> *Id.* (to be codified at 12 C.F.R. § 1024.38(b)(4)).

<sup>18</sup> *Id.* (to be codified at 12 C.F.R. pt. 1024, Supp. I, Comment 1024.38(b)(4)(ii)-1).