

## ARTICLES

August 25, 2014

### DO YOU HAVE A PLAN FOR TRANSFERRING YOUR SERVICING RIGHTS? YOU PROBABLY SHOULD...

Gone are the days that a simple “Hello/Goodbye” letter could satisfy the transfer of servicing obligations from one mortgage company to another. In light of potential risks to consumers during the mortgage servicing transfer process, the Consumer Financial Protection Bureau (CFPB) has issued **Bulletin No. 2014-01**, which replaces **Bulletin No. 2013-01**. The Bulletin targets issues that the CFPB continues to believe pose a risk to consumers when the servicing of their mortgage is transferred. It also gives a roadmap to what examiners will be looking for the next time they come in for an examination.

The Bulletin is divided into four parts: (i) general transfer-related policies and procedures; (ii) applicability of the other servicing rules to transfers; (iii) protections under other consumer credit protection laws; and (iv) plans for handling servicing transfers.

#### General Transfer-Related Policies and Procedures

Among other things, **the new servicing rule requires** that mortgage servicers maintain policies and procedures related to mortgage servicing. If you want your policies and procedures to pass your next examination, ensure that they include the following:

- Contracts require the transferor to provide all necessary documents and information at loan boarding.
- Tailored transfer instructions for each deal, and mandatory meetings to discuss and clarify key issues with counterparties in a timely manner (for large transfers, this could be months in advance of the transfer).
- Specifically tailored testing protocols to evaluate the compatibility of the transferred data with the transferee servicer’s systems and data mapping protocols.
- Quality control work after the transfer of preliminary data to validate that the data on the transferee’s system matches the data submitted by the transferor.
- Method to identify a transfer that cannot be implemented successfully in a single batch— and consequent procedures to implement alternative protocols such as splitting the transfer into several smaller transactions—to ensure the transferee can comply with its servicing obligations for every loan transferred.
- A post-transfer process for validating data to ensure it transferred correctly and is functional, as well as procedures for identifying and addressing data errors for inbound loans.
- Organization and labeling of incoming information to ensure the transferee servicer uses any transferred information before seeking information from borrowers.
- Regularly scheduled calls with transferor servicers to (i) identify any loan-level issues and (ii) to research and resolve those issues within a few days of them being raised.

If you transfer loans with pending loss mitigation applications or approved trial modification plans, CFPB examiners will look for the following:

- The **transferor** specifically flags all loans with pending loss mitigation applications (complete and incomplete), as well as approved loss mitigation plans (including trial modification plans) through a previously agreed upon means and assists in ensuring that the transferee’s systems can process the loss mitigation data upon transfer.
- The **transferee** requires the transferor to supply a detailed list of loans with pending loss mitigation applications, as well as approved loss mitigation plans.
- The **transferee** requires that appropriate documentation for loans with pending loss mitigation applications, as well as approved loss mitigation plans, are transferred pre-boarding.
- The **transferee** ensures receipt of information regarding any loss mitigation discussions with borrowers, including any copies of loss mitigation documents.
- The **transferee** monitors newly transferred loans and determines if partial payments received are actually payments pursuant to trial or permanent modification agreements.

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## Applicability of the Servicing Rules to Transfers

Although the Bulletin primarily focuses on the implications for the transfer of servicing as it relates to the servicer's policies and procedures, servicers are reminded that the other servicing rules may be implicated as part of the transfer process.

- **Error Resolution Procedures** (12 C.F.R. 1024.35) and **Requests for Information** (12 C.F.R. 1024.36). Servicers are required to meet certain procedural mandates for responding to notices of error and written information requests. A transfer does not relieve a transferor servicer of its obligations to respond to notices of error and information requests for up to one year after transfer or discharge.
- **Force-Placed Insurance** [12 C.F.R. 1024.37 and 12 CFR 1024.17(k)]. Before a servicer assesses any premium charge or fee related to force-placed insurance on a borrower, the servicer must comply with certain requirements, including sending notices to the borrower. This notice requirement applies to a transferee servicer that replaces existing force-placed insurance with new force-placed insurance.
- **Early Intervention** (12 C.F.R. 1024.39). A servicer must establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower's delinquency. As clarified in CFPB Bulletin 2013-12, servicers are required to make good faith efforts to establish live contact for each billing cycle for which a borrower has been delinquent for at least 36 days. Transferee servicers are under an obligation to continue good faith efforts undertaken by transferor servicers.
- **Continuity of Contact** (12 C.F.R. 1024.40). Servicers must maintain policies and procedures that are reasonably designed to achieve certain objectives related to personnel assigned to assist delinquent borrowers. Servicers are advised to consider how to inform delinquent borrowers of the availability of servicer personnel. For example, customer service contact information could be included in the "Hello" letter.
- **Loss Mitigation** (12 C.F.R. 1024.41). CFPB examiners will pay particular attention to servicers' handling of loss mitigation in the context of transfers. A transferee that obtains the servicing of a mortgage loan for which an evaluation of a complete loss mitigation option is in process should continue the evaluation of the complete loss mitigation application to the extent practicable. CFPB examiners will carefully scrutinize any evaluations that take longer than 30 days from the date the transferor received the borrower's complete application, especially if the borrower suffered negative consequences due to the delay.

## Protections under Other Consumer Protection Laws

The Fair Credit Reporting Act (FCRA) prohibits servicers from furnishing inaccurate information to the credit bureaus. This Bulletin reminds servicers that they must establish policies and procedures to ensure the accuracy and integrity of the information provided. (See Venable's recent [article](#) regarding a settlement with an auto finance company related to furnishing inaccurate data to credit bureaus.) Additionally, FCRA requires that debt collectors send a notice to borrowers within five days of an initial communication in connection with the collection of that debt. CFPB examiners are enforcing this requirement on mortgage servicers that "act like debt collectors."

Servicers also are required to service loans in such a way as to avoid any UDAAP violations.

## Plans for Handling Servicing Transfers

If your company is engaged in "significant" (a term not defined in the Bulletin) mortgage servicing transfers, the CFPB may ask you to prepare a written plan identifying how you will manage the specific risk associated with the transfer of servicing. Although servicers do not need approval from the CFPB to implement these plans, they will serve as a guide for examiners.

These plans will vary by transaction, but should generally include the following:

- The number of loans involved in the transfer;
- The total servicing volume being transferred (measured by unpaid principal balance);
- 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;
- A detailed description of how the servicer will ensure it is complying with the applicable new servicing rule provisions on transfers;
- A detailed description of transaction and system testing to be conducted to ensure accurate transfer of electronic information, and a description of the summary report resulting from the transferee or

transferor's testing;

- 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;
- A description of the training plan and actual training materials for staff involved in reviewing, assessing, utilizing, or communicating information regarding the transferred loans; and
- A customer-service plan, specific to the transferred loans, that provides for responding to loss mitigation requests or inquiries and for identifying whether a loan is subject to a pending loss mitigation resolution or application.

### **Takeaways**

This Bulletin is a roadmap for your next servicing examination. If you cannot check off every item on this alert, you need to audit your policies and procedures.

The Bulletin is also a reminder that you must have a robust Compliance Management System (CMS) in place. Your CMS must ensure that violations of federal law do not occur during a transfer, and must contain mechanisms for promptly identifying and remediating any violations that do occur. Your CMS should have:

- . Strong policies and procedures;
- . Effective board oversight;
- . Regular and properly directed training;
- . Internal monitoring;
- . External audits; and
- . Complaint review.

Please contact a member of Venable's [CFPB Task Force](#), including the [author](#) of this alert, if you need assistance with your policies and procedures, CMS, or mortgage servicing transfers.