

Financial Services Regulatory Update

December 13, 2016

This communication is designed to provide you with quick snapshots and timely perspectives on recent regulatory developments.

Navigating the Revised Mortgage Servicing Rules

Background

On November 30, 2016, the Consumer Financial Protection Bureau published revisions to its Mortgage Servicing Compliance Guide reflecting final rules adopted in August. Requirements relating to periodic statements for borrowers in bankruptcy and provisions related to successors in interest are effective April 19, 2018; the remainder of the requirements and provisions are effective October 19, 2017. While exemptions from the rules are available for small servicers, the revised rules will apply to most mortgage loan servicing organizations.

Coverage and Exemptions

Similar to the servicing requirements under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA), the Mortgage Servicing Rules apply to closed-end, real estate secured credit involving consumer borrowers. Reverse Mortgage transactions, timeshare plans, and loans involving borrowers in bankruptcy are exempt from the periodic statement requirements under the revised rules; the Truth in Lending Act imposes requirements for open-end credit transactions. Conventional first mortgage transactions are covered, as well as closed-end subordinate lien mortgages involving consumer borrowers.

The rules exempt some servicers, such as small or non-profit servicers:

1. Small Servicers

- A servicer that, together with any affiliates, service 5,000 or fewer mortgage loans, and
- The servicer services only mortgage loans for which the entity or its affiliate are the creditor or assignee

2. Non-profit Servicers

- A servicer that is designated a non-profit entity as defined under the Internal Revenue Service under section 501(c)(3), and
- Services 5,000 or fewer mortgage loans, including those serviced on behalf of associated non-profit entities, and
- Services only mortgage loans that it or an associated non-profit entity originated

Loans acquired through a merger or acquisition count toward the total loans serviced. Additionally, subserviced loans affect the status of an otherwise small servicer since the master servicer and subservicer must both meet the definition of a “small servicer” in order for either of them to claim that status.

Organizations that begin a calendar year as a small servicer but later in the year no longer qualify because they service more than 5,000 loans will have six months or until January 1 of the following year, whichever is later, to comply with the rules. If the servicer ceases to service more than 5,000 before its status change, it retains the small servicer status.



3. Small Servicer Rules

Small servicers must comply with the following provisions of the Mortgage Servicing Rules:

- Provisions relating to written requests from successors in interest
- Adjustable Rate Mortgage (ARM) rate adjustment disclosure provisions
- Prompt payment crediting and payoff statement provisions
- Force-placed insurance provisions
- Error resolution and information request provisions
- Some loss mitigation provisions

What Changed?

Perhaps the most significant change, and the one that will require the most effort to implement, relates to Successors in Interest. The rules address mortgaged properties that are transferred by means of any one of five covered transfer types:

1. A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
2. A transfer to a relative resulting from the death of a borrower;
3. A transfer where the spouse or children of the borrower become an owner of the property;
4. A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or
5. A transfer into an *inter vivos* trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

Servicers must develop and maintain proactive policies and procedures reasonably designed to:

- Promptly facilitate communication with any potential or confirmed successors in interest regarding property securing a mortgage loan upon receiving notice of the death of a borrower, or of any transfer of the property;
- Promptly determine what documents are reasonably required to confirm the person's identity and ownership interest in the property, and promptly provide the person with a description of those documents and how to submit a written request for information regarding the documents required for confirmation; and
- Promptly notify the person, upon the receipt of such documents, that the person is confirmed as a successor in interest, additional documents are required, or the person is not a successor in interest.

In addition, servicers must respond to certain written requests indicating a person may be a successor in interest by providing that person with a written description of the documents required to confirm the person's identity and ownership interest in the property.

Servicers are not required to seek a successor in interest in the event a borrower dies, but they must promptly respond to claims by successors in interest. When servicers determine a person is a successor in interest to property securing



a serviced loan, they must treat the confirmed successor in interest as a borrower for the purposes of Mortgage Servicing Rules that otherwise apply to the servicer (i.e., the servicer is not exempt from the applicable requirements). The Rules do not specifically define the term “prompt” for purposes of communicating with successors in interest; however, the CFPB has indicated circumstances will dictate whether responses would be considered prompt.

Other changes under the 2016 Rules relate to timing, frequency and content of periodic statements, disclosures and model forms related to force-placed insurance, early intervention practices and servicer obligations for delinquent borrowers, and loss mitigation practices. These revisions provide clarification for implementing the original rules, adopted in 2013 and effective January 10, 2014.

Compliance Timeline and Implementation Planning

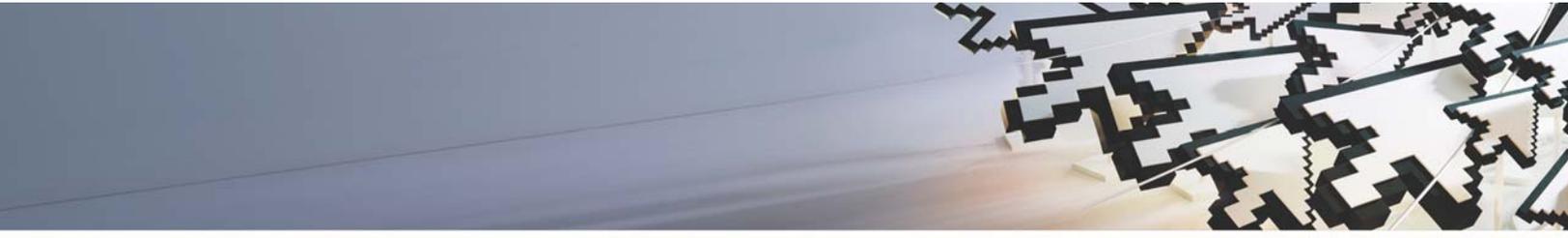
Using the Bureau’s Compliance Guide, begin by reviewing existing policies and procedures related to mortgage loan servicing. Whether the organization is a small servicer or non-profit servicer, or a servicing organization fully subject to the Rules, provisions applicable to each organization must be considered in policies and implemented in practice as directed by formal procedures. This exercise will help organizations evaluate the impact to their operations and plan for resources accordingly.

Once policies and procedures have been updated, servicers will need to update compliance and operational risk assessments, evaluating and obtaining assurances from third party service providers (e.g., loan servicing system vendors, third party collectors or loan work-out providers, etc.) to determine whether any gaps are likely to cause compliance violations. Based on the risk assessment updates and third party evaluations, servicers may need to develop internal stop-gaps or controls to manage compliance risk.

Finally, training should be provided to personnel responsible for business activities governed by the revised rules. Of particular importance are the provisions relating to successors in interest since servicers will likely require support and guidance from legal counsel. Loss mitigation and early intervention personnel, especially if they are third party providers, must be clear on the organization’s expectations for the way they conduct work-out and collection activities.

Changes taking effect October 19, 2017 will require evaluations, updates, and changes in the following areas:

- Error resolution and information requests
- Force-placed insurance
- General servicing policies, procedures and requirements
- Early intervention with delinquent borrowers
- Continuity of contact with delinquent borrowers
- Loss mitigation practices
- Interest rate adjustment notices for ARMs
- Prompt crediting of mortgage payments and responses to requests for payoff amounts
- Periodic statements for mortgage loans



Changes effective April 19, 2018 affect the following:

- Borrower bankruptcy notifications, periodic statements
- Successor in interest provisions

How Experis can help

Experis Finance offers industry experience in all aspects of Financial Services, including:

- Performing objective assessments of servicing and loss mitigation practices
- Assessing risks related to third party relationships
- Assessing the adequacy of your organization's compliance control environment
- Developing internal compliance training programs to address unique risks
- Assisting in the development and/or enhancement of monitoring programs to detect compliance violations
- Developing and maintaining first, second, and third line controls and testing

Our Risk Advisory Services practice can evaluate your current loan compliance program, provide comprehensive recommendations for improvement and help address those recommendations.

Our team of professionals is experienced in working with clients to address these issues in order to help them avoid costly fines and penalties. If you have any questions about or concerns around your implementation of these steps, contact an Experis representative at financialservicesindustry@experis.com or visit our website [Experis Finance](#).