



# THE ONGOING CHALLENGES OF SERVICING **TRANSFERS**

by CHRIS ORTIGARA AND JIM SHANKLE

COMPLIANCE WITH MORTGAGE SERVICING RULES CONTINUES TO BE A HIGH PRIORITY for the Consumer Financial Protection Bureau (CFPB). Most servicers are very

familiar with some of the key changes, particularly those related to the loss-mitigation rules. But it can be very challenging for many servicers to have all aspects of their policies and procedures carefully detailed in writing as well as the actual implementation in place.

Since fall 2012, the CFPB has periodically issued its *Supervisory Highlights*. To date, in addition to updates to the CFPB's servicing examination procedures in January 2014, there have been nine *Supervisory Highlights*, with fall 2015 and summer 2015 being the most recent.

These highlights reflect concerns that the CFPB has discovered during the course of its completed examinations. The *Supervisory Highlights* should also help financial entities and servicers better understand shortfalls that are common to the industry as well as CFPB expectations.

All servicers should have a system to actively review these *Supervisory Highlights* as soon as they are issued so they can make internal changes if they recognize an area or areas that may require attention.

To the extent that servicers may feel overwhelmed with making sure all the regulations are properly being followed, the *Supervisory Highlights* should provide assistance with possible common themes. Put another way, if it's in the *Supervisory Highlights* and you're still doing it wrong and months have passed, you may not get much sympathy from your regulator. But if you have an active

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process to check and update and implement, your reviews by the CFPB and other regulators will be a lot less stressful.

Common themes in both the recent fall and summer *Supervisory Highlights* focus on findings related to Regulation X (loss mitigation, periodic statement disclosures). Based on relatively recent market observations, this column will itemize the details on a few requirements related to Regulation X, of which some lenders may not be aware.

The loan-boarding processes should be carefully reviewed by all servicers. It is critical for the buyers of servicing rights to adopt policies, procedures and practices that are reasonably designed to ensure they can identify necessary documents and loan information that may not have been received from the seller of servicing rights.

This is essential to many aspects of Regulation X. This also includes having follow-up procedures and practices to obtain missing documents and loan data

from the seller. Once a servicing transfer is completed, there may be little or no leverage to compel the seller to search for the missing documents. This is especially true in those situations in which the servicing acquired may have been sold/transferred multiple times prior to the current transfer.

Future potential problems that will likely arise from a faulty loan-boarding process can easily outweigh the time and cost of getting it done right initially.

The CFPB, in Bulletin 2014-01, states its examiners will review the process for transferring pending loss-mitigation applications as well as foreclosures in process (commonly referred to as "in flight") prior to the effective date of the transfer. The loan-boarding team of the buyer should require receipt of documentation from the seller at least 15 days prior to the transfer date.

This pre-transfer documentation should include a preliminary data element report that identifies all data fields that will be included for each loan in the scheduled transfer, as well as a listing of the loan documents to be received at the transfer. Transfer of servicing rules are located in Regulation X at part 1024 in the Code of Federal Regulations (CFR). In addition, the CFPB has issued guidance on mortgage servicing transfers under CFPB Bulletin 2014-01. The CFPB requires that the buyer have the ability to access the entire payment history of a borrower, including the history from the seller as well as prior servicers.

Many servicers only maintain the most recent two years of history on their primary system and archive the rest. It is all too common during servicing transfers for the seller to only provide the easiest data to access—the past two years only. The buyer should not only have agreements in place requiring the seller to include archived payment histories on each borrower, but the loan-boarding team needs appropriate mechanisms and checklists in place to monitor that this has occurred.

Each department within the servicer's operation should have policies and procedures relating specifically to the loan-boarding process. For example, the loss-mitigation, escrow, foreclosure and bankruptcy departments should each have policies and procedures for loan boarding.

Each should have responsibilities during or immediately following a servicing transfer to ensure each loan is serviced properly per the most recent loan data for each loan within the servicing transfer to be boarded. These departments should fully document the processes and requirements.

The servicer must have policies and procedures in place that enable the servicer to properly evaluate loss-mitigation applications in accordance with part 12 in the CFR, section 1024.41. The regulation addresses the required procedures for the receipt and evaluation of loss-mitigation applications submitted by borrowers.

The servicer must provide accurate information regarding loss-mitigation options to a borrower. In addition, the policies and procedures must identify with specificity all loss-mitigation options for which borrowers may be eligible pursuant to any requirements established by an owner or assignee of the borrower's mortgage loan. Note it is not sufficient to identify one loss-mitigation option if more than one is eligible.

In addition, pursuant to part 12 of the CFR, section 1024.39, the content of the written notice to the borrower requires a statement providing a brief description of examples of loss-mitigation options that may be available. For those loans in which the prior servicer(s) determined a borrower did not qualify for

any loss-mitigation alternatives, the documentation received from the prior servicer should clearly demonstrate that the borrower is aware of the next steps in the process (i.e., foreclosure, deed-in-lieu, reinstatement, short sale, etc.).

These are just a few of the many areas of the loan-boarding process related to Regulation X that all servicers need to have in place. The value of drilling down to the specifics of each regulation related to servicing is often the difference between haphazard adherence to the regulations and a complete, well-designed program to catch shortcomings so they can be immediately addressed and resolved. Which category is your servicing operation in?

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