

PUBLICATION IN THE *FEDERAL REGISTER*]: in Regulation X, 12 CFR 1024, § 1024.30(d) and related comments 30(d)-1 through -3; the definitions of successor in interest and confirmed successor in interest in § 1024.31 and related comments 31(Successor in interest)-1 and -2; § 1024.32(c) and related comments 32(c)(1)-1, 32(c)(2)-1 and -2, and 32(c)(4)-1; § 1024.35(e)(5); § 1024.36(d)(3) and (i) and related comments 36(i)-1 through -3; § 1024.38(b)(1)(vi) and related comments 38(b)(1)(vi)-1 through -5; comment 41(b)-1; comment appendix MS to part 1024-2; and in Regulation Z, 12 CFR 1026, § 1026.2(a)(11) and (27) and related comments 2(a)(11)-4 and 2(a)(27)(i)-1 and -2; comment 20(e)(4)-3; § 1026.20(f); comment 36(c)(1)(iii)-2; § 1026.39(f); comment 41(c)-5; and § 1026.41(e)(5), (f), and (g). For additional discussion regarding the effective date of the rule, see part VI of the **SUPPLEMENTARY INFORMATION** below.

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SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

In January 2013, the Bureau issued several final rules concerning mortgage markets in the United States (2013 Title XIV Final Rules), pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111-203, 124 Stat. 1376 (2010).¹

¹ Specifically, on January 10, 2013, the Bureau issued Escrow Requirements Under the Truth in Lending Act (Regulation Z), 78 FR 4725 (Jan. 22, 2013) (2013 Escrows Final Rule), High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X), 78 FR 6855 (Jan. 31, 2013) (2013 HOEPA Final Rule), and Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78

Two of these rules were (1) the Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) (2013 RESPA Servicing Final Rule);² and (2) the Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z) (2013 TILA Servicing Final Rule).³

The Bureau clarified and revised those rules through notice and comment rulemaking during the summer and fall of 2013 in the (1) Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (July 2013 Mortgage Final Rule)⁴ and (2) Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z) (September 2013 Mortgage Final Rule).⁵ In October 2013, the Bureau clarified compliance requirements in relation to successors in interest, early intervention requirements, bankruptcy law, and the Fair Debt Collection Practices Act (FDCPA),⁶ through an Interim Final Rule (October 2013 IFR or IFR)⁷

FR 6407 (Jan. 30, 2013) (January 2013 ATR Final Rule). The Bureau concurrently issued a proposal to amend the January 2013 ATR Final Rule, which was finalized on May 29, 2013. *See* 78 FR 6621 (Jan. 30, 2013) (January 2013 ATR Proposal) and 78 FR 35429 (June 12, 2013) (May 2013 ATR Final Rule). On January 17, 2013, the Bureau issued the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules, 78 FR 10901 (Feb. 14, 2013) (Regulation Z) and 78 FR 10695 (Feb. 14, 2013) (Regulation X) (2013 Mortgage Servicing Final Rules). On January 18, 2013, the Bureau issued the Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B), 78 FR 7215 (Jan. 31, 2013) (2013 ECOA Valuations Final Rule) and, jointly with other agencies, issued Appraisals for Higher-Priced Mortgage Loans (Regulation Z), 78 FR 10367 (Feb. 13, 2013) (2013 Interagency Appraisals Final Rule). On January 20, 2013, the Bureau issued the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 FR 11279 (Feb. 15, 2013) (2013 Loan Originator Final Rule).

² 78 FR 10695 (Feb. 14, 2013).

³ 78 FR 10901 (Feb. 14, 2013).

⁴ 78 FR 44685 (July 24, 2013).

⁵ 78 FR 60381 (Oct. 1, 2013).

⁶ 15 U.S.C. 1692 *et seq.*

⁷ 78 FR 62993 (Oct. 23, 2013).

and a contemporaneous compliance bulletin (October 2013 Servicing Bulletin).⁸ In addition, in October 2014, the Bureau added an alternative definition of small servicer in the Amendments to the 2013 Mortgage Rules under the Truth in Lending Act (Regulation Z).⁹ The purpose of each of these updates was to address important questions raised by industry, consumer advocacy groups, and other stakeholders. The 2013 RESPA Servicing Final Rule and the 2013 TILA Servicing Final Rule, as amended in 2013 and 2014, are collectively referred to herein as the 2013 Mortgage Servicing Final Rules.

On November 20, 2014, the Bureau issued a proposed rule that would have further amended the 2013 Mortgage Servicing Final Rules.¹⁰ The proposal covered nine major topics, and focused primarily on clarifying, revising, or amending provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements under Regulation X's servicing provisions; and prompt crediting and periodic statement requirements under Regulation Z's servicing provisions. The proposal also addressed proper compliance regarding certain servicing requirements when a person is a potential or confirmed successor in interest, is a debtor in bankruptcy, or sends a cease communication request under the Fair Debt Collection Practices Act.

The Bureau is now finalizing the proposed amendments, with additional clarifications and revisions, to revise regulatory provisions and official interpretations relating to the

⁸ Bureau of Consumer Fin. Prot., CFPB Bulletin 2013-12, *Implementation Guidance for Certain Mortgage Servicing Rules* (Oct. 15, 2013), available at http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.

⁹ 79 FR 65300, 65304 (Nov. 3, 2014).

¹⁰ 79 FR 74175 (Dec. 15, 2014).

Regulation X and Z mortgage servicing rules.¹¹ The final rule also covers nine major topics, summarized below, generally in the order they appear in the final rule. More details can be found in the section-by-section analysis below.

1. Successors in interest. The Bureau is finalizing three sets of rule changes relating to successors in interest. First, the Bureau is adopting definitions of successor in interest for purposes of Regulation X's subpart C and Regulation Z that are modeled on the categories of transfers protected under section 341(d) of the Garn-St Germain Act. Second, the Bureau is finalizing rules relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest.¹² Third, the Bureau is applying the Regulation X and Z mortgage servicing rules to successors in interest once a servicer confirms the successor in interest's status.

2. Definition of delinquency. The Bureau is finalizing a general definition of delinquency that applies to all of the servicing provisions of Regulation X and the provisions regarding periodic statements for mortgage loans in Regulation Z. Delinquency means a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow, becomes due and unpaid, until such time as no periodic payment is due and unpaid.

3. Requests for information. The Bureau is finalizing amendments that change how a servicer must respond to requests for information asking for ownership information for loans in trust for which the Federal National Mortgage Association (Fannie Mae) or Federal Home Loan

¹¹ Note that RESPA and TILA differ in their terminology. Whereas Regulation X generally refers to "borrowers," Regulation Z generally refers to "consumers."

¹² This final rule uses the term "successor in interest's status" to refer to the successor in interest's identity and ownership interest in the property.

Mortgage Corporation (Freddie Mac) is the owner of the loan or the trustee of the securitization trust in which the loan is held.

4. *Force-placed insurance.* The Bureau is finalizing amendments to the force-placed insurance disclosures and model forms to account for when a servicer wishes to force-place insurance when the borrower has insufficient, rather than expiring or expired, hazard insurance coverage on the property. Additionally, servicers now will have the option to include a borrower's mortgage loan account number on the notices required under § 1024.37. The Bureau also is finalizing several technical edits to correct discrepancies between the model forms and the text of § 1024.37.

5. *Early intervention.* The Bureau is clarifying the early intervention live contact obligations for servicers to establish or make good faith efforts to establish live contact so long as the borrower remains delinquent. The Bureau is also clarifying requirements regarding the frequency of the written early intervention notices, including when there is a servicing transfer. In addition, regarding certain borrowers who are in bankruptcy or who have invoked their cease communication rights under the FDCPA, the Bureau is finalizing exemptions for servicers from complying with the live contact obligations but requiring servicers to provide written early intervention notices under certain circumstances.

6. *Loss mitigation.* The Bureau is finalizing several amendments relating to the loss mitigation requirements. The final rule: (1) Requires servicers to meet the loss mitigation requirements more than once in the life of a loan for borrowers who become current on payments at any time between the borrower's prior complete loss mitigation application and a subsequent loss mitigation application; (2) modifies an existing exception to the 120-day prohibition on foreclosure filing to allow a servicer to join the foreclosure action of a superior or subordinate

lienholder; (3) clarifies how servicers select the reasonable date by which a borrower should return documents and information to complete an application; (4) clarifies that, if the servicer has already made the first notice or filing, and a borrower timely submits a complete loss mitigation application: (i) the servicer must not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, even where the sale proceedings are conducted by a third party, unless one of the specified circumstances is met (*i.e.*, the borrower's loss mitigation application is properly denied, withdrawn, or the borrower fails to perform on a loss mitigation agreement); (ii) that absent one of the specified circumstances, conduct of the sale violates the rule; (iii) that the servicer must instruct foreclosure counsel promptly not to make any further dispositive motion, to avoid a ruling or order on a pending dispositive motion, or to prevent conduct of a foreclosure sale, unless one of the specified circumstances is met; and (iv) that the servicer is not relieved from its obligations by counsel's actions or inactions; (5) requires that servicers provide a written notice to a borrower within five days (excluding Saturdays, Sundays, or legal holidays) after they receive a complete loss mitigation application and requires that the notice: (i) indicate that the servicer has received a complete application; (ii) provide the date of completion, a statement that the servicer expects to complete its evaluation within 30 days from the date it received the complete application, and an explanation that the borrower is entitled to certain specific foreclosure protections and may be entitled to additional protections under State or Federal law; (iii) clarify that the servicer might need additional information later, in which case the evaluation could take longer and the foreclosure protections could end if the servicer does not receive the information as requested.; (6) sets forth how servicers must attempt to obtain information not in the borrower's control and evaluate a loss mitigation application while waiting for third party information; requires servicers to exercise reasonable diligence to obtain the information and

prohibits servicers from denying borrowers solely because a servicer lacks required information not in the borrower's control, except under certain circumstances; requires servicers in this circumstance to complete all possible steps in the evaluation process within the 30 days, notwithstanding the lack of the required third-party information; requires that servicers promptly provide a written notice to the borrower if the servicer lacks required third party information 30 days after receiving the borrower's complete application and cannot evaluate the application in accordance with applicable requirements established by the owner or assignee of the mortgage loan; and requires servicers to notify borrowers of their determination on the application in writing promptly upon receipt of the third party information it lacked; (7) permits servicers to offer a short-term repayment plan based upon an evaluation of an incomplete loss mitigation application; (8) clarifies that servicers may stop collecting documents and information from a borrower for a particular loss mitigation option after receiving information confirming that, pursuant to any requirements established by the owner or assignee, the borrower is ineligible for that option; and clarifies that servicers may not stop collecting documents and information for any loss mitigation option based solely upon the borrower's stated preference but may stop collecting documents and information for any loss mitigation option based on the borrower's stated preference in conjunction with other information, as prescribed by requirements established by the owner or assignee of the mortgage loan; and (9) addresses and clarifies how loss mitigation procedures and timelines apply when a transferee servicer receives a mortgage loan for which there is a loss mitigation application pending at the time of a servicing transfer.

7. Prompt payment crediting. The Bureau is clarifying how servicers must treat periodic payments made by consumers who are performing under either temporary loss mitigation programs or permanent loan modifications. Periodic payments made pursuant to temporary loss

mitigation programs must continue to be credited according to the loan contract and could, if appropriate, be credited as partial payments, while periodic payments made pursuant to a permanent loan modification must be credited under the terms of the permanent loan agreement.

8. Periodic statements. The Bureau is finalizing several requirements relating to periodic statements. The final rule: (1) clarifies certain periodic statement disclosure requirements relating to mortgage loans that have been accelerated, are in temporary loss mitigation programs, or have been permanently modified, to conform generally the disclosure of the amount due with the Bureau's understanding of the legal obligation in each of those circumstances, including that the amount due may only be accurate for a specified period of time when a mortgage loan has been accelerated; (2) requires servicers to send modified periodic statements (or coupon books, where servicers are otherwise permitted to send coupon books instead of periodic statements) to consumers who have filed for bankruptcy, subject to certain exceptions, with content varying depending on whether the consumer is a debtor in a chapter 7 or 11 bankruptcy case, or a chapter 12 or 13 bankruptcy case; and includes proposed sample periodic statement forms that servicers may use for consumers in bankruptcy to ensure compliance with § 1026.41; and (3) exempts servicers from the periodic statement requirement for charged-off mortgage loans if the servicer will not charge any additional fees or interest on the account and provides a periodic statement including additional disclosures related to the effects of charge-off.

9. Small servicer. The Bureau is finalizing certain changes to the small servicer determination. The small servicer exemption generally applies to servicers who service 5,000 or fewer mortgage loans for all of which the servicer is the creditor or assignee. The final rule excludes certain seller-financed transactions and mortgage loans voluntarily serviced for a non-affiliate, even if the non-affiliate is not a creditor or assignee, from being counted toward the

5,000 loan limit, allowing servicers that would otherwise qualify for small servicer status to retain their exemption while servicing those transactions.

In addition to the changes discussed above, the final rule also makes technical corrections and minor clarifications to wording throughout several provisions of Regulations X and Z that generally are not substantive in nature.

II. Background

Title XIV Rules under the Dodd-Frank Act

In response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression, Congress passed the Dodd-Frank Act, which was signed into law on July 21, 2010. In the Dodd-Frank Act, Congress established the Bureau and generally consolidated the rulemaking authority for Federal consumer financial laws, including the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA), in the Bureau.¹³ At the same time, Congress significantly amended the statutory requirements governing mortgages with the intent to restrict the practices that contributed to and exacerbated the crisis.¹⁴ Under the statute, most of these new requirements would have taken effect automatically on January 21, 2013, if the Bureau had not

¹³ See, e.g., sections 1011 and 1021 of the Dodd-Frank Act, 12 U.S.C. 5491 and 5511 (establishing and setting forth the purpose, objectives, and functions of the Bureau); section 1061 of the Dodd-Frank Act, 12 U.S.C. 5581 (consolidating certain rulemaking authority for Federal consumer financial laws in the Bureau); section 1100A of the Dodd-Frank Act (codified in scattered sections of 15 U.S.C.) (similarly consolidating certain rulemaking authority in the Bureau). *But see* Section 1029 of the Dodd-Frank Act, 12 U.S.C. 5519 (subject to certain exceptions, excluding from the Bureau's authority any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both).

¹⁴ See title XIV of the Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010) (codified in scattered sections of 12 U.S.C., 15 U.S.C., and 42 U.S.C.).