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An Overview of Current Rules, New Amendments, and Expanding Responsibility

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An Overview of Current Rules, Recent Revisions and Expanding Responsibility

In 2013, the Consumer Financial Protection Bureau (“CFPB”) enacted an extensive series of rules impacting the servicing of residential mortgages. These rules were intended to create uniform practices for all servicers, and to establish specific expectations for the relationship between servicers and mortgagors, particularly those mortgagors whose obligations may have become delinquent or are otherwise facing adverse life circumstances.

The crux of the 2013 regulations focused on issues related to loss mitigation, foreclosure, and the costs and fees assessed for defaults under a mortgagor’s loan agreement. The CFPB has recently finalized amendments to these rules, which add some additional clarity to areas previously determined to be unclear, and which impose additional requirements on servicers. This paper is intended to briefly recap the 2013 rules, and to discuss the additional rules, definitions, and expectations as articulated in the 2016 amendments. The text of the amendments, together with extended commentary, can be found in a 901 page PDF available at www.consumerfinance.gov.

The final 2016 rule amendments were issued on August 4, 2016, are effective twelve (12) months following publication in the Federal Register, except for certain provisions related to successors in interest, consumers in bankruptcy, and issues related to when servicers can stop collecting information from a borrower related to specific loss mitigation programs, which will become fully effective eighteen months (18) following publication in the Federal Register. As of the date of publication of this paper, the rules had not yet been published in the Register.

During this transition period, servicers should carefully review the amended rules and assess what changes should be made to current operations, processes and training to ensure

timely compliance with the amendments at before the effective date. It is recommended that particular emphasis be placed on amendments pertaining to confirmed successors in interests, increased borrower loss mitigation opportunities and options, and responsibility for continuing loss mitigation application processing during and after servicing transfers.

Partial 2013 Rule Highlights:

Accessing and providing prompt, accurate information¹

- Generally, servicers need not respond to a request for information if the request (1) is substantially the same as a prior request for information already responded to, unless it requests information that changes over time and covers a different period than prior request²; (2) seeks proprietary, confidential, or privileged information³; (3) seeks information which is irrelevant⁴; or (4) the request is overbroad or unduly burdensome⁵.
- However, servicers are to respond if to a request that seeks the identity of, address of, or contact information for the owner or assignee of the mortgage loan⁶.
- Timing: In sending an acknowledgement of the request (typically unnecessary if a response is forthcoming within five days of receipt), servicers are to respond with the request for identity/contact information of owner/assignee not more than 10 days after the request is received (exclusive of legal holidays and weekends)⁷. For all other requests, response must be no later than 30 days from receipt of request (exclusive of

¹ 12 C.F.R. § 1024.38(b)(1).

² 12 C.F.R. § 1024.36(f)(1)(i) and Comment 36(f)(1)(i) – 1.

³ 12 C.F.R. § 1024.36(f)(1)(ii) and Comment 36(f)(1)(ii) – 1.

⁴ 12 C.F.R. § 1024.36(f)(1)(iii).

⁵ 12 C.F.R. § 1024.36(f)(1)(iv).

⁶ 12 C.F.R. § 1024.36(a); 12 C.F.R. § 1024.36(d)(2)(i)(A) and Comment 36(a) – 2.

⁷ 12 C.F.R. § 1024.36(d)(2)(i)(A).

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