



8584 Katy Freeway, Suite 420

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

Partners

Thomas E. Black, Jr.¹

Gregory S. Graham²

Shawn P. Black³

Managing Attorney Houston

Ryan Black⁴

Senior Lawyers

David F. Dulock

Diane M. Gleason

Daniel S. Engle⁵

Margaret Noles

Associates

Nick Stevens

Syndy Davis

Brandon Pieratt

Of Counsel

David M. Tritter

Calvin C. Mann, Jr.

Retired Partner(s)

Calvin C. Mann, Jr.

¹ Also Licensed in Iowa, New York, and Washington

² Also Licensed in Georgia

³ Also Licensed in Kentucky and New York

⁴ Also Licensed in Washington D.C.

⁵ Also Licensed in New York

May 5, 2020

To: Clients and Friends

From: David F. Dulock

Subject: CFPB Bulletin 2020–02—Compliance Bulletin and Policy Guidance: Handling of Information and Documents During Mortgage Servicing Transfers

In the May 5, 2020, *Federal Register* (85 FR 25281, [click here](#)), the Bureau of Consumer Financial Protection (Bureau) issued Bulletin 2020-02 to provide guidance to residential mortgage servicers and subservicers (servicers) on the transfer of residential mortgage loans. Bulletin 2020-02 covers mortgage servicing transfer-related policies and procedures and the delivery of loan information and documents for ensuring accuracy “that are reasonably designed to achieve the objectives” of Regulation X servicing transfer requirements. (*See* §1024.38.) In addition, Bulletin 2020-02 advises that State laws and regulations may impose additional requirements on servicers.

Bulletin 2020-02 is applicable on May 1, 2020.

In Bulletin 2020-02, the Bureau provides the following conditional and limited relief for good-faith efforts by servicers during the coronavirus pandemic:

Taking into consideration the coronavirus pandemic that led to the President’s declaration of a national emergency on March 13, 2020 (National Emergency), and the economic and social dislocations caused by the pandemic, for the duration of the National Emergency and for 120 days thereafter, if a servicing transfer is requested or required by a Federal regulator or by the security issuer of “Government Loans” (as defined in the CARES Act), the Bureau intends, for activity during this period, to consider the challenges that entities may face as a result, including operational and time constraints related to the transfer, and to be sensitive to good-faith efforts demonstrably designed to transfer the servicing without adverse impact to consumers. The Bureau intends to focus supervisory feedback for institutions, if needed, on identifying issues, correcting deficiencies, and ensuring appropriate remediation to consumers.

Bulletin 2020 details 10 examples (briefly identified below) of servicer practices that the Bureau considers contribute to the policies and procedures that Regulation X requires a servicer to maintain to achieve the objectives of its transfer requirements:

- Develop a servicing transfer plan that includes communications plan, system conversion testing plan, escalation plan, and timeline with key milestones.
- Conduct meetings to discuss and clarify issues with counterparties in a timely manner.
- Implement alternative protocols if it appears the transfer cannot be implemented successfully in a single batch of all accounts.
- Determine servicing responsibilities for legacy accounts.
- Use tailored testing protocols to evaluate compatibility of transferred data with the transferee servicer’s systems and data mapping protocols.
- Identify material issues potentially impacting the accuracy/completeness of transferred loans’ loan data, documentation, servicer’s ability to comply with the law or investor guidelines.

- Identify loans in default, active foreclosure and bankruptcy. Include any loss mitigation activity documentation for each loan, including status and notes, copies of agreements with a borrower, and any servicer analysis on potential recovery from a non-performing loan.
- Perform quality control after transfer of preliminary data to validate that transferor and transferee data match. Prioritize de-boarding/on-boarding data mapping errors for resolution.
- Conduct post-transfer review for effectiveness of the transfer and any gaps requiring resolution.
- Monitor consumer complaints and loss mitigation performance metrics 4-to-6 months post-transfer. Also monitor for delinquencies, foreclosures and bankruptcies to detect trends.

Because servicer portfolios vary in composition and complexity, Bulletin 2020-02 states that “servicers may not need to implement all the example policies and procedures listed above in order to” satisfy Regulation X objectives; however, it “emphasizes the importance of post-transfer monitoring to ensure that transferred data is complete, accurate and functional for the transferee.” Further, Bulletin 2020-02 paraphrases Regulation X comment 38(b)(4)(ii)-1 that “transferees must have policies and procedures reasonably designed to ensure, in connection with a servicing transfer, that the transferee receives copies of any loss mitigation applications and agreements, finds out about the status of any prior discussions with borrowers, and retrieves missing loss mitigation documents and information from the transferor servicer before asking the borrower for such information.”

As for loan information and documents to be transferred or received, Bulletin 2020-02 paraphrases §1024.38(b)(4)(i) that “Regulation X requires transferor servicers to maintain policies and procedures that are reasonably designed to achieve the objectives of timely transferring all information and documents in the possession or control of the servicer relating to a transferred mortgage loan to a transferee servicer in a form and manner that:

- Ensures the accuracy of the information and documents transferred, and
- Enables a transferee servicer to comply with the terms of the transferee servicer’s obligations to the owner or assignee of the mortgage loan and applicable law.”

Bulletin 2020-02 also contains an Appendix A that provides examples of information and documents to be transferred or received grouped by subject area. It contains common data elements for the servicing of mortgage loans and is provided as a guide that servicers may use to assess their transfer-related policies and procedures. The bulletin advises that the Bureau intends to use Appendix A to assess compliance with Regulation X.

In closing, we advise that you not rely solely on this memorandum’s summary of Bulletin 2020-02 and that you read the bulletin, including the footnote citations to Regulation X and Regulation Z that provide the legal basis and requirements for complying with Bulletin 2020-02.

This Memorandum is provided as general information in regard to the subject matter covered, but no representations or warranty of the accuracy or reliability of the content of this information are made or implied. Opinions expressed in this memorandum are those of the author alone. In publishing this information, neither the author nor the law firm of Black, Mann & Graham L.L.P. is engaged in rendering legal services. While this information concerns legal and regulatory matters, it is not legal advice and its use creates no attorney-client relationship or any other basis for reliance on the information. Readers should not place reliance on this information alone, but should seek independent legal advice regarding the law applicable to matters of interest or concern to them. The law firm of Black, Mann & Graham L.L.P. expressly disclaims any obligation to keep the content of this information current or free of errors.