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August 29, 2014 **REV. October 23, 2014**

(CFPB Bulletin 2014-01 now published in [79 FR 63295](#), without Appendix A)

To: Clients and Friends

From: David F. Dulock & Regina M. Uhl

Subject: CFPB Bulletin 2014-01 – Compliance Bulletin and Policy Guidance for
Mortgage Servicing Transfers

On August 19, 2014, the CFPB issued the above referenced bulletin ([click here](#)) updating and replacing similar guidance by the CFPB in Bulletin 2013-01 issued prior to RESPA's new servicing rule that took effect on January 10, 2014 (12 CFR §1024.30, *et seq.*). Bulletin 2014-01 provides updated guidance to residential mortgage servicers and subservicers to address potential risks to consumers that may arise in connection with transfers of servicing, particularly when the transfers involve loans with pending loss mitigation applications or approved trial and permanent modification plans. A related CFPB press release states, "[t]he bulletin includes information on how mortgage servicers should pay special attention to new rules protecting consumers applying for loss mitigation help or trial modifications [.]” quoting CFPB Director Richard Cordray that the CFPB “will not tolerate consumers getting the runaround when mortgage servicers transfer loans.”

While we strongly recommend that you read Bulletin 2014-01 in full, this memorandum sets out redacted guidance from the bulletin, taken from the following four bulletin sections:

A. General Transfer-Related Policies and Procedures

The new servicing rule requires servicers to maintain policies and procedures that are reasonably designed to facilitate the transfer of information during mortgage servicing transfers. This section of the bulletin provides non-exhaustive examples of general transfer-related policies and procedures CFBP examiners may consider in evaluating whether servicers have satisfied this requirement:

Transfer Policies and Procedures

- Ensuring that contracts require the transferor servicer to provide all necessary documents and information at loan boarding (*i.e.*, transferring loan and account data from one management system to another).
- Developing tailored transfer instructions for each transfer contract and conducting meetings to discuss and clarify key issues with counterparties in a timely manner. Key issues may include descriptions of proprietary modifications, detailed descriptions of data fields, known issues with document indexing, and specific regulatory or settlement requirements applicable to some or all of the transferred loans.
- Using specifically tailored testing protocols to evaluate the compatibility of the transferred data with the transferee servicer's systems and data mapping protocols.
- Engaging in quality control after the transfer of preliminary data to validate that the data on the transferee servicer's system matches the data submitted by the transferor servicer.
- Recognizing when the transfer cannot be implemented successfully in a single batch and implementing alternative protocols to ensure that the transferee servicer can comply with its servicing obligations for every loan transferred.

Post-transfer Policies and Procedures (Transferee Servicers)

- Implementing a post-transfer process for validating data to ensure it transferred correctly and is functional and developing procedures for identifying and addressing data errors for inbound loans.
- Organizing and labeling incoming information and ensuring that the transferee servicer uses any transferred information before seeking information from borrowers.
- Conducting regularly scheduled calls with transferor servicers to identify any loan level issues and to research and resolve those issues within a few days of being raised.

Loss Mitigation Transfer Policies and Procedures

- The transferor servicer specifically flagging all loans with pending loss mitigation applications (complete and incomplete) and all loans with approved loss mitigation plans (including trial modification plans) through a previously agreed upon means and assisting in ensuring that the transferee servicer's systems can process the loss mitigation data upon transfer.
- The transferee servicer requiring that the transferor servicer supply a detailed list of loans with pending loss mitigation applications and loans with approved loss mitigation plans.
- The transferee servicer requiring that appropriate documentation for loans with pending loss mitigation applications and loans with approved loss mitigation plans be transferred preboarding of loans.
- The transferee servicer ensuring receipt of information regarding loss mitigation discussions with borrowers, including copies of loss mitigation documents.
 - o Obtaining any such missing information or documents from a transferor servicer before attempting to obtain such information from borrowers.
 - o Reviewing transferred documents to determine if the documents may be used in loss mitigation efforts.
 - o A transferee servicer that, following a transfer, requires borrowers to resubmit loss mitigation application materials is unlikely to have §1024.38(b)(4) compliant policies and procedures.
 - o A transferee servicer that, following a transfer, fails to identify documents and information that borrowers are required to submit to complete loss mitigation applications is unlikely to have §1024.38(b)(2)(iv) compliant policies and procedures.
 - o A transferee servicer that, following a transfer, fails to properly evaluate borrowers who submit loss mitigation applications is unlikely to have §1024.38(b)(2)(v) compliant policies and procedures.
- The transferee servicer monitoring newly transferred loans and determining if partial payments received are pursuant to trial or permanent modification agreements.

B. Applicability of Other Parts of the New Servicing Rule to Transfers

This section answers certain frequently asked questions about how other requirements under the new servicing rule apply to servicing transfers, describes certain focus areas for CFPB examiners and explains how servicers can minimize compliance risk.

Error Resolution Procedures (§1024.35) and Requests for Information (§1024.36)

- If the transferee servicer receives a notice of error or information request from the

borrower or the borrower's agent, the transferee servicer must comply with all applicable requirements under §§1024.35 and .36 within the regulatory timeframes, even if the transferor servicer was servicing the loan at the time of the alleged error or the event about which information is requested.

- A transfer does not relieve transferor servicers from their obligations under §§1024.35 and .36. Transferor servicers are obligated to respond, within the applicable timeframes, to notices of error and information requests received from the borrower or borrower's agent up to one year after the loan was transferred or discharged.

Force-placed Insurance (§§1024.37 and .17(k))

- If the transferee servicer replaces the existing force-placed insurance policy with a new force-placed insurance policy, the transferee servicer must comply with Regulation X's requirements, including having a reasonable basis to conclude the borrower has failed to comply with the mortgage loan contract's requirement to maintain hazard insurance. The transferee servicer also must send the notice required by §1024.37(e) prior to assessing a premium charge or fee on the borrower.
- If a transferor servicer transfers a mortgage loan after mailing or delivering to the borrower one or both of the notices required by §1024.37(c) and (d), the transferee servicer does not need to resend the notice(s) sent by the transferor servicer. The transferee servicer, however, must ensure that the borrower has been sent all required notices within the applicable timeframes before it may assess any premium charge or fee related to force-placed insurance.

Early Intervention (§1024.39(a) and (b))

- A servicer must establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower's delinquency and, as clarified in CFPB Bulletin 2013-12, to make good faith efforts to establish live contact for each billing cycle for which a borrower has been delinquent for at least 36 days. A transferee servicer must begin or continue the good faith efforts regardless of whether the delinquency began while the loan was being serviced by the transferor servicer.
- A servicer must provide to a delinquent borrower a written notice containing the information set forth in §1024.39(b)(2) not later than the 45th day of the borrower's delinquency. A transferee servicer must comply with the written notice requirement regardless of whether the delinquency began while the loan was being serviced by the transferor servicer.

Continuity of Contact (§1024.40)

- Servicers must maintain policies and procedures that are reasonably designed to assign and make available personnel to assist delinquent borrowers.
- Transferee servicers' policies and procedures must be reasonably designed to assign and make available personnel to assist delinquent borrowers when delinquent loans are transferred. CFPB examiners may consider the following policies and procedures, among others, as contributing to meeting this requirement:
 - o Identifying which borrowers are 45 days or more delinquent at transfer and ensuring that personnel are available to assist such borrowers starting at loan boarding.

- o Ensuring that these personnel can provide the borrower with accurate information as required by §1024.40(b)(1), including information relating to loss mitigation applications started at the transferor servicer.
- o Pursuant to §1024.40(b)(2), ensuring that these personnel can retrieve in a timely manner:
 - A complete record of the borrower's payment history, including with the transferor servicer and all prior servicers.
 - All written information the borrower has provided to the transferor servicer and all prior servicers in connection with a loss mitigation application.
- Servicers should consider how to inform delinquent borrowers of the availability of servicer personnel – *e.g.*, the customer service telephone number could be included in the Welcome Letter, early intervention communications or other communications following the transfer.

Loss Mitigation (§1024.41)

- A transferee servicer that obtains the servicing of a mortgage loan for which an evaluation of a complete loss mitigation option is in process should, following a transfer, continue the evaluation of the complete loss mitigation application to the extent practicable. CFPB examiners will scrutinize any evaluations that take longer than 30 days from the date the transferor servicer received the borrower's complete application.
- If a loan is transferred with a loss mitigation application pending or when a borrower is in a loss mitigation program, the transferor and transferee servicers should manage their risk of noncompliance with §1024.41 – for example, by ensuring both before and after the borrower accepts an offer that all applicable loss mitigation information was sent to the transferee servicer by the date of transfer, including:
 - o All applicable loss mitigation notices and when they were sent, including:
 - Acknowledgment notices required by §1024.41(b)(2)(i)(B).
 - Notices stating the transferor servicer's determination of which loss mitigation options, if any, it will offer to the borrower, as required by §1024.41(c)(1)(ii).
 - Denial notices as required by §§1024.41(d) and (h)(4).
 - o All documents and information submitted by a borrower to be evaluated for loss mitigation options.
 - o Documents and information sufficient to show, as applicable:
 - If a borrower submitted an application and when the transferor servicer received it.
 - Whether documentation and information submitted by a borrower in reply to the §1024.41(b)(2)(i)(B) notice did or did not constitute a complete application.
 - The date the transferor servicer received a complete application; if, and when, the servicer requested additional documents or information; and if, and when, the borrower provided them.
 - o Whether an evaluation had been completed and if a loss mitigation offer was made to a borrower.
 - o If the borrower was denied for a loan modification option, whether the borrower appealed and, if so, the status of the appeal.
 - o If a foreclosure sale is pending:
 - The current date of the foreclosure sale.

- Whether a borrower submitted a complete application more than 37 days before the foreclosure sale.
- Instructions to and from foreclosure counsel to ensure compliance with §1024.41(g), including instructions and status of all necessary stays, continuances and/or dismissals.
- o All loss mitigation agreements, including trial and permanent loan modification agreements, forbearance agreements, short sale agreements, deed-in-lieu of foreclosure agreements, or other applicable agreements.
- o Documents and information sufficient to show, as applicable, whether the borrower accepted an offer and whether the borrower was performing in accordance with the offer.

C. Protections under Federal Consumer Financial Law

This section describes other Federal consumer financial laws applicable to servicing transfers and explains potential consequences when servicers fail to fulfill their obligations under these laws.

Fair Credit Reporting Act (15 U.S.C. §1681, et seq.; Regulation V, 12 CFR Part 1022)

- The FCRA generally prohibits furnishing information on a consumer to a consumer reporting agency that the furnisher knows or has reasonable cause to believe is inaccurate and also gives a consumer the right to dispute credit reporting information with a consumer reporting agency and directly with the furnisher. Servicers that furnish consumer information to consumer reporting agencies must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information furnished. They must consider applicable federal guidelines and periodically review their policies and procedures and update them as necessary to ensure their continued effectiveness. Like other furnishers, servicers also must appropriately investigate consumer disputes regarding the consumer information furnished to a consumer reporting agency and report their existence along with any other information furnished to consumer reporting agencies.

Fair Debt Collection Practices Act (15 U.S.C. §1692, et seq.)

- The FDCPA imposes obligations on servicers to the extent they act as debt collectors within the meaning of the FDCPA. Among other obligations, the FDCPA requires that within five days after the initial communication with a borrower in connection with the collection of any debt, a debt collector must send the borrower a notice including the amount of the debt, the creditor's name, the borrower's right to request verification of the debt, and other required information. The FDCPA also prohibits deceptive representations, the use of unfair or unconscionable means, and harassing or abusive conduct in debt collection.

Unfair, Deceptive, or Abusive Act or Practice (Dodd-Frank Act, Title X, §§ 1031, 1036)

- Conduct that does not violate one of the specific prohibitions in the consumer financial laws discussed above may nonetheless constitute an unfair, deceptive, or abusive act or practice (UDAAP). Under the Dodd-Frank Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in a UDAAP. The Dodd-Frank Act also provides CFPB with rule-making authority and, with respect to

entities within its jurisdiction, enforcement authority to prevent UDAAPs in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

Compliance Management System (CMS)

- CFPB expects all servicers under its jurisdiction to maintain a robust CMS. A robust CMS must, among other things, both ensure that violations of Federal consumer financial law do not occur during a transfer and contain mechanisms for promptly identifying and remediating any violations of Federal consumer financial law that do occur. Entities with a robust CMS have strong policies and procedures, effective board oversight, regular and properly directed training, internal monitoring, external audits and complaint review.

D. Plans for Handling Servicing Transfers

This section informs servicers engaged in significant servicing transfers that the CFPB will, in appropriate cases, require them to prepare and submit written plans to the CFPB detailing how they will manage the associated consumer risks. Servicers do not need approval from the CFPB before moving forward with servicing transfers unless specifically required to do so (*e.g.*, by a consent order). The information included in a plan would depend on the circumstances of the particular transfer. In general, however, the CFPB will request information regarding:

- The number of loans involved in the transfer.
- The total servicing volume being transferred (measured by unpaid principal balance).
- The name(s) of the servicing platform(s) on which the transferor servicer stored all relevant account-level information for transferred loans prior to transfer and information about compatibility with the transferee servicer's systems.
- A detailed description of how the servicer will ensure that it is complying with the applicable new servicing rule provisions on transfers.
- A detailed description of the transaction and system testing to be conducted to ensure accurate transfer of electronic information and a description of the summary report resulting from the testing.
- A description of how the transferee servicer will identify and correct errors identified in connection with the transfer, including a specified time period for reviewing files and resolving errors.
- A description of the training plan and actual training materials for staff involved in reviewing, assessing, utilizing, or communicating information regarding the transferred loans.
- A customer-service plan, specific to the transferred loans, that provides for responding to loss mitigation requests or inquiries and for identifying whether a loan is subject to a pending loss mitigation resolution or application.

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