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CFPB's Proposed Changes to the Mortgage Servicing Rules: The Devil Is in the Details

On November 20, 2014, the Consumer Financial Protection Bureau (CFPB) proposed amendments to its Mortgage Servicing Rules (Proposed Rule). The 492 page Proposed Rule would make both significant and technical changes to the Mortgage Servicing Rules. Significantly, if adopted, the new regulations would:

- Apply the Mortgage Servicing Rules to successors in interest who acquire an ownership interest in the property, whether or not the successor has assumed an interest in the mortgage loan;
- With regard to loss mitigation:
  - Require servicers to apply the procedural loss mitigation requirements more than once in the life of the loan;
  - Require servicers to dismiss a foreclosure sale if the servicer or its foreclosure counsel do not comply with the dual tracking requirements;
  - Clarify the application of the loss mitigation procedures and timelines during the transfer of servicing; and
  - Amend the requirements for collecting and evaluating loss mitigation applications;
- Narrow the scope of the exemption from the early intervention requirements for borrowers in bankruptcy and borrowers who have exercised their cease communication rights under the Fair Debt Collection Practices Act (FDCPA); and
- Require servicers to send periodic statements to borrowers in bankruptcy.

If promulgated, a final rule would take effect 280 days after publication in the Federal Register. However, the periodic statement provisions applicable to bankruptcy would take effect 365 days after publication in the *Federal Register*. **Comments on the Proposed Rule are due by March 16, 2015.**

By way of background, in January 2013 the CFPB promulgated the Mortgage Servicing Rules to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act and to establish national standards for the mortgage servicing industry. Those rules took effect January 10, 2014, governing nine major topics delineated in Regulation X promulgated under the Real Estate Settlement Procedures Act (RESPA) and the Regulation Z under the Truth in Lending Act (TILA): (1) periodic billing statements (TILA); (2) interest rate ARM adjustments (TILA); (3) payment crediting and

payoff statements (TILA); (4) force-placed insurance (RESPA); (5) error resolution and requests for information (RESPA); (6) general servicing policies and procedures (RESPA); (7) early intervention (RESPA); (8) continuity of contact (RESPA); and (9) loss mitigation (RESPA).[1]

Since the initial publication, the CFPB has issued three amendments to the Mortgage Servicing Rules[2] and signaled that it would continue to issue proposed updates. Additionally, the CFPB has issued several bulletins and other interpretative guidance on issues of heightened concern, such as the intersection of the Mortgage Servicing Rules and other federal laws (such as the Federal Bankruptcy Code and the FDCPA),[3] vendor management,[4] servicing transfers (with a particular focus on the impact to borrowers in default and the handling of loans mid-stream in the modification process)[5] and how servicers handle successors in interest.[6]

As highlighted below, the Proposed Rule does not fundamentally change the structure of the Mortgage Servicing Rules, but the CFPB's detailed proposal expands upon the following nine topics:

Successors in Interest

Existing Rule: RESPA currently requires servicers to have "policies and procedures reasonably designed to ensure that, upon notification of the death of a borrower, a servicer promptly identifies and facilitates communication with a successor in interest of the deceased borrower with respect to property that secures the deceased borrower's mortgage loan." In Bulletin 2012-12, the CFPB expanded upon those expectations in order "to promote home retention whenever possible for successors in interest faced with the loss of their homes due to the death of a borrower." Further, in July 2014, the CFPB issued an interpretive rule stating that when a borrower dies, successors in interest may be added to the mortgage without application of the CFPB's ability-to-repay rule, thus enabling a lender to recognize a successor in interest as the new borrower without considering his or her ability to repay.[7]

Proposed Rule: The Proposed Rule would: (1) define a successor in interest as a person to whom an ownership interest in the property securing a mortgage loan is transferred from a prior borrower covered under an exemption under Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982;[8] (2) require a servicer to have reasonable policies and procedures applicable to successors in interest who acquire an ownership interest in the property (regardless of whether that person has assumed legal liability for the mortgage debt) upon a borrower's death and other transfers such as those resulting from divorce, legal separation, family trust, or through a transfer from a parent to child; (3) require a servicer to respond to a written request from a person indicating that the person may be a successor in interest in accordance with RESPA's information request provisions by providing that person information regarding what documents are required to confirm the person's identity and ownership interest in the property; and (4) require a servicer to promptly confirm a successor in interest's status and notify the person of the servicer's confirmation so as not to interfere with the successor in interest's ability to apply for loss mitigation. A successor in interest would be considered a borrower once a servicer confirms a successor in interest's identity and ownership interest in the property.

A&B Observation: By interpreting "borrowers" ("consumers" under TILA) to include successors in interest and applying the Mortgage Servicing Rules to confirmed successors, the Proposed Rule will have broad implications that will permeate through *all* of the Mortgage Servicing Rules. Servicers are likely to face operational challenges implementing these requirements. The documents a servicer can request to confirm a potential successor in interest's identity and ownership interest in the property must be specific to the potential successor in interest. Servicers will be required to operationalize the applicability of these requirements to potential and confirmed successors in interest, persons who

possess an ownership interest in the property but have not assumed the mortgage and borrowers who previously had an ownership in the property.

Delinquency

Current Rule: Delinquency generally is not defined under the Mortgage Servicing Rules, although a definition exists for certain provisions, such as the early intervention and continuity of contact requirements.

Proposed Rule: The CFPB would create a definition of delinquency to apply consistently throughout Regulation X as "a period of time during which a borrower and the borrower's mortgage loan obligation are delinquent." The Proposed Rule also would clarify within the proposed definition that a borrower and borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest and if applicable, escrow, became due and unpaid, until such time as the payment is made. According to the proposed commentary, delinquency lasts until a payment is made even if a borrower is afforded a period after the due date to pay before the servicer assesses a late fee.

A&B Observation: The application of this rule will impact how borrowers treat rolling deficiencies in light of the 120-day foreclosure referral waiting period. The rule's impact on the CFPB's anticipated FDCPA rulemaking is unclear. RESPA's proposed definition of "delinquency" aligns with the Fannie Mae and Freddie Mac uniform note for purposes of determining when a loan is in default. While the Proposed Rule uses the term "default," it does not define that term. In its discussion of this provision, the CFPB recognizes that servicers may use different terminology (such as "past due" or "in default") and may distinguish between borrowers who are "delinquent" or "seriously delinquent." The CFPB further states that "[e]xcept for the Mortgage Servicing Rules themselves, the CFPB does not intend the proposed definition of delinquency to affect industry's existing procedures for identifying and dealing with borrowers who are late or behind on their payments." Nonetheless, in its explanation of the Proposed Rule, the CFPB at times appears to use the terms "delinquency" and "default" interchangeably.[9] Thus, the question remains whether, in the CFPB's eyes, there exists a distinction between "delinquent" and "default," as the latter term is used to determine if the loan is subject to FDCPA protections.

Information Request

Current Rule: When a borrower submits a request for the name of the owner or assignee of a mortgage loan held by a trust in connection with a securitized transaction, the Mortgage Servicing Rules require the servicer to identify the name of the trust and the name, address and appropriate contact information for the trustee.

Proposed Rule: The Proposed Rule would amend how a servicer responds to requests for information concerning loans in trust for which Fannie Mae or Freddie Mac is the trustee, investor or guarantor by not requiring a servicer to provide the name of the trust if the borrower does not specifically request such information. The Proposed Rule would not change a servicer's requirements for responding to requests for ownership information for loans for which Ginnie Mae is the guarantor, but a proposed comment would clarify that Ginnie Mae is not the owner or assignee of the loan solely as a result of its role as guarantor.

A&B Observation: This change requested by the industry will benefit servicers that may not track the name of the trust for each loan and will ease the burden of asking the trustee for this information each time a request from the borrower is made.

Force Placed Insurance

Current Rule: A servicer may not charge a borrower for force placed insurance unless the servicer has a "reasonable basis" to believe that the borrower failed to comply with the loan contract's requirements to maintain hazard insurance. Moreover, before assessing a fee to force place insurance, a servicer must comply with certain notice requirements. All notices must follow model forms issued by the CFPB that cannot include additional or extraneous information. The notice must include a statement that the borrower's insurance has expired or is expiring, as applicable, but does not address insufficient insurance coverage.

Proposed Rule: The Proposed Rule would modify the initial and reminder form notices promulgated by the CFPB to address situations when a servicer wishes to force place insurance when the borrower has insufficient coverage and allows servicers to include the borrower's mortgage loan account number on the initial, reminder and renewal notices.

A&B Observation: This is a positive change for servicers as it affords them flexibility on the notice requirements before force-placing insurance when the borrower's insurance provides less coverage than required by the mortgage loan contract and allows them to provide account information on the initial, reminder and renewal notices.

Early Intervention

Current Rule: For closed-end loans secured by the borrower's principal residence, a servicer must establish, or make good faith efforts to establish, live contact with a borrower by the thirty-sixth day of his or her delinquency and promptly inform the borrower, where appropriate, that loss mitigation options may be available. In addition, a servicer must provide a borrower a written notice with information about loss mitigation options by the forty-fifth day of a borrower's delinquency. In its 2013 interim final rule, the CFPB stated that borrowers in bankruptcy and borrowers who have exercised the "cease communication" right under the FDCPA are exempt from these requirements. The CFPB noted that further study on these areas was needed and that future rulemaking may alter or eliminate these exemptions.[10]

Proposed Rule: The CFPB is proposing to:

- ***Live Contact:*** Clarify the servicer's recurring obligation to make good faith efforts to establish live contact when a borrower is delinquent for one or more billing cycles. (A corresponding change is proposed to the written early intervention notice). The CFPB also would codify guidance from its October 2013 bulletin permitting servicers to combine their live contact attempts with their attempts to contact borrowers for other purposes (such as providing information about, or discussing, loss mitigation options). The commentary to the Proposed Rule provides examples of "good faith efforts" to establish live contact.
- ***Borrowers in Bankruptcy:*** Require servicers to comply with the live contact requirements for any borrower who is jointly liable with someone who is a debtor in a Chapter 7 or 11 bankruptcy case. A borrower who is a debtor in bankruptcy, on a mortgage in Chapter 12 or 13 bankruptcy or has been discharged from personal liability would remain exempt from the live contact requirement. Servicers would have to comply with the written early intervention notice requirement for all borrowers in bankruptcy unless no loss mitigation options are available, the borrower's confirmed bankruptcy plan provides for the surrender of the property or avoidance of the lien, or does not provide for the payment of pre-bankruptcy arrearages or maintenance of payments due under the loan, the borrower files with the bankruptcy court a statement of intent to surrender the property, or the court enters an order avoiding the lien or lifting the automatic stay.

- ***FDCPA:*** Maintain the current exemption from the live contact requirement for borrowers who have invoked the FDCPA's "cease communication" protections. However, the exemption from the written early intervention notice would apply only if there are no loss mitigation options available. If loss mitigation options are available, servicers would be required to send a modified early intervention written notice as set forth in the Proposed Rule. To rely on these exemptions, the servicer must receive a cease communication request and act as a debt collector under the FDCPA with respect to the loan. To the extent the FDCPA applies to a servicer's communication with a borrower, the Proposed Rule would provide a safe harbor stating that a servicer does not violate the FDCPA by providing this modified notice after the borrower invoked his or her cease communication rights. Commentary to the Proposed Rule also addresses borrowers in bankruptcy who have exercised their "cease communication" rights and provides that, in that instance, the servicer must provide the written notice only if the borrower is represented by a person authorized to communicate with the servicer on his or her behalf.

A&B Observation: The intersection of the Mortgage Servicing Rules with bankruptcy law and the FDCPA is one of the more challenging aspects of the Mortgage Servicing Rules. Moreover, it is unclear if courts will agree with the CFPB's interpretation. The CFPB proposes to issue an advisory opinion stating that a servicer responding to borrower-initiated communications with specific information about loss mitigation options that may be available does not undermine the FDCPA's "cease communication" protection. It is not clear why the CFPB believes it is necessary to issue an advisory opinion rather than stating this in the rule itself. This aspect of the Proposed Rule, if adopted, is likely to be fertile battleground for litigation.

Loss Mitigation

Current Rule: For closed-end loans secured by a borrower's principal residence, servicers are required to follow specific procedural requirements regarding their evaluation of borrowers for loss mitigation. When a servicer receives a timely loss mitigation application, the servicer must: (1) acknowledge receipt and inform the borrower whether the application is complete or incomplete, (2) evaluate complete loss mitigation applications within 30 days for all loss mitigation options available to the applicant, (3) notify the borrower of the results of the evaluation, (4) evaluate timely appeals, and (5) refrain from beginning or completing the foreclosure process when a borrower is being evaluated for loss mitigation options. A servicer need only follow these procedural requirements for a single loss mitigation application for a borrower's mortgage loan account. The servicer is required to exercise reasonable diligence in obtaining documents and information to complete the application. Servicers also are prohibited from dual tracking, that is, making the first notice or filing required for a foreclosure process unless the mortgage loan account is more than 120 days delinquent, the foreclosure is based on the borrower's violation of a due-on-sale clause or the servicer is joining a foreclosure action of a subordinate lien holder.

Proposed Rule: The CFPB is proposing to:

- ***Life of Loan:*** Require servicers to comply with the loss mitigation procedural requirements throughout the life of the loan for borrowers who become current after delinquency.
- ***Service Providers Handling Foreclosure:*** When a court orders a foreclosure sale date that does not afford sufficient time for the servicer to evaluate a complete loss mitigation application, require the servicer to take reasonable steps to avoid having the court rule on a dispositive motion or issue of a judgment or order of sale or to delay a foreclosure sale until the servicer has completed its loss mitigation evaluation. When a servicer (or its foreclosure counsel) does not take such reasonable steps, the servicer would have to ensure that the court dismisses the

- foreclosure proceeding if dismissal is necessary to avoid completing the foreclosure sale during the pendency of the loss mitigation application.
- ***Subordinate Liens:*** Expand the current exemption such that a servicer of a mortgage secured by a subordinate lien may join the foreclosure action of a senior lienholder, even if the subordinate lien is not delinquent.
- ***Short Term Forbearance or Repayment Plans:*** Permit servicers to offer short-term forbearance programs or repayment plans based upon an evaluation of an incomplete loss mitigation application provided certain conditions are satisfied. The Proposed Rule would define a short-term payment forbearance program as one that allows a borrower to forgo making certain payments due over periods of no more than six months regardless of the time a servicer allows the borrower to make up the missing payments. A short-term repayment plan is one that allows for the repayment of no more than three months of payment due and allows a borrower to pay the arrearages over future payments for a period lasting no more than six months.
- ***Loss Mitigation Application:*** With respect to the receipt and evaluation of a loss mitigation application, require a servicer to provide a borrower a notice as specified in the Proposed Rule promptly every time a loss mitigation application becomes complete, and provide servicers certain flexibility in setting a date by which borrowers must return documents to complete an application; impose reasonable due diligence standards on a servicer to collect information not in the borrower's control that the servicer requires to determine the loss mitigation options it will offer to the borrower and prohibit a servicer from denying a borrower's complete loss application solely because the servicer has not received documents or information not in the borrower's control; impose new notice obligations on a servicer based on the delay in receiving information from third parties to evaluate the borrower's complete loss mitigation application within 30 days; and permit servicers to stop collecting documents and information from a borrower pertaining to a loss mitigation option after confirming that the borrower is ineligible for that particular option.
- ***Transfer of Servicing:*** Codify the CFPB's existing position that a transfer of servicing should not adversely affect a borrower who is pursuing loss mitigation. While a transferee servicer that acquires the servicing of a mortgage loan for which a loss mitigation application is pending as of the transfer date (i.e., the date the transferee servicer will begin accepting payments on the loan) must comply with the loss mitigation procedural requirements for that application within the timeframes that were applicable to the transferor servicer, a transferee servicer would be provided additional time to provide the acknowledgment notice, or to evaluate complete applications or a pending appeal; additional time also would be granted in the case of an involuntary transfer.

A&B Observation: The loss mitigation proposal raises several issues; only a few are noted here.

First, the transfer of servicing provision applies only to a transferee servicer. The CFPB does not believe specific transferor servicer provisions are necessary because a transferor servicer shares responsibility for enabling a transferee servicer to comply with new Section 1024.41(k) requirements for ensuring that borrowers will not be adversely impacted by a servicing transfer. The CFPB seeks comment on the treatment of complete applications pending at transfer, such as whether it is ever necessary to give transferee servicers an extension of time to evaluate complete applications.

Second, the CFPB considered and rejected requiring re-evaluation of a borrower for loss mitigation subject to the procedural requirements in Section 1024.41 when there has been a material change in financial circumstance, but instead would require the borrower to become delinquent after curing a previous delinquency. Note that the CFPB assumes that a permanent modification of a borrower's mortgage loan application effectively cures a pre-modification delinquency.

Third, requiring service providers to handle foreclosure provisions is in response to inquiries received by the CFPB on what steps a servicer must take to comply with Section 1024.41(g), when a court orders a foreclosure sale date that does not afford sufficient time for the servicer to evaluate a borrower for a complete loss mitigation application. By clarifying that dismissal is required if a servicer has failed to take reasonable steps on its own or through foreclosure counsel to avoid a ruling or delay a foreclosure sale during a pending loss mitigation application, the CFPB believes it will incentivize servicers to comply with Section 1024.41(g).

Periodic Statement

Current Rule: Creditors, servicers and assignees (servicers) are required to provide a periodic statement for each billing cycle of a closed-end consumer credit transaction secured by a dwelling that must include, among other things, information on payments currently due and previously made, fees imposed, transaction activity, application of past payments and information regarding delinquency, as applicable. Servicers must continue to provide periodic statements even if a borrower who has exercised its cease communication rights under the FDCPA. Servicers are exempt from providing periodic statements while the borrower is a debtor in bankruptcy, but must resume sending periodic statements within a reasonably prompt time after the next payment due after the borrower's bankruptcy case is dismissed, closed or discharged. The CFPB issued an interim final rule in October 2013 providing that periodic statements are not required for any portion of the periodic mortgage debt that is discharged under the Bankruptcy Code.[11]

Proposed Rule: The Proposed Rule clarifies the periodic statement requirements for loans that have been accelerated, are in temporary loss mitigation programs, have been permanently modified or charged off, or are for borrowers in bankruptcy. Specifically, the CFPB is proposing to:

- ***Amount Due for Accelerated Loans, Loans in Temporary Loss Mitigation Programs or Loans Permanently Modified:*** When the balance of the mortgage loan has been accelerated, but the servicer will accept a lesser amount to reinstate the loan, provide that the "amount due" should identify only the lesser amount. However, the explanation of amount due should include the reinstatement amount and the accelerated amount, as well as an explanation that the reinstatement amount will be accepted to reinstate the loan. If the borrower has agreed to a temporary loss mitigation program, the Proposed Rule provides that the servicer may either identify the payment due under the temporary loss mitigation program or the amount due according to the loan contract. In that event, the explanation of amount due should include the amount due under both, as well as an explanation that the amount due is disclosed as a different amount because of the temporary loss mitigation program. For a permanently modified loan, the "amount due" should identify only the amount due under the modified loan contract.
- ***Charged Off Loans:*** Exempt from the periodic statement requirements a servicer that has charged off a loan, will not charge any additional fees or interest on the account and within 30 days of the charge off or the most recent periodic statement provide a clearly marked final periodic statement.
- ***Borrowers in Bankruptcy:*** Require a servicer to send modified periodic statements to a borrower in bankruptcy unless the borrower is a debtor in bankruptcy or the borrower is a primary obligor on a mortgage loan for which another primary obligor is a debtor in a Chapter 12 or 13 case *and* one of the following circumstances apply: (1) the borrower requests in writing that the servicer cease providing periodic statements or coupon books, (2) the borrower's confirmed reorganization plan provides that the borrower will surrender the property, provides for avoidance of the lien, or otherwise does not provide for the payment of pre-bankruptcy arrearages or payments due under the mortgage loan; (3) a court order provides for the avoidance of the lien, lifts the automatic stay

or requires servicers to cease providing periodic statements or coupon books, or (4) the borrower files with the bankruptcy court a statement of intent to surrender the property.

A&B Observation: Limits to the current exemption for providing periodic statements to borrowers in bankruptcy will require servicers to make significant system changes. The CFPB is considering requiring servicers to allow consumers to opt in or opt out of receiving periodic statements. The CFPB also is considering requiring servicers to provide periodic statements to a Chapter 13 trustee overseeing a consumer's bankruptcy case. The Proposed Rule provides servicers necessary guidance on how to handle charged off loans, but issues remain, such as whether mortgage loans charged off prior to the effective date of the Mortgage Servicing Rules should be grandfathered and how to treat charged off loans that may have been purchased, assigned or transferred. These issues are ripe for comment.

Small Servicers

Current Rule: The Mortgage Servicing Rules exempt small servicers[12] from many, but not all, of their requirements. A servicer cannot qualify as a small servicer if it services any loan for which the servicer or its affiliate is not the creditor or assignee. However, mortgage loans voluntarily serviced for a creditor or assignee that is not an affiliate of the servicer, and for which the servicer does not receive any compensation or fees, are excluded from consideration.

Proposed Rule: When determining eligibility for the small servicer exemption, the Proposed Rule would not take into account loans that a servicer voluntarily services for a non-affiliate, without requiring that the non-affiliate be a creditor or assignee.

A&B Observation: This change is designed to allow community banks to service for their depository customers seller-financed sales of residential real estate without losing the small servicer exemption.

Payment Processing

Current Rule: The Mortgage Servicing Rules do not currently address payment processing for payments due under temporary loss mitigation programs.

Proposed Rule: The CFPB is proposing to clarify that if a loan contract has not been permanently modified, periodic payments under a temporary loss mitigation program should be credited according to the loan contact, irrespective of the payment due under the loss mitigation program. Thus, the payment could be credited as a partial payment. In contrast, payments under a permanent modification would be credited under the terms of the permanent modification.

A&B Observation: The CFPB acknowledged that it previously suggested payments under temporary loss mitigation should be credited according to the terms of the loss mitigation agreement. Therefore, servicers should review their existing procedures to reflect the CFPB's change in position.

Conclusion

CFPB's very detailed proposal reflects its priority to understand the intersection of the Mortgage Servicing Rules with bankruptcy law and the FDPCA, how servicers handle successors in interest and borrowers impacted by a transfer of servicing, and certain other implementation issues raised by servicers. The CFPB should be praised for addressing whether periodic statements are required for charged off loans, what it means to be 120 days delinquent in the case of a rolling deficiency and whether a servicer can allow a consumer to apply only for a short sale other non-retention option without being considered for retention options.

While the 492 page Proposed Rule goes into granular detail, many questions, both large and small, remain unanswered, and new ones are likely to emerge as servicers face the daunting task of determining how to implement these rules. As we all know, the devil is in the details: the Proposed Rule might not be Satan, but beware of demons that may be lurking in the background. In this regard, Alston & Bird strongly encourages servicers to accept the CFPB's invitation to provide comments on the Proposed Rule, including those areas the CFPB emphasizes. We would be delighted to assist in reviewing or preparing comments to submit to the CFPB.

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1 These rules were published in the *Federal Register* at Regulation X at 78 Fed. Reg. 10696 (Feb. 14, 2013) and Regulation Z at 78 Fed. Reg. 10902 (Feb. 14, 2013).

2 *See* 78 Fed. Reg. 44685 (July 24, 2013), 78 Fed. Reg. 60382 (Oct. 1, 2013) and 78 Fed. Reg. 62993 (Oct. 23, 2013).

3 *See* 78 Fed. Reg. 62993 (Oct. 23, 2013); CFPB Bulletin 2013-12.

4 *See* CFPB Bulletin 2012-3.

5 *See* 79 Fed. Reg. 63295 (Oct. 23, 2014); CFBP Bulletin 2014-01.

6 *See* 79 Fed. Reg. 41631 (July 17, 2014).

7 *Id*.

8 Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982 is found at 12 U.S.C. § 1701j-3(d).

9 *See* 79 Fed. Reg. 74176 (Dec. 15, 2014) ("Borrowers have FDCPA protections only with respect to debt collectors, and a servicer generally is considered a debt collector for purposes of the FDCPA only if the servicer acquires servicing rights to a mortgage loan after the mortgage loan is in default. Therefore, at the time borrowers first become delinquent on a mortgage loan they do not have rights under the FDCPA and their servicers are thus generally obligated to provide early intervention communication." 79 Fed. Reg. 74176, 74272 (Dec. 15, 2014). However, the CFPB later provides that, "Fewer servicers are likely to service mortgage loans for borrowers who have FDCPA rights with respect to the mortgage loan, because these rights are triggered only if the servicer acquired the servicing rights at a time when the mortgage loan was *delinquent*." *Id*. (Emphasis added)).

10 *See* 78 Fed. Reg. 62993 (Oct. 23, 2013); CFPB Bulletin 2013-12.

11 78 Fed. Reg. 62993, 63000-02 (Oct. 23, 2013).

12 A small servicer is one that either: (1) services, together with any affiliates, as the creditor or assignee 5,000 or fewer mortgage loans; or (2) is a Housing Finance Agency, as defined in 24 C.F.R. § 266.5. 12 C.F.R. § 1026.41(e)(4)(ii).

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