

MEMORANDUM OF *EX PARTE* COMMUNICATION

DOCKET: Docket No. CFPB–2014–0033
December 15, 2015 Proposed Servicing Regulation Amendments

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MEMO PREPARED By: Consumer Mortgage Coalition for the Mortgage Servicer Working Group

Early Intervention

The MSWG stated that after an FDCPA cease-communication notice, the early intervention written notice is operationally overly complicated in relation to the information it provides consumers. If the notice is required, the MSWG stated that it should not be necessary to amend the language from the current early intervention requirement (i.e., the Bureau should not require the notice to state that the servicer can foreclose).

The MSWG stated that early intervention should not be required for a borrower who is protected by bankruptcy because intervention is inconsistent with bankruptcy protections.

Default and Loss Mitigation

The MSWG stated that if servicing transfers while a complete loss mitigation application is pending, the transferee should have 30 days to consider the application. Otherwise, the

MSWG indicated that servicers may not transfer servicing when a loss mitigation application is pending. The MSWG stated that transfers to a servicer that specializes in delinquent loans can benefit the consumer.

The MSWG stated that if a servicer must withdraw or dismiss a foreclosure proceeding to prevent a sale while a last-minute loss mitigation / successorship / assumption application is pending, the statute of limitations could run while the servicer is reviewing the application. Servicers should be permitted to exercise all their rights as permitted by state law.

The MSWG recommended additional clarity about when loss mitigation is “available” and whether it means the same under § 1024.39 and § 1024.41. The MSWG suggested that the meaning should be the same under both provisions, and that the Bureau could achieve this by including an explicit cross-reference from one provision to the other.

The MSWG asked whether a default due to non-payment issues (i.e., non-monetary default) is an exception to the 120-day pre-foreclosure review. The MSWG stated that nonpayment defaults do not need a 120-day pre-foreclosure review because loss mitigation does not address them.

For accelerated loans, the proposal would in some cases require periodic statements to include the reinstatement amount and the accelerated amount. The MSWG stated that the proposed rule’s discussion of the accelerated amount appears to mean a payoff quote, which is unnecessary monthly. The MSWG stated that the final rule should be clearer about what is required and indicated that the disclosed accelerated amount should be limited to the principal balance. The MSWG stated that providing that information, with the reinstatement amount, would provide consumers with the information they need to decide what to do.

The MSWG stated that short-term forbearance and repayment plans should not need to be reduced to writing before they go into effect because sometimes borrowers need immediate relief. Short-term forbearance and repayment plans should be permitted more flexibility, particularly with respect to the timeframes and because servicers may use both types of plans together. The MSWG also stated that short-term repayment plans are typically designed to last between two and four months – or up to six months in rare instances.

Successors in Interest

The MSWG recommended that the CFPB hold a public roundtable to solicit additional input on this aspect of the rulemaking.

The MSWG stated that the proposed procedure for determining successorship is too rigid. Several rounds of communication between the servicer and the potential successor are normally required to identify the information and documents needed. The MSWG stated that a “one size fits all” procedure will not work.

The CFPB asked for suggestions on improving the procedure. The MSWG stated that determinations are not always necessary and should not be required in all cases, and that quick determinations likewise are not necessary in all cases and should not be required. For example, where a servicer will not offer an assumption or a loan modification, or where there is no risk of imminent default, the MSWG stated that there was no need for the servicer to make the successorship determination.

The MSWG stated that servicers need complete and accurate information and sufficient time to confirm the identity of a potential successor and the property ownership interest. Lacking both, the MSWG indicated that servicers may deny a valid claim or approve an incorrect claim. Servicers are concerned about UDAAP liability or private loss mitigation claims based on incorrect successorship and property ownership determinations.

The MSWG asked for clarification in the final rule about whether the requirements in § 1024.36 only give the servicer 45 days to respond to a request for information and make the determination about whether the potential successor is confirmed.

The MSWG stated that some servicers are not licensed or registered to originate loans as required by state law, and cannot permit successors to assume a loan in those states.

If the CFPB will restart the 120-day clock on a foreclosure if a borrower dies while a loan is delinquent, the MSWG stated that a number of fraud protections would be necessary. The MSWG stated that, if the 120-day clock will reset upon a borrower's death, it should be reset to the date of the borrower's death – not a later event, such as the submission of the death certificate.

The MSWG raised questions about non-borrowers treated as borrowers. For example, would a non-borrower who is treated as a borrower obtain borrower's rights under the loan contract and all other applicable laws? The MSWG noted that mortgages or notes commonly give borrowers the right to notice of acceleration and the right to reinstate. In addition, the MSWG noted that the Servicemembers Civil Rights Act interest rate cap is available only to the original borrower(s) or must be offered to confirmed successors. The MSWG also asked whether servicers would be allowed to pull the potential successor's credit report under applicable law.

The MSWG also raised questions about whether and when a property can be considered the potential successor's principal residence under Regulation X.