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Small Servicers and Key Provisions of the 2016 Mortgage Servicing Rule

On August 4, 2016, the Consumer Financial Protection Bureau issued a final rule (2016 Mortgage Servicing Rule) that amends certain of Regulation X's and Regulation Z's mortgage servicing provisions. Because small servicers are exempt from some of Regulation X's and Regulation Z's mortgage servicing provisions, some of the changes and clarifications in the 2016 Mortgage Servicing Rule do not directly affect them. This table highlights and summarizes the changes and clarifications that directly affect small servicers, but it is not a substitute for reviewing the 2016 Mortgage Servicing Rule, which is available at <http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/amendments-2013-mortgage-rules-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/>. Additional resources for implementing the 2016 Mortgage Servicing Rule are available at <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/mortserv/>.

The changes discussed in this table regarding successors in interest are effective 18 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*. The other changes discussed in this table are effective 12 months after the 2016 Mortgage Servicing Rule's publication in the *Federal Register*.

SECTION	SUMMARY OF THE 2016 MORTGAGE SERVICING RULE
<p>Small servicer exemption</p> <p>12 CFR 1026.41(e)(4)</p>	<p>Under the mortgage servicing rules, a small servicer includes a servicer that, together with any affiliates, services 5,000 or fewer mortgage loans for which the servicer or an affiliate is the creditor or assignee. When determining whether it qualifies as a small servicer, the servicer may exclude certain mortgage loans, including mortgage loans voluntarily serviced for a creditor that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees. The 2016 Mortgage Servicing Rule provides that servicers are not</p>

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required to count mortgage loans voluntarily serviced for a non-affiliate, even if the non-affiliate is not the creditor or assignee, if the servicer does not receive any compensation or fees. When making the small servicer determination, a servicer is also permitted to exclude seller-financed transactions for which the seller-financer meets the definition in § 1026.36(a)(5) of Regulation Z. To meet this definition, among other things, a seller-financer must provide seller financing for the sale of only one property in any 12-month period.

Successors in interest

See 12 CFR 1024.31 and 1026.2(a)(27) for definitions

See also various other provisions of Regulation X and Regulation Z

The 2016 Mortgage Servicing Rule requires small servicers to respond to certain written requests that indicate that the person making the request may be a successor in interest. Generally, in response to such a request, a small servicer must timely provide the potential successor in interest with a description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property.

Generally, a person is a successor in interest for purposes of subpart C of Regulation X if a borrower (or for Regulation Z, a consumer) transfers an ownership interest in a property securing a mortgage loan (or for Regulation Z, a dwelling securing a closed-end consumer credit transaction) to the person by means of one of the types of transfers enumerated in the 2016 Mortgage Servicing Rule. These types of transfers include but are not limited to certain transfers resulting from the death of the borrower or consumer, transfers to the borrower's or consumer's spouse or children, and transfers resulting from divorce.

The 2016 Mortgage Servicing Rule provides that a confirmed successor in interest shall be considered a borrower for the purposes of specified mortgage servicing provisions of Regulations X and a consumer for the purposes of specified mortgage servicing provisions of Regulation Z. These mortgage servicing provisions apply with respect to a confirmed successor in interest regardless of whether that person has assumed the mortgage loan obligation or is otherwise liable for the mortgage debt. The same exemptions and scope limitations that apply to other borrowers or consumers apply to confirmed successors in interest.

A small servicer generally has to respond to notices of error and requests for information from a confirmed successor in interest.

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A small servicer also may need to provide a confirmed successor in interest with force-placed insurance notices, servicing transfer notices, escrow related notices, and interest rate or payment adjustment notices, unless the servicer is providing the specific notice to another borrower or consumer. A small servicer is required to promptly credit payments, including those from a successor in interest, and to respond to a confirmed successor in interest's payoff statement requests.

Delinquency

See 12 CFR 1024.31 for definition

The 2016 Mortgage Servicing Rule provides a general definition of delinquency. This definition is relevant to small servicers because servicers, including small servicers, generally may not initiate foreclosure proceedings unless a borrower is more than 120 days delinquent.

Under the 2016 Mortgage Servicing Rule, a borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and (if applicable) escrow becomes due and unpaid, and continue to be delinquent until such time as no periodic payment is due and unpaid.

For more information on applying the new definition of delinquency, see the Factsheet on Delinquency and the 2016 Mortgage Servicing Rule, <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/mortserv>.

Loss mitigation

12 CFR 1024.41(f)(1)

Generally, Regulation X prohibits all servicers, including small servicers, from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower is more than 120 days delinquent. However, Regulation X includes some exceptions to this general prohibition, including an exception that permits a servicer to join a subordinate lienholder's foreclosure action. The 2016 Mortgage Servicing Rule expands this exception to permit a servicer to join either a superior or subordinate lienholder's foreclosure action, even if the borrower is not more than 120 days delinquent.

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Requests for information

Regulation X, comment 36(a)-2

The 2016 Mortgage Servicing Rule changes how all servicers, including small servicers, must respond to requests for ownership information when Fannie Mae or Freddie Mac is the owner of the loan or the trustee of the securitization trust in which a loan is held. For requests for information that do not expressly request the name or number of the trust or pool and Fannie Mae or Freddie Mac is the owner of the loan or the trustee of the securitization trust in which the loan is held, a small servicer complies by providing the name and contact information for Fannie Mae or Freddie Mac, as applicable. However, if the request for information does expressly request the name or number of the trust or pool when Fannie Mae or Freddie Mac is the owner of the loan or the trustee of the securitization trust in which the loan is held, a small servicer must provide the name of the trust, and the trustee's name, address, and appropriate contact information.

Force-placed insurance notices

12 CFR 1024.37

All servicers, including small servicers, must provide certain initial and reminder notices before assessing a premium, charge, or fee related to force-placed insurance. The 2016 Mortgage Servicing Rule amends the force-placed insurance disclosures and model forms to account for situations when any servicer wishes to force-place insurance because the borrower has insufficient, rather than expiring or expired hazard insurance coverage on the property. Additionally, the 2016 Mortgage Servicing Rule gives all servicers the option to include a borrower's mortgage loan account number on the force-placed insurance notices.

Prompt payment crediting

Regulation Z, comment 36(c)(1)(i)

The 2016 Mortgage Servicing Rule clarifies how all servicers, including small servicers, must treat periodic payments made by consumers who are performing under either temporary loss mitigation programs or permanent loan modifications. Periodic payments made pursuant to temporary loss mitigation programs must continue to be credited according to the loan contract and could, if appropriate, be credited as partial payments. Periodic payments made pursuant to a permanent loan modification must be credited under the terms of the permanent loan agreement.
