



IV. What are Some of the Challenges Facing Servicers in Meeting the Mortgage Servicing Rules' Requirements?

Challenge – 120-Day Pause Rule / Dual Tracking

Counting days of delinquency --

What does delinquency mean for this Rule?

❖ **CFPB informal oral guidance:**

Servicers should look to “common principles of statutory interpretation for defining undefined terms.” This includes “looking to state law or contracts law and industry standards for a definition of delinquency.”

Challenge – Preemption

Do the RESPA servicing rules preempt state servicing laws?

The Rule states that State laws on transfer of servicing notices and disclosures are preempted and generally preempts State laws that are inconsistent with RESPA.

- ❖ **The RESPA and the Servicing Rules do NOT preempt the ENTIRE field of regulation of the practices covered by RESPA or Regulation X or that are not in conflict with the Rules.**
- ❖ **Greater consumer protections are not inconsistent or preempted**
§ 1024.5(c) and Commentary .5(c)(1)-1; § 1024.33(d)

Challenge – ARM Loans and Step-Feature Loans

Not Subject to the ARM Loan Disclosure Requirements, if Fixed-rate Loan With a Rate Increase Not Based on an Index or Formula:

- ❖ **Graduated-payment mortgages**
- ❖ **Step-rate transactions**
- ❖ **Renewable balloon-payment instruments**
- ❖ **Shared equity loans**

Commentary 1026.20(c)(1)(ii)-3

Challenge – Agent Error Notices & Information Requests

Servicers Must Treat an Error Notice or Information Request Submitted by an Agent of the Borrower as Though it Came Directly From the Borrower

Commentary--1024.35(a)-1:

- ❖ **A creditor, assignee or servicer may take “reasonable measures” to verify the identity of the consumer’s agent or representative.**
- ❖ **The response period does not begin until a request is received from a “verified party.”**
- ❖ **A verified request sent by a borrower’s attorney or other representative typically will include an authorization signed by the borrower.**

Challenge – Actions of Sub-Servicers

Servicers are generally responsible for actions of sub-servicers

- ❖ **Must oversee and ensure sub-servicers' compliance with applicable laws and regulations**
- ❖ **Number of loans serviced by a sub-servicer can affect Servicer's status as a Small Servicer**

§ 1026.41 – Comment .41(e)(4)(ii) –3; See also, FDIC FIL 44-2008 “Guidance for Managing Third-Party Risk”

Challenge – Flood Insurance

Servicing Rules apply to hazard insurance, excluding:

- 1. Hazard insurance required by the Flood Disaster Protection Act of 1973**
- 2. Hazard insurance obtained by a borrower but renewed by the borrower's servicer as described in the rules**
- 3. Hazard insurance obtained by a borrower but renewed by the borrower's servicer at its discretion, if the borrower agrees**

§ 1024.37(a)(2)

Challenge – Error Notices and Information Requests in Writing

Rule:

- ❖ **Error notices and requests for information do not have to be in writing***
- ❖ **They can be taken orally or over the phone**
- ❖ **Servicers are only required to comply with the formal rule requirements for written notices and requests**
§ 1024.35 and § 1024.36

****Note: Large servicers' policies, procedures and requirements must contain procedures for informing consumers how to submit written notices of errors and written information requests.***

Challenge – Fair Debt Collection Practices Act (FDCPA)

A servicer will have no liability under the FDCPA if it complies with rules regarding:

Error resolution	Loss mitigation rules
Requests for information	Initial ARM interest rate adjustment disclosure
Force-placed insurance rules	Furnishing of periodic statements

A servicer debt collector under FDCPA receiving a written cease-communication request is exempt from complying with requirements for:

Early intervention	Notice of interest rate change for ARMs with corresponding payment change
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CFPB Bulletin 2013-12

Challenge – HELOCs and Rural Property

- Servicing Rule That Applies to HELOCs:
 - **Providing payoff statements §1026.36(c)(3)**
- Rural:
 - **No rural exemption in the Servicing Rules**
 - **Geographic location of the bank or of the secured property does not matter when determining whether a servicer qualifies for the Small Servicer exemption.**