CFPB Update on Servicing Rules

Presented by the CFPB and MBA
October 16, 2013

Transcript prepared by BuckleySandler LLP[1]

DAVID STEVENS: Good Afternoon, everybody. My name is David Stevens, I'm the President and Chief Executive Officer of the Mortgage Bankers Association and I want to thank you all for joining us today for the MBA and CFPB joint webinar. We hope you find the sessions informative and useful as you plan for the future of your companies and your borrowers. We all know this is the year of regulatory implementation. The Consumer Financial Protection Bureau is at the epicenter of policy development and how it impacts everyone on this call. I'd like to take a moment and personally applaud the CFPB for what has been a very positive, inclusive process into the development and roll out of all of their regulations. We greatly appreciate the effort the CFPB has put into the implementation process as well as the open, transparent, and ongoing dialogue that's clearly reflected by their ongoing behaviors, and this call is an example of that. I'd also like to make a personal note of appreciation for the CFPB staff's willingness to participate in this webinar, as well as their ongoing participation in all of the conferences of the Mortgage Bankers Association. This afternoon, you're going to hear from a select group of CFPB staff on the servicing rules and if you're able to join us tomorrow, the origination rules will be covered. The CFPB staff will provide unofficial oral guidance to frequently asked

[1] **The audio recording and original slides are available at: http://mortgagebankers.org/Compliance/cfpbrecordings.htm. The transcript is provided for informational purposes only and does not constitute legal opinions, interpretations, or advice by BuckleySandler. The transcript was prepared from the audio recording provided by the MBA and may have minor inaccuracies due to sound quality. In addition, the transcript has not been reviewed by the CFPB for accuracy or completeness. This transcript inserts an image of the slide that corresponds to the discussion, but all insertions are approximate because the audio recording does not consistently identify which slide is being discussed. This transcript also revises citations for consistency with the Code of Federal Regulations (*e.g.*, "1026.32(b)(1)(iii)" instead of "1026.32(b)(1)(3)").**

questions from the industry about various Title XIV rules impacting us today. The slide Q and A will not be available during our session today but inquiries about the meaning or intent of any CFPB regulation can be addressed to the Bureau directly and you can contact the CFPB at. . .

LISA APPLEGATE: On the last slide.

DAVID STEVENS: On the last slide.

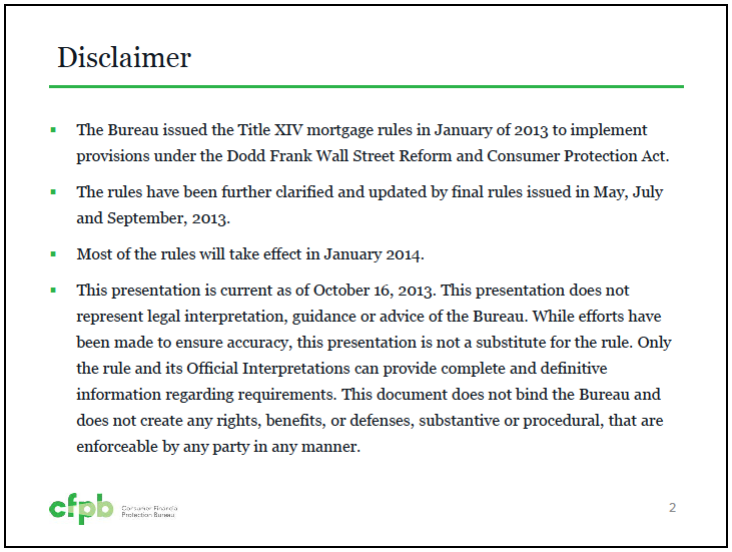
LISA APPLEGATE: On the last slide, you will see it there.

DAVID STEVENS: Joining us today from the CFPB is Lisa Applegate. Lisa Applegate is the Mortgage Implementation Lead at the CFPB. Lisa joined the Bureau at the beginning of 2013 after almost two decades at Fannie Mae to lead industry based and support activities and engagement around implementation of the Dodd Frank Act Rules which were issued by the Bureau in January. Lisa was attracted to the Bureau role as an opportunity to bring her related GSE industry implementation leadership experience to bear to make high impact contributions at an important time as the industry focuses on implementing the new rules. Lisa, thank you for your time today.

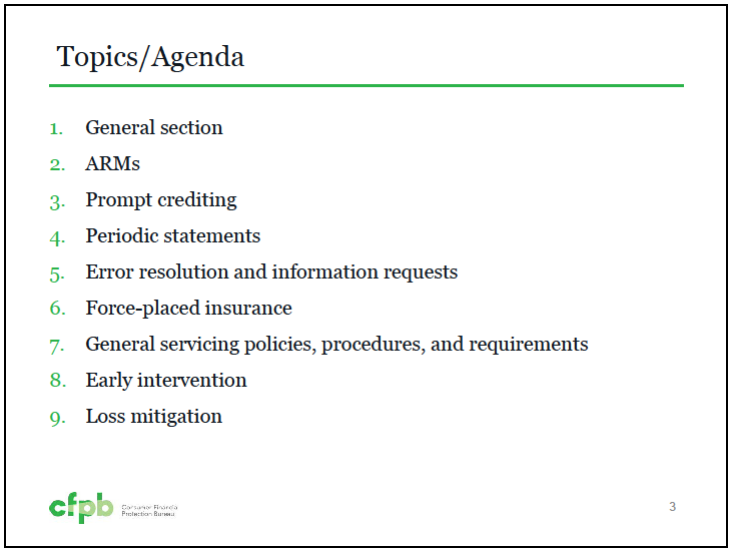
LISA APPLEGATE: Thank you, Dave. Thank you for that lovely introduction and thanks to the MBA for inviting the Bureau to be here today to provide updates as to the servicing rules, and tomorrow related to the origination rules. We're very happy to be here, continuing the regulatory implementation support focus that we began earlier this year. One of our key priorities has been to bring increased clarity, certainty, and burden relief wherever possible and appropriate to address critical questions from industry. To this end, we have valued the ongoing dialogue with all of the trade associations including the MBA and various industry stakeholders throughout the year helping to surface and prioritize these questions.

Today, the Bureau's Office of Regulations will provide unofficial oral staff guidance, addressing certain, frequently asked questions that we have heard persistently from industry about the Title XIV mortgage servicing rules. We hope this session is helpful to you as you finalize your implementations and prepare for the effective dates of these rules.

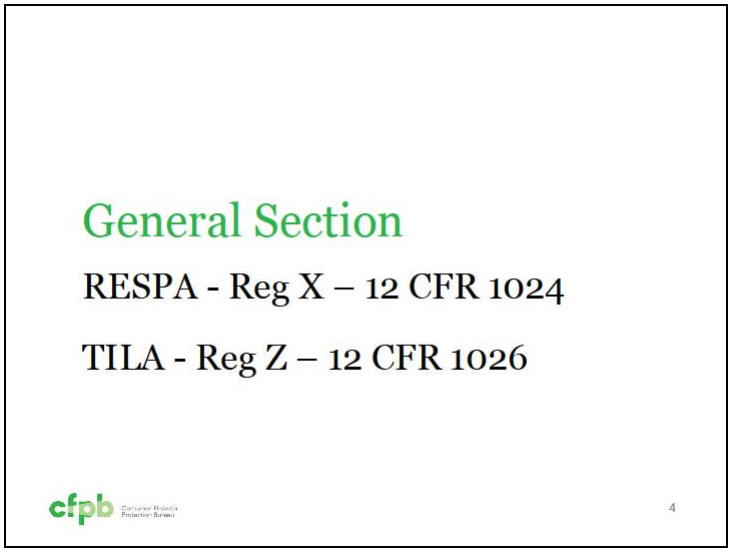
Laurie Maggiano, the Bureau's Servicing Program Manager, whom many of you know, will walk through a series of the questions on the rules and four subject matter expert attorneys from the Bureau's office of regulations, Will Corbett, Laura Johnson, Whitney Patross, and Marta Tanenhaus will provide unofficial, oral guidance remarks. Before we start, let me draw your attention to slide two.



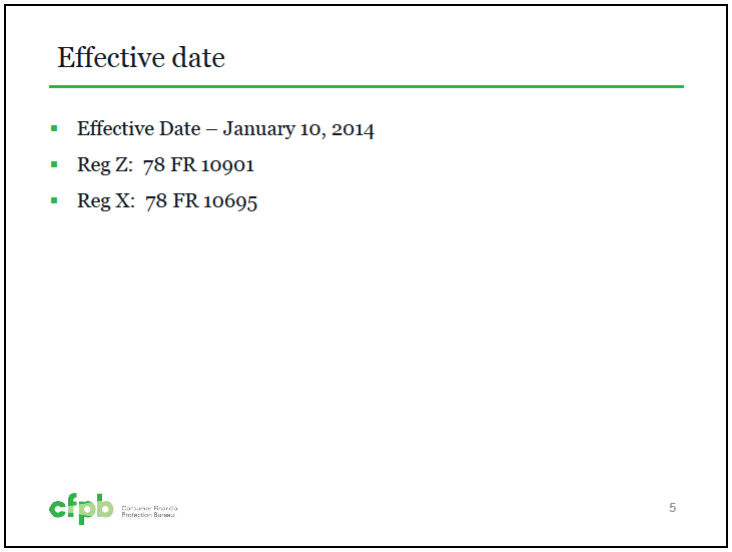
Although considerable efforts have been made to ensure accuracy of all remarks provided here today, this unofficial, oral staff guidance is not a substitute for the rules. Laurie, let me hand the reins over to you to walk through the questions.



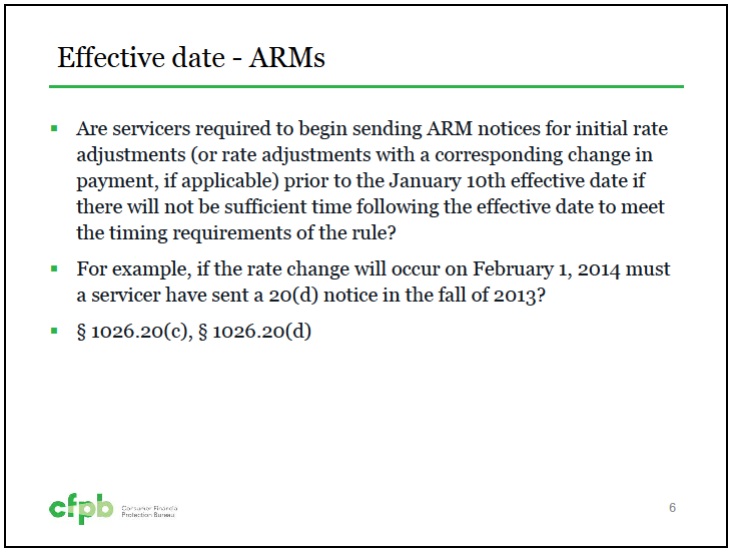
LAURIE MAGGIANO: Thank you very much Lisa. We'll begin with some questions that cut across all the rules and then we'll address questions that dive into specific rules. Marta, would you like to begin?



MARTA TANENHAUS: Sure. The Bureau's received questions related to the impact of the effective date with regard to different rules and to mortgage loans in differing circumstances.

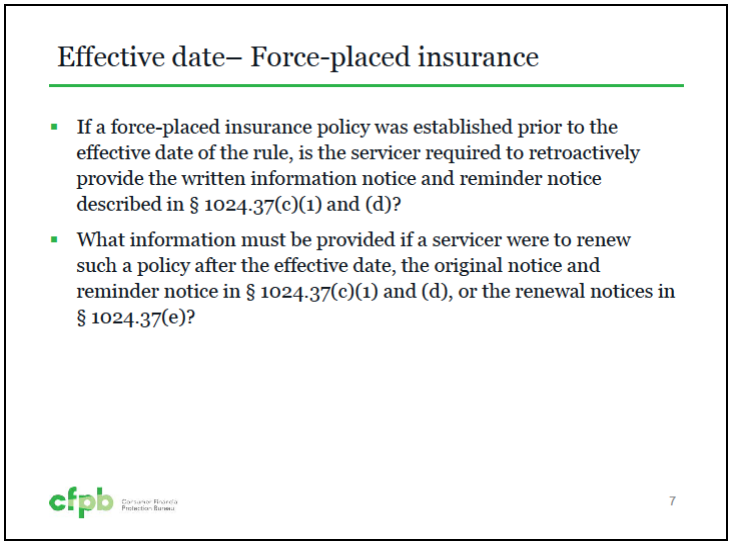


The rule goes into effect on January 10th, 2014 and the Bureau wants to make perfectly clear that no servicer is required to comply with the rules before January 10th, 2014. And this is true both for the new rules and for the existing rules that have been modified that will go into effect on that date. But we also want to make clear that the existing requirements do remain in place until January 10th. So servicers looking to implement provisions of the rules early should be careful to remain in compliance with the existing rules, until the January 10, 2014 effective date.



LAURIE MAGGIANO: All right, let's deal with some ARM questions. Are servicers required to begin sending ARM notices for initial rate adjustments or rate adjustments with a corresponding change in payment, if applicable, prior to the January 10th effective date if there will not be sufficient time following the effective date to meet the timing requirements of the rule? For example, if the rate change will occur in February 1, 2014, must a servicer have sent an interest rate adjustment notice in the fall of 2013?

MARTA TANENHAUS: The answer to the questions is no. First, as I just stated above, no servicer is required to comply with the new regulations before the effective date. But remember, again, servicers must continue to comply with existing ARM notices prior to the effective date. Second, servicers will not be required to provide ARM notices that are due after the effective date but for which there's not sufficient time to provide them within the timeframe required by the rules. So for example, because the 20(d) notice might, must be provided at least 210 days before the first payment is due after the initial interest rate adjustment, servicers will not be required to provide the notice when such payment is due, 209, excuse me, or fewer days from the effective date, excuse me. Similarly, because 20(c) notices are required at least 60 days before the first payment is due after a rate adjustment causing a payment change, servicers will not be required to provide the newly modified 20(c) payment change ARM notices when such payment is due 59 or fewer days from the effective date. Note that servicers will already have provided the 20(c) payment change ARM notice required under the old rule, for payment changes that occur up to 24 days after the effective date of the rule. To get more information on this or digest this a little bit more, if you go to our website and look at the Small Entity Compliance Guide, Section 2.2, there's a discussion of this.

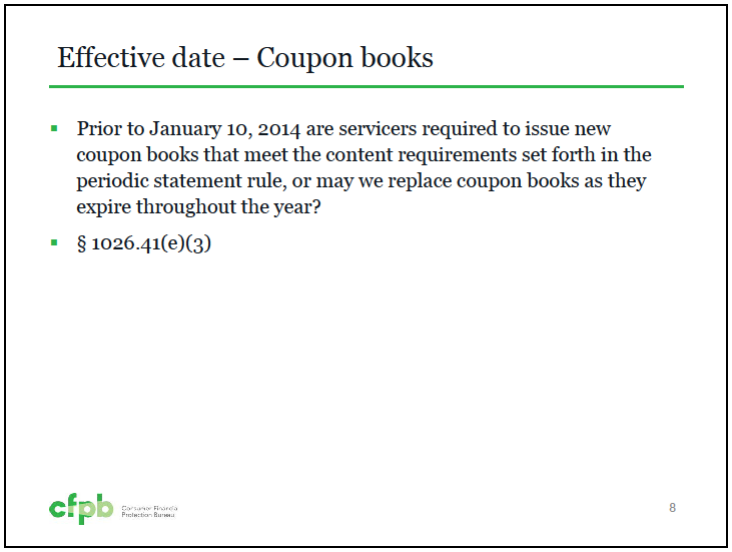


LAURIE MAGGIANO: Thank you Marta. Laura, regarding force-placed insurance, if a force-placed insurance policy was established prior to the effective date of the rule, is the servicer required to retroactively provide the written information notice and reminder notice described in § 1024.37(c)(1) and (d)?

LAURA JOHNSON: Thanks Laurie. No, if a force-placed insurance policy was established prior to the effective dates, a servicer is not required to provide the information and the notice in (c)(1) and (d).

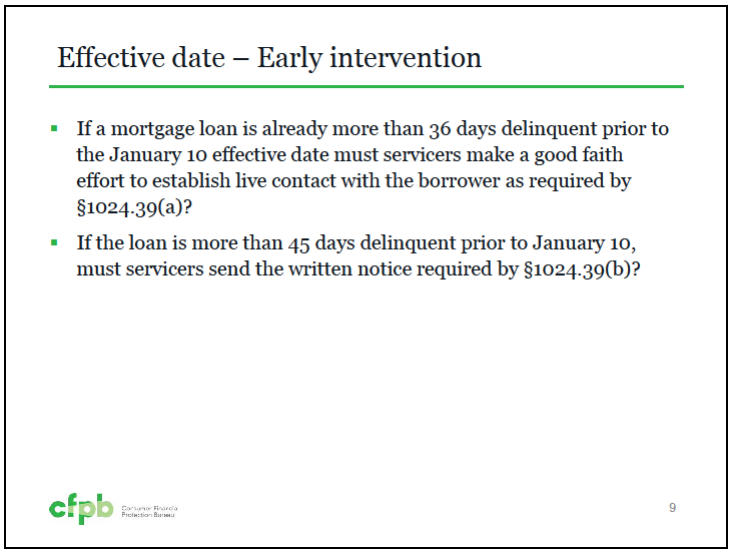
LAURIE MAGGIANO: So, what information must be provided if a servicer were to renew such a policy after the effective date, the original notice and reminder notice in 37(c)(1) and (d), or the renewal notices in 37(e)?

LAURA JOHNSON: If the insurance policy was established before the effective date, but is being renewed after the effective date, only the renewal notices in 1024.37(e) must be sent.



LAURIE MAGGIANO: With respect to coupon books, prior to January 10, 2014, are servicers required to issue new coupon books that meet the content requirements set forth in the periodic statement rule, or may servicers replace coupon books as they expire throughout the year?

LAURA JOHNSON: The servicers must begin complying with the rule on January 10th. So they must either have issued compliant coupon books to qualify for the exemption from the periodic statement requirements or they must begin sending periodic statements on that date.



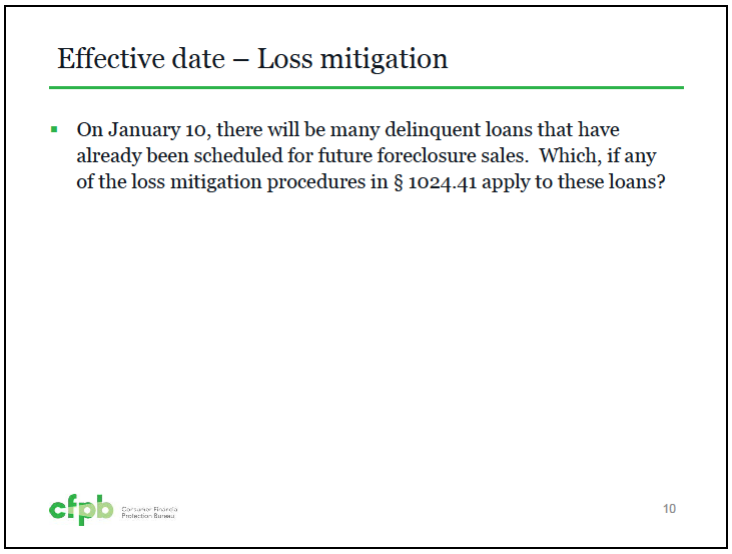
LAURIE MAGGIANO: Thank you, Laura. Marta, back to you. Regarding early intervention effective date, if a mortgage loan is already more than 36 days delinquent prior to the January 10th effective date must servicers make a good faith effort to establish live contact with the borrower as required by 39(a)? And also, if the loan is more than 45

days delinquent prior to January 10th, must servicers send the written notice required by 39(b)?

MARTA TANENHAUS: The answer to the question is no. But let me clarify, that for the purposes of the early intervention rule, a delinquency begins on the day of payment of principal interest and if applicable, escrow, for a given billing cycle is due and unpaid. Thus, under the rule, a separate and new delinquency occurs each billing cycle, for which the borrower fails to make this mortgage payment.

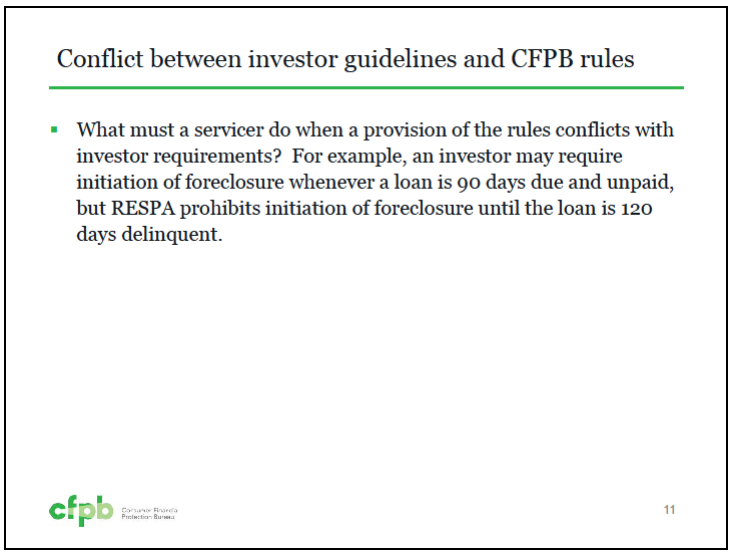
So for a delinquency that occurs before the effective date, the servicer is not required to comply with the early intervention requirements for that delinquency. However, if a delinquency occurs after the effective date, a servicer is required to comply with the early intervention requirements. For example, if a borrower does not make the mortgage payment due on January 1st, 2014, the servicer is not required to comply with the early intervention requirements for that billing cycle, because the payment was due before the effective date.

But, if the borrower does not make a payment in February, that is, after the effective date, the servicer must comply with, for example, the live contact, live contact, early intervention requirements by the 36th day of the delinquency. So for a payment due February 1st, the servicer must comply with the live contact requirement by March 9th. Another new billing cycle begins in March, so if the borrower does not make the March 1st payment, the servicer again must comply with the live contact requirements by April 6th. See comment 39(a)(1) for more calculations and also the, see the bulletin released yesterday [(October 15, 2013)] by the Bureau for information about servicer communications that fulfill the live contact requirements.



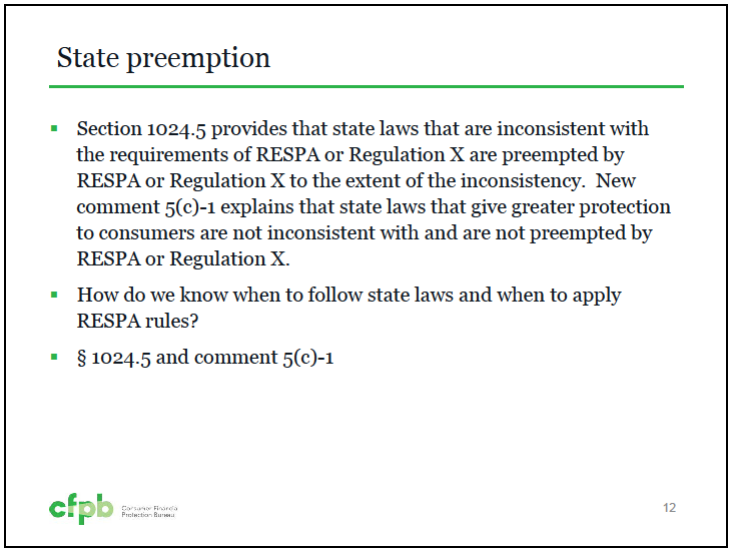
LAURIE MAGGIANO: Thank you Marta. Whitney, there was a question about the effective dates with respect to loss mitigation. On January 10, there will be many delinquent loans that have already been scheduled for foreclosure sales. Which, if any of the loss mitigation procedures in § 1024.41 would apply to these loans?

WHITNEY PATROSS: Sure, that's a great question. So first I want to note that servicers are not required to comply with the loss mitigation rule for mortgage loan ([loss mitigation]) applications received before the effective date of January 10th. Borrowers do have the right be evaluated for loss mitigation options pursuant to Section 41 for any applications submitted on or after the effective date, regardless of if they have been evaluated for loss mitigation before the effective date. And finally I want to note, the 120 day prohibition on foreclosure referrals applies both to mortgage loans that become delinquent on or after the effective date, as well as to any mortgage loan that is already delinquent on the effective date, but for which the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process has not yet occurred.



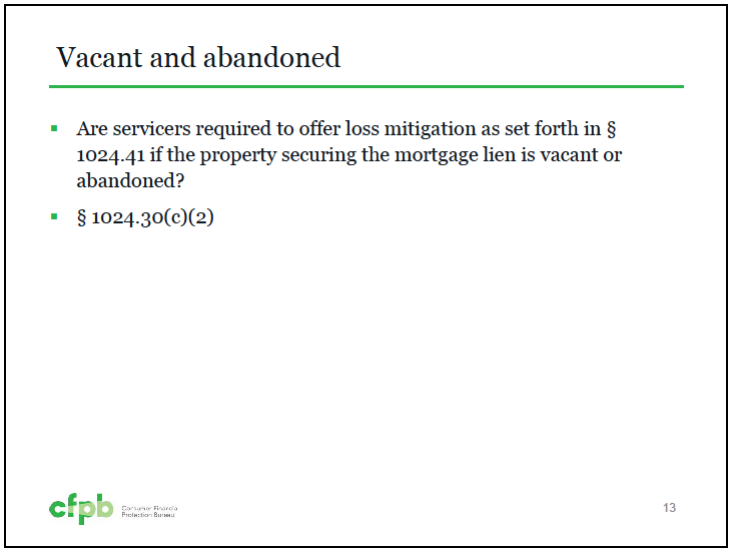
LAURIE MAGGIANO: Thank you. Now I have some questions that are still general in nature, but not related to effective date. What must a servicer do when a provision of the rules conflicts with investor requirements? For example, an investor may require initiation of foreclosure whenever a loan is 90 days due and unpaid, but RESPA prohibits initiation of foreclosure until the loan is 120 days due and unpaid. Will, can you respond to that?

WILL CORBETT: Thanks Laurie, sure. CFPB rules are the law, and trump investor guidelines. Thus, even if investor guidelines state that a servicer should initiate foreclosure by the 90th day of delinquency, a servicer may not take any action that would be a violation of the rule. On October 11th, Fannie Mae issued Servicing Guide Announcement 2013-20, and Freddie Mac issued a similar announcement 2013-21, bringing their requirements in line with the Bureau's new regulations.



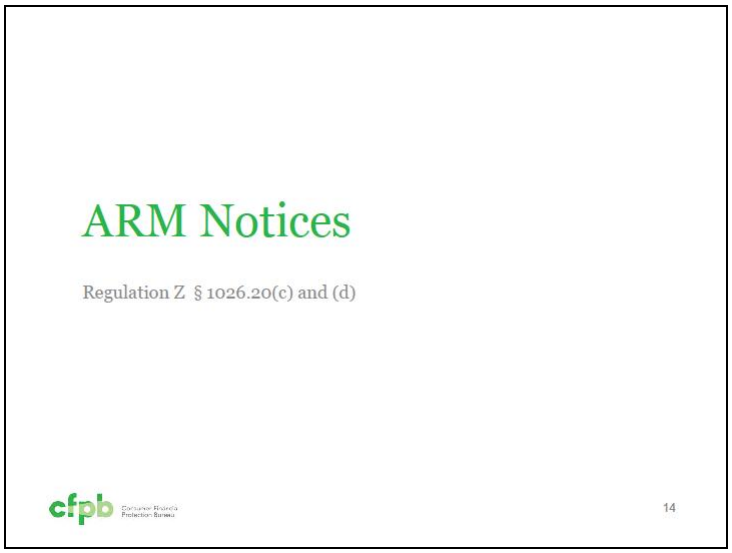
LAURIE MAGGIANO: Thank you. We also had a question, Will, about state preemption. Section 1024.5 provides that state laws that are inconsistent with the requirements of RESPA or Reg. X are preempted by RESPA or Reg. X to the extent of the inconsistency. However, new comment 5(c)-1 explains that state laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X. How do servicers know when to follow state laws and when to apply RESPA rules?

WILL CORBETT: The best way to think about this is that in general, the servicing rules provide a floor. State laws may not require or allow an action that would be prohibited under CFPB rules, but states can generally impose additional consumer protection requirements. The rule does not preempt the entire field of regulation for mortgage loan servicing. Note that the provision on transfers in § 1024.33(d) does specifically preempt state law. The provision states that any state law requiring notice to the borrower at the time of application or at the time of the transfer of servicing of the loan is preempted and there shall be no additional disclosure requirements.

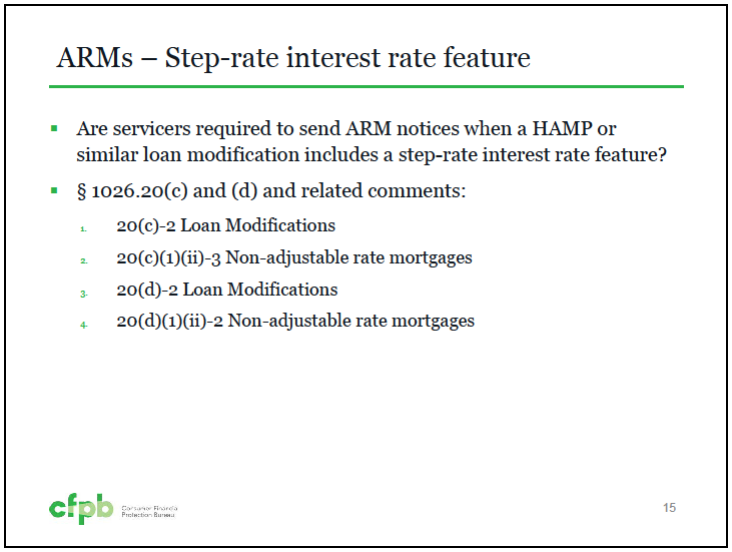


LAURIE MAGGIANO: One more for you, Will. This one is about vacant and abandoned properties. Are servicers required to offer loss mitigation as set forth in § 1024.41 if the property securing the mortgage lien is vacant or abandoned?

WILL CORBETT: § 1024.30 discusses the scope of, the scope of the mortgage servicing sub-part in RESPA. § 1024.30(c)(2) explains that the loss mitigation provisions only apply to a mortgage loan secured by a borrower's principal residence. Note that a vacant property may still be a principal residence. Also note that an abandoned property may not be a principal residence.

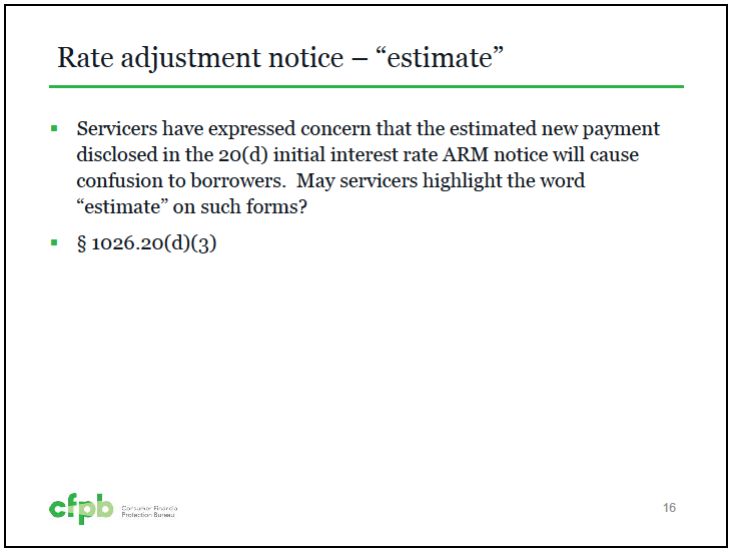


LAURIE MAGGIANO: Thank you. Let's move on to some more specific questions. We have a series of questions regarding ARMs.



Are servicers required to send ARM notices when a HAMP or similar loan modification includes a step-rate interest feature? Marta?

MARTA TANENHAUS: Comments 20(c), paragraph 2 and 20(d), paragraph 2 state that a modification to a loan does not trigger the ARM notices. This includes trial modifications. Note however, that if the modified loan is an ARM, ARM notices are required to resume for future interest rate changes. If the modified loan is not an ARM, of course, the ARM rule no longer applies. Also, the comments noted on the screen state that step-rate mortgages that are structured as fixed rate loans are not adjustable rate mortgages, thus the ARM rules do not apply to these loans. So HAMP loan modifications do not require ARM notices under the rules because loan modifications do not trigger the ARM requirements and the HAMP modified loan is a step-rate mortgage and thus it's not an ARM.



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LAURIE MAGGIANO: Thank you. Servicers have also expressed concern that the estimated new payment disclosed in the 20(d) initial interest rate ARM notice will cause confusion to borrowers. Marta, may servicers highlight the word "estimate" on the notice?

MARTA TANENHAUS: Well, note that in the 20(d) Model and Sample forms for the initial interest rate ARM notice, three references to the new payment label it an estimate, and all of these references are in bold-faced type or underlined or both. There's also a sentence alerting consumers that if the upcoming interest rate adjustment causes a payment change, they'll receive another notice – a 20(c) notice with the exact amount of the interest rate and the new payment two to four months before the new payment's due. And the word "exact" is bolded and underlined in that. If servicers feel that this is not enough to alert consumers to the fact that the new rate in payment are estimates, as with any of the Reg. Z disclosures, servicers can consult Comment 1 to Appendices G and H for guidance on permissible changes to the content or format of model forms.

LAURIE MAGGIANO: Moving on to prompt crediting.

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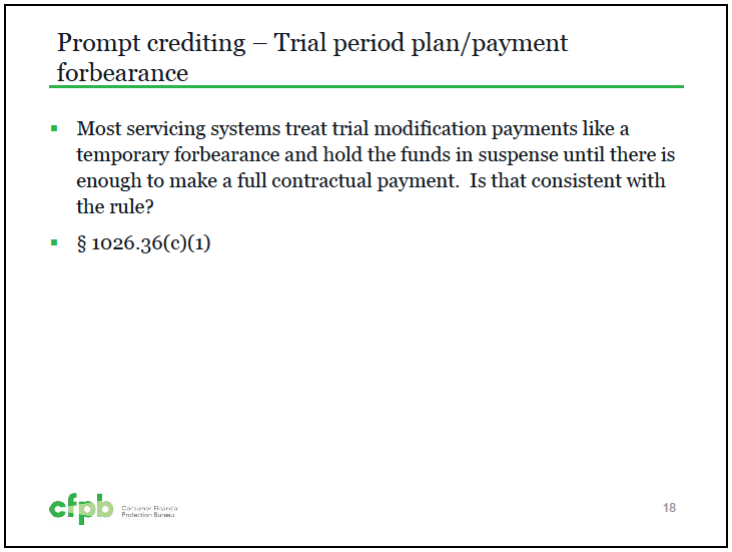
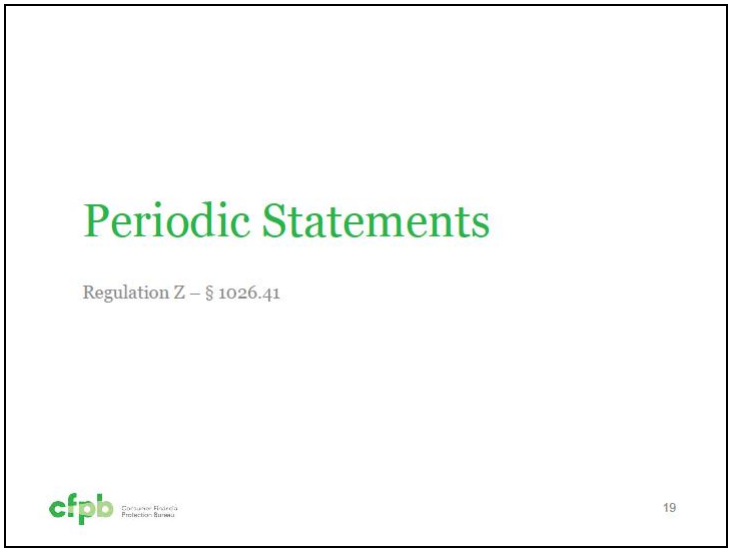


Whitney, most servicing systems treat trial modification payments like a temporary forbearance and hold the funds in suspense until there is enough to make a full contractual payment. Is that consistent with the rule?

WHITNEY PATROSS: Sure. I'd like to start by noting the prompt crediting rule requires that a servicer promptly credit a payment as of the date of receipt, except when failure to do so does not result in any charge to the consumer or the reporting of negative information to a consumer reporting agency. So suppose the borrower has regular payments of $1,000 a month and they're in a trial modification in which they make $800 a month. If after the first month the servicer would like to hold the $800 in a suspense account and then at the second month, when they receive the second payment of $800 combined $200 with the initial $800 and credit that full payment and then hold $600 on for the next month, they are certainly free to do so.



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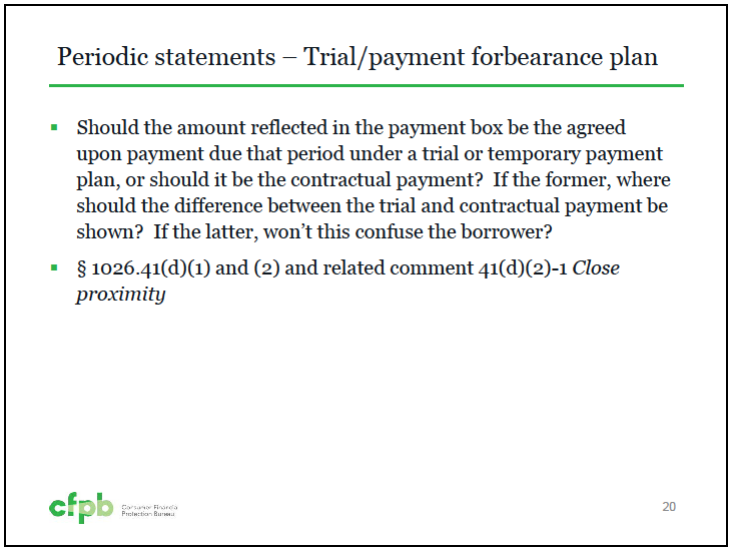
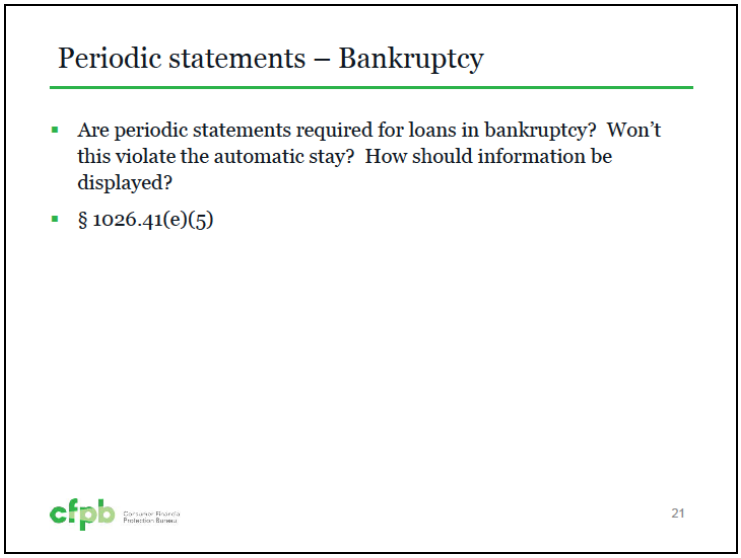
LAURIE MAGGIANO: We also have several questions regarding periodic statements and how information should be displayed in certain scenarios and when those periodic statements must be sent.



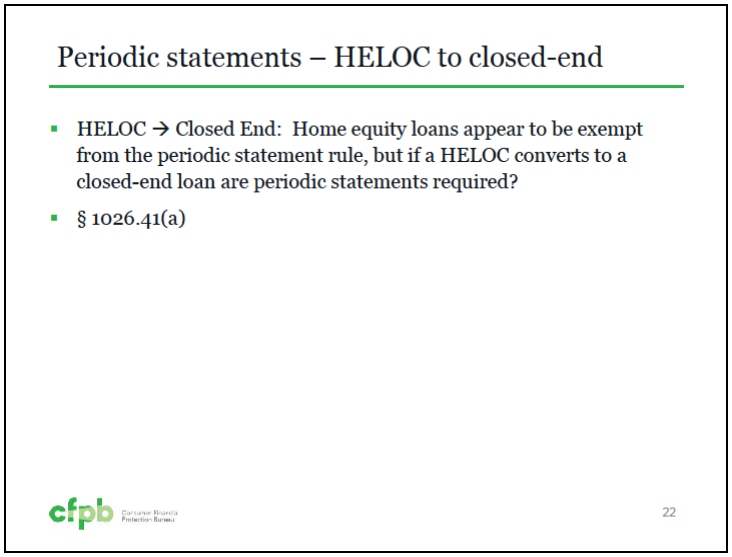
First of all, should the amount reflected in the payment box be the agreed upon payment due that period under trial or temporary payment plan, or should it be the contractual payment? If the former, where should the difference between the trial and the contractual payment be shown? And, if the latter, won't this confuse the borrower? Laura, could you address that?

LAURA JOHNSON: Sure. It's important to keep in mind that the periodic statement is designed to provide important information to borrowers, including the amount that they're expected to pay. Further, note that the periodic statement must reflect the legal obligation between the parties. There's also flexibility built into the periodic statement requirement and you can add information to it as long as it doesn't obscure the required disclosures. So, using the example that Whitney just gave for a trial mod, if we suppose that the borrower's regular, contractual payment is $1,000 a month, but they're in a trial mod that reduces the payment to $800 a month, you could reflect that on the periodic statement by, at the top of the form, you could say that the amount due is $800. The explanation of the amount due can be used to explain the difference between the $1,000 and the $800. You can explain that the principal and interest in escrow is $1,000 and at the end of the explanation of the amount due items, you could show that you subtracted $200 from the $1,000 due to the trial mod. And that gets you to the $800 amount due.



LAURIE MAGGIANO: Thank you. Are periodic statements required for loans in bankruptcy, Laura? Wouldn't this violate the automatic stay?

LAURA JOHNSON: As several of you may have seen in the interim final rule that we released yesterday [(October 15, 2013)] – I'm sure you've already had a chance to read it – periodic statements are not required when consumers are in bankruptcy. We've determined that further study is needed about how the various legal protections intersect and how to communicate with consumers in a way that doesn't confuse them regarding their status in bankruptcy. The Bureau is continuing, is continuing to look into this issue. Please take a look at the interim final rules for additional details.



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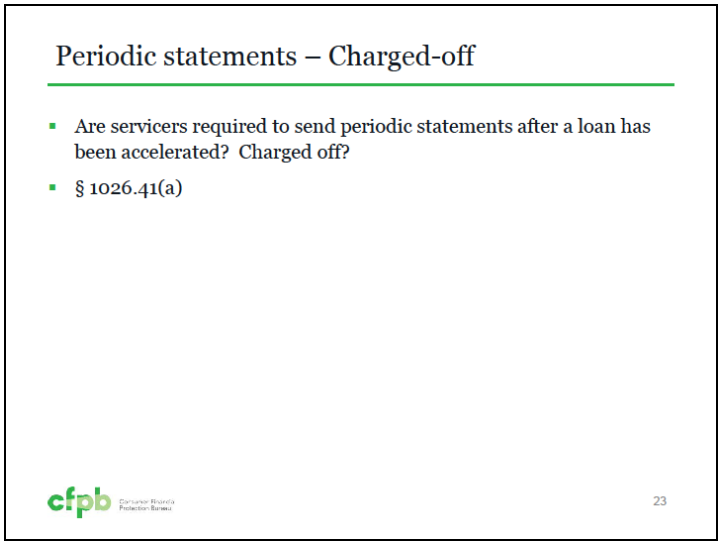
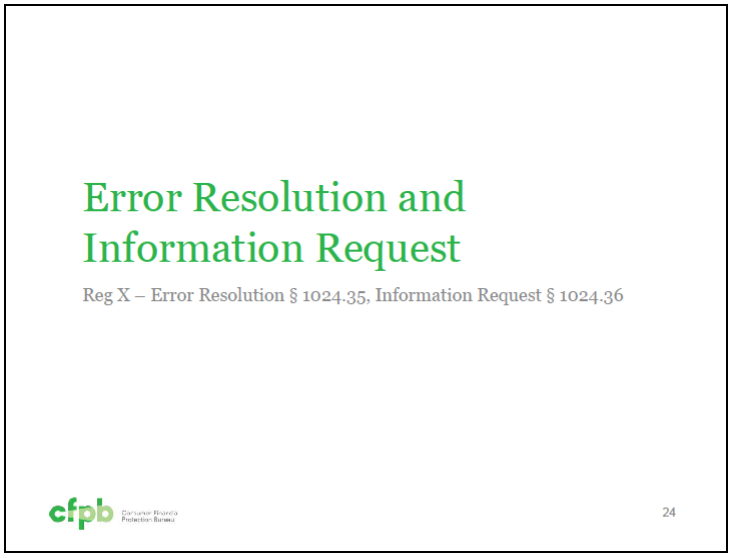
LAURIE MAGGIANO: And how about HELOC? Home equity loans appear to be exempt from the periodic statement rule, but if a HELOC converts to a closed-end loan are periodic statements required?
LAURA JOHNSON: Thanks. The periodic statement obligation begins with the conversion to closed-end. And the statements must reflect all transaction history after the conversion, but they need not reflect any activity from before.

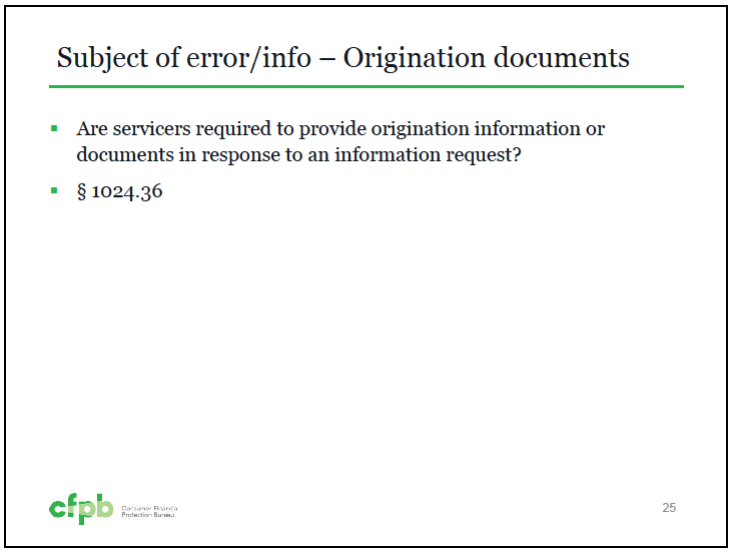


LAURIE MAGGIANO: Whitney, there were some questions regarding what servicer's responsibility is with respect to sending periodic statements after a loan has been accelerated or charged off.

WHITNEY PATROSS: Sure, the periodic statement requirement applies to closed-end, consumer credit transactions, secured by a dwelling. After a loan is accelerated, it is still a closed-end, consumer credit transaction secured by a dwelling, so periodic statements are still due after acceleration. I would note that at this point, the amount due on the periodic statement would be the entire outstanding principal balance because at that time the servicer is asking for the entire amount of the loan. Once a loan has been foreclosed, however, the transaction is no longer secured by a dwelling, so the periodic statement obligation would end. Generally, when people ask this question, they're talking about charged-off loans as one in which the entity removes the loan from their books but maintains the lien and in that case, you're still dealing with a closed-end consumer credit transaction secured by a dwelling. So at that point, periodic statements would still be required.

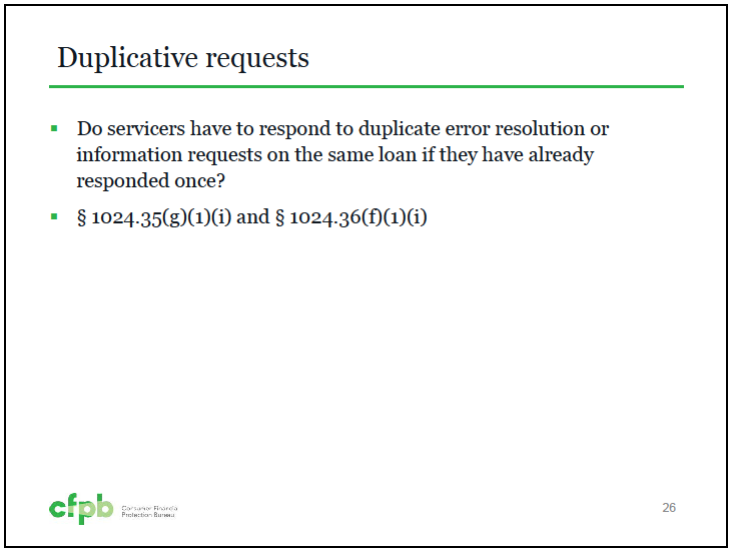


LAURIE MAGGIANO: Thank you. Now we're moving on to some questions regarding the error resolution process.



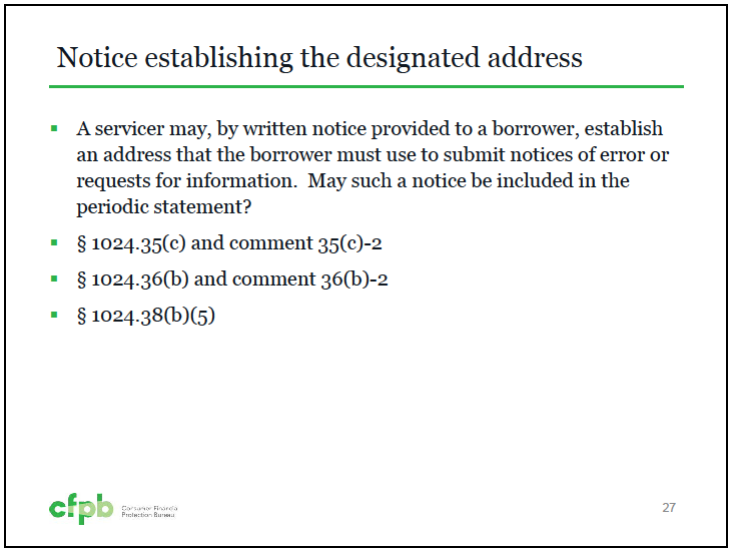
And Whitney, I'd like you to address these two, if you would. We've received a number of requests for clarification of the requirements related to error resolution and information requests. For example, are servicers required to provide origination information or documents in response to an information request?

WHITNEY PATROSS: Sure, I would start by noting that a servicer is not required to provide information that they do not have, and the record retention requirement doesn't apply before the effective date. However, to the extent that a servicer does have origination documents, for example, a copy of the note, they should provide it on a borrower's request.



LAURIE MAGGIANO: Do servicers have to respond to duplicative error resolutions or information requests on the same loan if they have already responded once?

WHITNEY PATROSS: They do. There is a carve-out from the information request provision that says if a request is made several times, a duplicative request, the servicer is not required to provide the information multiple times. However, the servicer is still required to respond to each request and say they're not responding because it is a duplicative request.



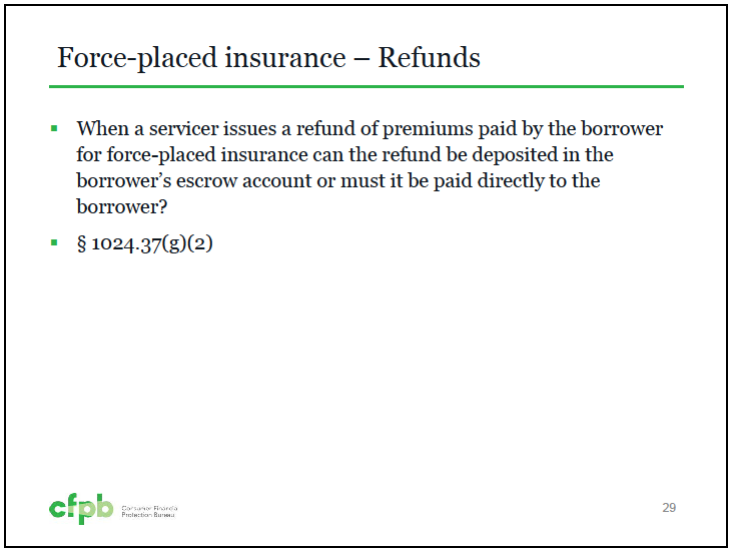
LAURIE MAGGIANO: Thank you. We had some questions regarding the designated address for the information and error requests. A servicer may, by written notice provided to the borrower, establish an address that the borrower must use to submit notices of error or requests for information. May such a notice be included in the periodic statement? Will?

WILL CORBETT: Yes, this notice may be in the periodic statement. A note that the notice at issue involves more than providing simply the exclusive address, the notice establishing the address must also include a statement that the borrower must use the established address to assert an error or request information. Once the address is designated, it must be provided in the following locations: any periodic statement or coupon book, any website that the servicer maintains in connection with the servicing of the loan, any notice required pursuant to § 1024.39 or § 1024.41 that includes contact information.

Also note that a servicer must have policies and procedures reasonably designed to inform borrowers of the procedure for submitting written notices of error and requests for information.

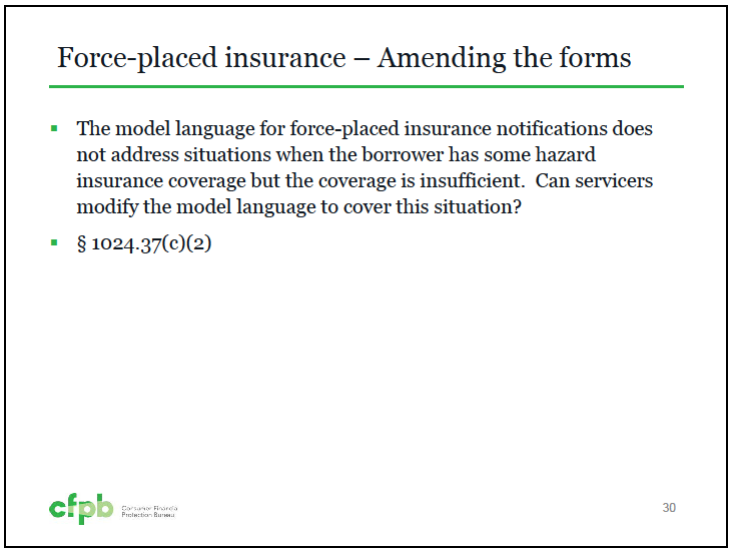
LAURIE MAGGIANO: Will, would you answer a couple questions about force-placed insurance for us?

WILL CORBETT: Sure.



LAURIE MAGGIANO: First, when a servicer issues a refund of premiums paid by the borrower for force-placed insurance can that refund be deposited in the borrower's escrow account or must it be paid directly to the borrower?

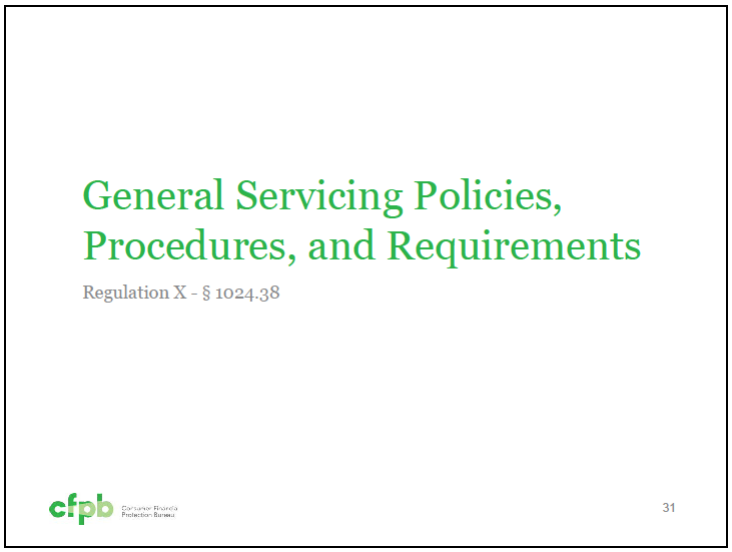
WILL CORBETT: Either is fine.



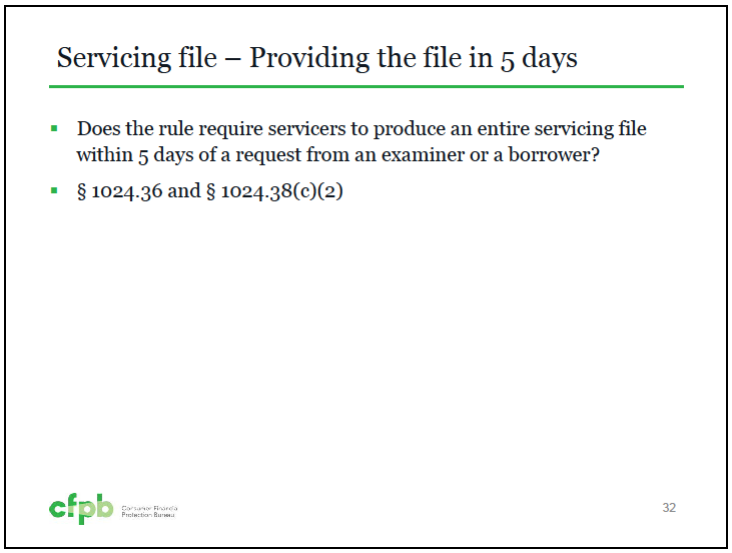
LAURIE MAGGIANO: Okay. And next, the model language for force-placed insurance notifications does not address all situations. For example, when a borrower has some, some hazard insurance coverage but the coverage is insufficient, can servicers modify the model language to cover this situation?

WILL CORBETT: The provision in § 1024.37 requires the notice to include certain statements. While additional information may not be included on the same page, such information may be

provided on a separate piece of paper in the same transmittal. The Bureau realizes language may cause difficulties and will consider amending this provision in the future.



LAURIE MAGGIANO: Thank you. The next question that the Bureau has received, a variety of questions actually, related to the requirement of § 1024.38(c)(2) to maintain a complete servicing file, with special concerns expressed about the requirement to maintain a report of data fields relative to the borrower's mortgage loan that are stored on the servicer's electronic system.

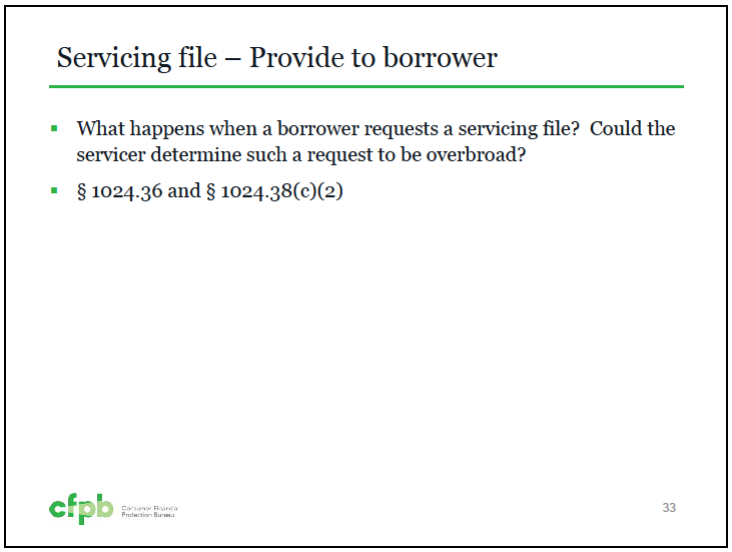


So Whitney, does that rule require servicers to produce the entire servicing file within five days of a request from an examiner or a borrower?

WHITNEY PATROSS: Sure, this is definitely a question we've heard many times before. So I want to start by noting that the requirement in 38(c) to compile the file in five days does not

create an independent right for the borrower to request that file in five days. If a borrower asks for the servicing file, that request will be processed through the information request provisions in section 36 and will follow the timelines in section 36. If an examiner requests a servicing file, they are required, it should be provided within five days. And the servicing file requirement is really about setting a benchmark to make sure that a servicer's systems are able to work together and that information can be assembled quickly.

I will note the proposed rule contemplated that a servicer would maintain a servicing file at all times and in response to comments, we walked that back to the five day benchmark. And we do understand that the servicing file is large and complicated and requires many different systems to work together, but that's exactly why we think this is an important thing. The servicing of a mortgage loan is a really complicated area and it's important that information from the different systems can be brought together.

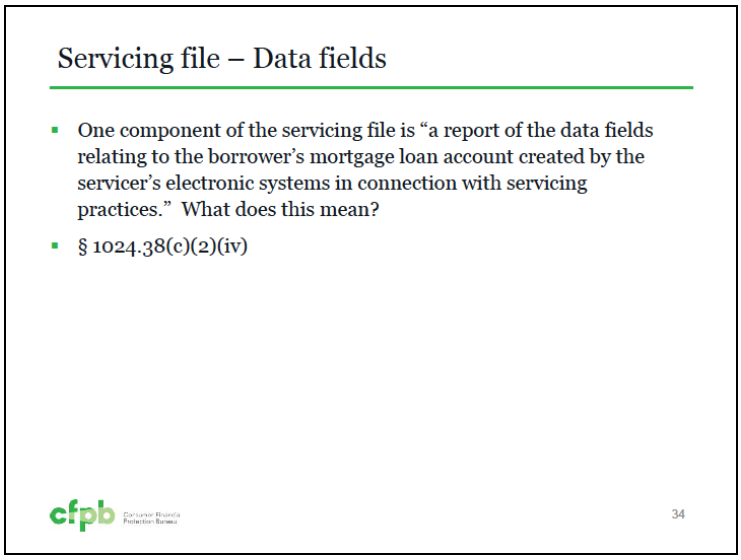


LAURIE MAGGIANO: What happens when a borrower requests a servicing file? Could the servicer determine that that request is overbroad?

WHITNEY PATROSS: As I said, borrower requests for the servicing file will be processed in accordance with the information request and as such, are subject to the limitations in 36(f). Section 36 does have a carve-out for requests that are overbroad or unduly burdensome and we realize this is a tricky area. According to the rule, an information request is overbroad if the borrower requests an unreasonable volume of documents or information and the commentary gives examples of requests that are overbroad or unduly burdensome, including a request for all mortgage loan file documents. And I will note that a servicing file is a subset of the entire mortgage file.

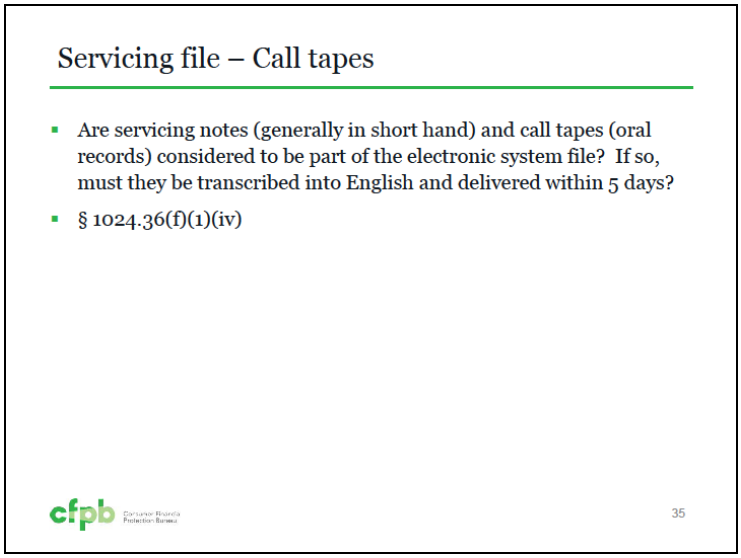
The determination of when exactly a request for an information is overboard really is a question of interpretation and depends on the facts and circumstances of individual cases, so I really can't draw a bright line for you, but I can suggest that one way servicers might mitigate the challenges

of this information request is attempting to determine and provide specific information that the borrower's looking for. Two ideas are, if the notes of a servicing file contain shorthand or lots of acronyms, servicers might want to consider providing the borrower with a key or a chart of commonly used abbreviations, which will help avoid some follow-up calls. And another idea is the servicer might want to consider providing borrowers with a data dictionary listing sort of what information is available to help borrowers determine what exactly they're looking for and make more specific requests.



LAURIE MAGGIANO: Thank you. Laura, one component of the servicing file is "a report of the data fields relating to the borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices." What does this mean?

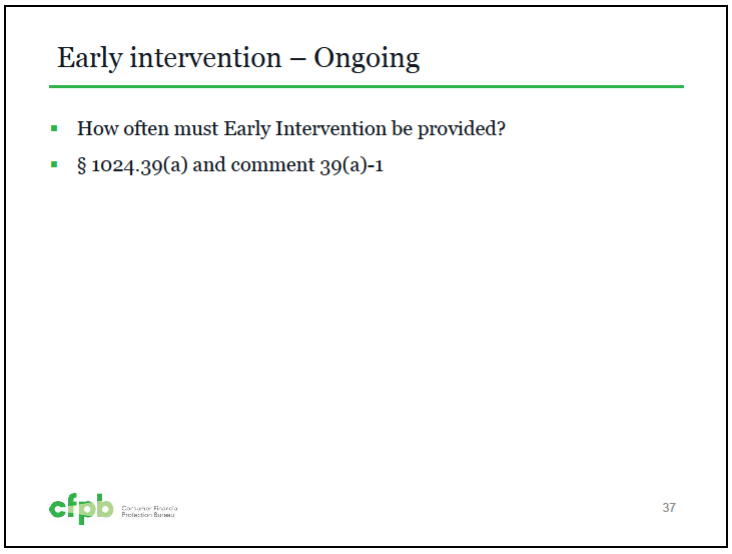
LAURA JOHNSON: Thanks, Laurie. Comments 38(c)(2)(iv), paragraph one, provides some guidance in this area. This means a report listing the relevant fields by name, populated with any specific data relating to the borrower's mortgage loan account. Note that the report only needs to provide data fields that relate to the borrower's account. So fields related to other things, such as back end processing need not be provided. Also, note that the report only needs to provide data fields that relate to the account in connection with servicing practices. So some examples of that are provided in the comments. You could provide, some examples include fields used to identify the terms of the loan, fields reflecting the evaluation of the borrower for loss mit options, and any credit reporting history.



LAURIE MAGGIANO: Are servicing notes, which are often kept in short hand, and call tapes, which are oral records, considered to be part of the electronic system file? And, if so, must they be transcribed into English and delivered within five days?

LAURA JOHNSON: Thanks. Whitney already talked about the five day requirement, so I won't go over those again specifically, but as she said, when a borrower submits a request for the servicing file or for the servicing notes, that request is treated as an information request and is handled through the procedures in section 1024.36. So those requests are subject to the, are also subject, to the exemptions in section 36. As Whitney mentioned before, that section includes the carve-out for requests that are overbroad or unduly burdensome. The paragraph explains that a request is unduly burdensome if a diligent servicer could not respond to the information request without incurring costs or dedicating resources that would be unreasonable under the circumstances.

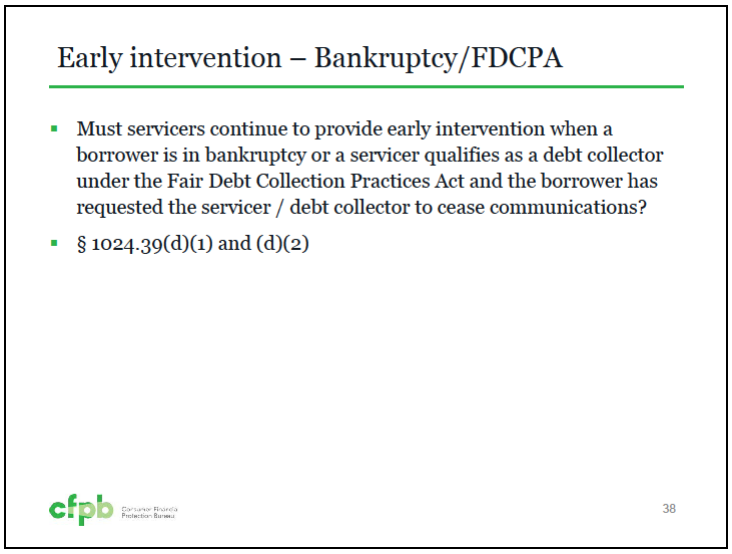
So, for example, as the commentary explains, a request for information in a specific format, like, like, an English transcript, in which the servicer does not ordinarily store the information, would be considered unduly burdensome. The servicing notes only need to be provided in an unedited or shorthand form if that's what the servicer ordinarily maintains. However, a servicer may want to consider providing the borrower with a key or a list of commonly used abbreviations to help the borrower understand the shorthand notes and avoid additional follow-up information requests.



LAURIE MAGGIANO: Thank you, Laura. Let's move on to early intervention. We discussed the impact of the effective date on early intervention earlier in this program but, Marta, can you talk a bit about how often early intervention must be provided for loans that become delinquent after the effective date?

MARTA TANENHAUS: Sure. As was mentioned earlier, the early intervention provisions impose ongoing requirements. Early intervention includes a specific definition of delinquency. Each billing cycle for which a borrower misses a payment of principal, interest, and, if applicable, escrow, is a separate delinquency for purposes of the early intervention rule. Thus, for each billing cycle that borrowers miss this payment, a servicer must comply with the provisions as set forth in the rule. So suppose a borrower misses the February 1st payment. The servicer must comply with the live contact requirements by the 36th day of the delinquency. So by March 9th, the servicer must send a written notice no later than the 45th day, so by March 18th, a new billing cycle begins on March 1st. And suppose the borrower's also delinquent for this

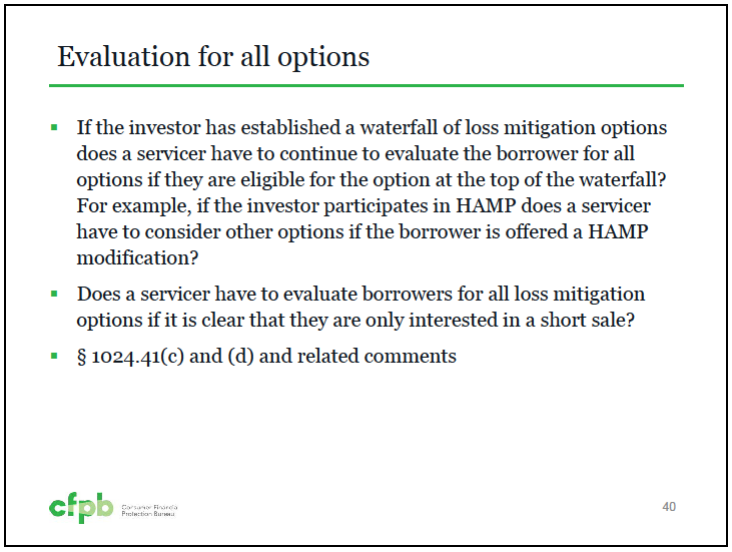
billing cycle. The servicer must comply with the live contact requirement by the 36th day of the delinquency, so by April 6th. The servicer's only required to provide the written notice once every 180 days, thus the written notice need not be provided again for this March delinquency. See the servicing bulletin the Bureau issued yesterday ([October 15, 2013]) for examples of servicer contacts that can fulfill the live contact requirements.



LAURIE MAGGIANO: Marta, must servicers continue to provide early intervention when a borrower is in bankruptcy or a servicer qualifies as a debt collector under the Fair Debt Collection Practices Act and the borrower has requested that the servicer/debt collector cease communications?

MARTA TANENHAUS: The answer to the question is no. The interim final rule the Bureau released yesterday [(October 15, 2013)] creates two exemptions from the early intervention rule. First, servicers do not have to comply with the rule when a borrower is in bankruptcy. Second, a servicer that's a debt collector under the FDCPA, with respect to a borrower who has sent a written request that the servicer/debt collector cease communications is exempt from the rule. The Bureau thinks that further study is needed about how the various legal protections intersect and how to communicate with borrowers in a way that doesn't confuse them, particularly with regard to their status in bankruptcy. So the Bureau is continuing to look into this issue, but these two exemptions have been put into place.

LAURIE MAGGIANO: Thank you very much. Another part of the rule where we've received a number of questions was loss mitigation, at § 1024.41.

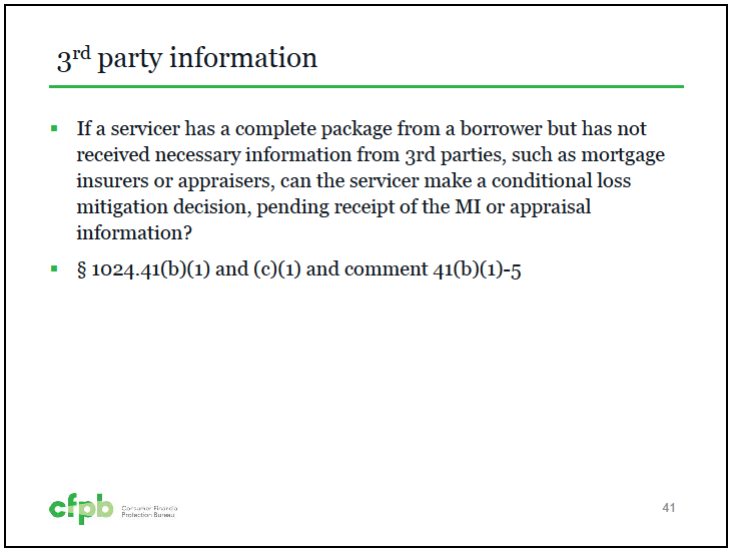


So I'll direct this first question to Whitney. If the investor has established a waterfall of loss mitigation options, does a servicer option, servicer has to continue to evaluate the borrower for all options if they are eligible for the option at the top of the waterfall? I am going to repeat that question. . . It's not working for me. If the investor has established a waterfall of loss mitigation options, does a servicer have to continue to evaluate the borrower for all options if they are eligible for the option at the top of the waterfall? For example, if the investor participates in HAMP, does a servicer have to consider other options if the borrower is offered a HAMP modification? And does a servicer have to evaluate borrowers for all loss mitigation options if it is clear that they are only interested in a short sale?

WHITNEY PATROSS: Sure, let me talk a little bit about how the loss mitigation rule works, because these are definitely questions we've gotten many, many a times. First of all, the rule does require that a servicer evaluate a borrower for all loss mitigation options on receipt of a complete loss mitigation application. And the rule also requires that a servicer provide denial information for any loan modification options for which the borrower is denied. Let me talk about that a little bit more. I'm going to start by noting that a failure to offer any loan modification program is considered denial and thus, the borrower must be provided a reason for that denial. If the denial is based on investor requirements, the denial notice must identify the owner or assignee of the mortgage loan and the requirement that is the basis for the denial. So a statement that the denial is based on investor requirements isn't sufficient, it needs to go into more detail than that.
As explained in the commentary, the rule does contemplate the use of a waterfall. If a servicer offers loan modification options A, B, and C, and the borrower is offered loan modification A, the servicer may deny the borrower for options B and C on the grounds that the borrower were qualified for option A. And finally I'm going to note that if the denial is based on an NPV analysis, the notice must include the inputs used in the NPV calculation.

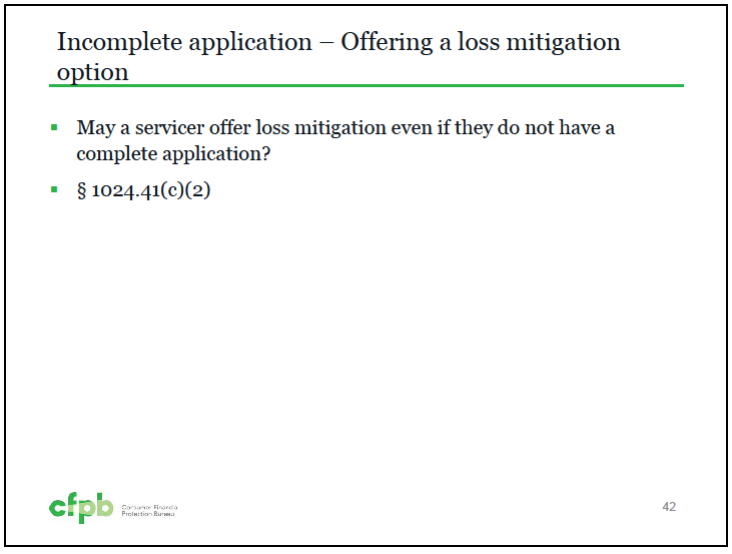
So in the first question you brought up, if the investor participates in HAMP, must they consider all of the other options available? If I understand HAMP correctly, they would be offered option A and they would be denied for options B and C on the grounds that they were offered option A. And so in the denial letter they would explain that because they were offered option A, they're not being offered B, C, or any subsequent options. And I want to note here, in September ,we released an update to the rule that talked about denial reasons and in that update we mentioned that the servicer only needs to disclose reasons actually considered. The servicer doesn't need to go in and consider counterfactuals or create hypothetical situations to determine the potential reasons why the borrower might have been denied. Once the servicer determines grounds for denying the borrower, they can end the analysis there, but they should note in the denial letter that there potentially could be other reasons for the denial.

Addressing your second question about – you're not the only one who's having trouble talking today. Addressing your second question about if a borrower's only interested in a short sale, I will note that while our rule sets procedures which a servicer must follow, the rule does not set criteria and an investor remains free to set whatever criteria they would like. If a servicer and an investor agree that the first criteria for modification is that the borrower is interested in remaining in their home, they're certainly free to do so and if that's how they set up the structure and a borrower asks for a short sale, the servicer would consider the analysis, they would say, question one: "Are you interested in remaining in your home?" The borrower has indicated they are not, therefore they are not eligible for loan modifications, because they fail to meet the criteria. And in the denial letter, they'll explain that you are not being offered a home, loan modification because you have indicated you are not interested in remaining in your home. So while you do need to continue the evaluation and the analysis, hopefully it won't be too difficult.



LAURIE MAGGIANO: Great. So if a servicer has a complete package from a borrower but has not received necessary information from third parties, such as mortgage insurers or appraisers, can the servicer make a conditional loss mitigation decision, pending receipt of the MI or appraisal information? Will, could you address that?

WILL CORBETT: Well the rules require the servicer to respond to the borrower within 30 days of receiving a complete application. In notifying the borrower of that response the servicer is free to add additional information in the notice and thus can explain that, while the servicer is unable to offer a loss mitigation option without certain information, they're working to obtain the information and they may offer the option when that information is obtained. The Bureau is aware of this issue and is keeping it in mind for future rulemakings.



LAURIE MAGGIANO: Thank you. So, may the servicer offer loss mitigation even if they do not have a complete application? Whitney?

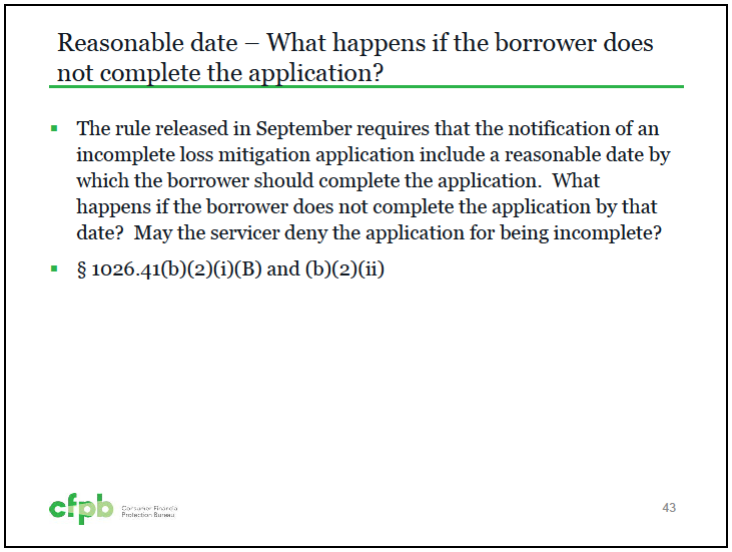
WHITNEY PATROSS: Sure, in general, a servicer may not offer a borrower loss mitigation based on an incomplete application and that's due to the anti-evasion clause in section 1024.41(c)(2). However, there are a few nuances to this provision which are probably worth going into a little bit. First, the rule addresses loss mitigation based on the evaluation of an application. As explained in the commentary, servicers remain free to offer loss mitigation that is not based on an application. We suspect this will be particularly useful in the areas of natural disasters where servicers want to offer all the borrowers some sort of relief or assistance and they are certainly free to do so.

The second nuance on the rule that I want to get into a little bit is if an application remains incomplete for a significant period of time, and a servicer has exercised reasonable diligence, there is a provision in the rule that will allow the servicer to offer loss mitigation based on an incomplete application, if they have exercised reasonable diligence and the application remains incomplete for a significant period of time without further progress by the borrower. And so I will note if the borrower is still working to complete the application, the servicer does need to continue working with that borrower and complete the application.

And then finally we added a new provision to the rule addressing payment forbearance. This is a specific carve out to the anti-evasion clause and this allows a servicer to offer a borrower a payment forbearance program based on an incomplete loss mitigation application. And because this is a new provision to the rule, let me just give a little bit more details on the payment forbearance program. So first I want to mention that when a servicer offers a borrower payment forbearance, the reasonable diligence obligation does require that the servicer continue to send the (b)(2) notice, inform the borrower that they're being offered payment forbearance based on an incomplete application, and the servicer needs to remind the borrower that they do have the option of completing their application to be evaluated for all loss mitigation options. And if the borrower does in fact complete their application, they should receive a full evaluation.

Payment forbearance, as defined in the commentary, is when a servicer allows the borrower to forego making certain payments or portions of payments for a period of time. The rule does limit this to a short-term payment forbearance and the commentary explains that that's up to six months. And as discussed in the preamble, this payment forbearance period could be prospective, retrospective, or a combination of both. So if a borrower is three months behind when they're offered this plan and the servicer wants to work out an arrangement where they address the past three months, they could also address three months going forward.

Although payment forbearance is limited to six months, there is nothing in the rule that prohibits a servicer from offering multiple payment forbearances. I will note that the servicer needs to check in at the end of each payment forbearance before offering a new one and this is an issue that the Bureau will keep an eye on and see if this is being inappropriately offered. But we wanted to leave servicers the flexibility to continue to do that.



LAURIE MAGGIANO: So there were some questions about what happens if the borrower doesn't complete the application. The rule released in September requires that the notification of an incomplete loss mitigation application must include a reasonable date by which the borrower should complete the application. But, what happens if the borrower does not complete the application by that date? May the servicer deny the application for being incomplete?

WHITNEY PATROSS: Sure, a lot of these questions stem from the update we released to the rule, so I'm really excited we get a chance to clarify this for everyone. Let me start by talking a little bit about the reasonable date in the (b)(2) notice, which is the notice the servicer sends to the borrower on receipt of an initial application. So the idea behind a reasonable date is to give the borrower some suggestion of when they should complete the application under the rule, as released in January. This was the earliest remaining of four milestones. And the idea was to make sure the borrower knows when they should complete their application, so that they would get the most protection because as a borrower gets closer and closer to a scheduled foreclosure sale, their protections decrease.

So after January, we looked at the rule and we took a lot of feedback and we really felt that was a little too prescriptive, so in the September rule we made an update and we said that the notification to the borrower must include a reasonable date by which the borrower should complete the application and in the commentary we explain that a servicers should consider these milestones in determining a reasonable date, but we gave servicers a little bit of flexibility. So the reasonable date has no legal significance on its own, outside of what it's suggesting to the borrower. I will note that a borrower should be encouraged to complete the application by the reasonable date, but the rule specifically does not use the word "must" because even if our borrower misses this deadline, they might still be entitled to protection if they can complete the application at a later date. So we thought it was important to encourage the borrower to complete their application but not discourage them from later completing the application if they're unable to meet that original deadline.

So your question was, what happens if the borrower misses the deadline? And the short answer is, absolutely nothing. That deadline was probably keyed to some protection, which the borrower will not receive, but if the borrower is able to complete the application at a later date, they should be encouraged to do so. The application does not expire at that reasonable date. It's just some guidance for the borrower, because we understand these rules are a little bit complicated and we didn't want the borrower to have to try and figure out all of these different deadlines, we just wanted to give them a simple number.

So, I know there's been a lot of questions about when you can deny an application for being incomplete, so I want to highlight a few elements of the rule. One is that servicers are required to exercise reasonable diligence in completing an application. And there is the anti-evasion clause which prohibits the servicer from offering a loss mitigation application based on an incomplete application. However, as I mentioned before, there is sort of this "significant period of time" clause. So if a servicer uses reasonable diligence and after a significant period of time the borrower, the application remains incomplete, without any further actions by the borrower working towards completing it, the servicer is eligible to offer a loss mitigation application, a loss mitigation option based on an incomplete application.

LAURIE MAGGIANO: Thank you very much. And with that, I think I will turn it back over to Lisa Applegate.

LISA APPLEGATE: Thank you, Laurie. So we talked a little faster than we thought we might. We're about to wrap up. I just wanted to draw everyone's attention to the comment that Dave made earlier, which is that the Bureau is available at any time for questions about the meaning or intent of the regulations on this slide 44 you see the email address, CFPB_reginquiries@cfpb.gov or the phone number, 202-435-7700. As many of you are aware, there's also a web page on consumerfinance.gov. It's noted here: regulatory-implementation. And you can find many resources, including links to all the rules, bulletins, and interim final rules mentioned here today,

as well as implementation support materials there, hopefully helpful to you. I hope we've managed to touch on some questions of interest and importance for many of you out there today and I want to thank again the Mortgage Bankers Association for hosting this call and I'll turn it over to Faith for a wrap up.

FAITH: Awesome, thank you Lisa. Just as a reminder we'd like to let you all know that we will have a recording posted to MBA's website tomorrow, so be looking for that. We thank you guys, of course we thank the CFPB for joining us and we hope to see you all tomorrow same place, same time. So thank you, you guys and we hope you have a great rest of the day.