

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1024**

**Docket No. CFPB-2017-0031**

**RIN 3170-AA77**

**Amendments to the 2016 Amendments to the 2013 Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Interim final rule with request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is issuing an interim final rule amending a provision of the Regulation X mortgage servicing rules issued in 2016 relating to the timing for servicers to provide modified written early intervention notices to borrowers who have invoked their cease communication rights under the Fair Debt Collection Practices Act. The Bureau requests public comment on this interim final rule.

**DATES:** This interim final rule is effective on October 19, 2017. Comments must be received on or before **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB-2017-0031 or RIN 3170- AA77, by any of the following methods:

- *Email:* [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov). Include Docket No. CFPB-2017-0031 or RIN 3170-AA77 in the subject line of the email.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552.
- *Hand Delivery / Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552.

*Instructions:* All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Joel L. Singerman, Counsel; or William R. Corbett or Laura A. Johnson, Senior Counsels, Office of Regulations, at 202-435-7700 or <https://reginquiries.consumerfinance.gov/>.

**SUPPLEMENTARY INFORMATION:**

## **I. Summary of the Interim Final Rule**

On August 4, 2016, the Bureau issued the Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (2016 Mortgage Servicing Final Rule) amending certain of the Bureau's mortgage servicing rules.<sup>1</sup> The Bureau has learned, through its outreach in support of industry's implementation of the 2016 Mortgage Servicing Final Rule, that certain technical aspects of the rule relating to the timing for servicers to provide modified written early intervention notices to borrowers who have invoked their cease communication rights under the Fair Debt Collection Practices Act (FDCPA) may create unintended challenges in implementation. To alleviate any unintended challenges and facilitate timely provision of written early intervention notices to these borrowers, the Bureau is issuing this interim final rule to address the provision in Regulation X, which would otherwise become effective October 19, 2017.<sup>2</sup>

Among other things, the 2016 Mortgage Servicing Final Rule addresses Regulation X's provision regarding early intervention requirements when a borrower has invoked the cease communication right under the FDCPA.<sup>3</sup> Under that provision (and with certain exceptions not applicable here), a servicer subject to the FDCPA with respect to that borrower's loan must provide a modified written early intervention notice to that borrower on a periodic basis but is prohibited from doing so more than once during any 180-day period.

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<sup>1</sup> 81 FR 72160 (Oct. 19, 2016).

<sup>2</sup> The Bureau is addressing in a separate proposed rule another disclosure timing provision of the 2016 Mortgage Servicing Final Rule that would otherwise become effective April 19, 2018.

<sup>3</sup> The provisions of Regulation X discussed herein were amended by the 2016 Mortgage Servicing Final Rule but are not effective until October 19, 2017. To simplify review of this notice and differentiate between those amendments and this proposed rule, this notice generally refers to the 2016 amendments as though they already are in effect.

Based on feedback received through its efforts to support industry implementation of the 2016 Mortgage Servicing Final Rule, the Bureau understands that there is concern among some servicers that this 180-day prohibition in § 1024.39(d)(3)(iii), read in conjunction with the early intervention provision's other timing requirements regarding written notices, requires servicers to provide the notice exactly on the 180th day after providing a prior notice. The Bureau did not intend this result and is concerned that the provision imposes too narrow a window for compliance and may provide insufficient guidance as to when and how servicers comply with the timing requirements under certain circumstances. Thus (and as explained in further detail below), the Bureau is issuing this interim final rule to amend § 1024.39(d)(3)(iii) to give servicers a 10-day window to provide the modified notice at the end of the 180-day period.

The Bureau believes that the interim final rule provides clearer and more flexible standards than the timing requirements adopted in the 2016 Mortgage Servicing Final Rule, offering greater certainty for implementation and compliance, without undermining important borrower protections relating to early intervention. The Bureau seeks public comment on this interim final rule.

## **II. Background**

### *A. 2016 Mortgage Servicing Final Rule and Implementation Support*

In August 2016, the Bureau issued the 2016 Mortgage Servicing Final Rule, which amends certain of the Bureau's mortgage servicing rules in Regulations X and Z.<sup>4</sup> Most of these

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<sup>4</sup> 81 FR 72160 (Oct. 19, 2016). The amendments cover nine major topics and focus primarily on clarifying, revising, or amending provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements under Regulation X's servicing provisions; and prompt crediting and periodic statement requirements under Regulation Z's servicing provisions. The amendments also address proper compliance regarding certain servicing requirements when a person is a potential or confirmed successor in interest, is a debtor in bankruptcy, or sends a cease communication request under the FDCPA.

rules become effective on October 19, 2017, except that the provisions relating to bankruptcy periodic statements and successors in interest become effective on April 19, 2018. The Bureau has worked to support implementation by providing an updated compliance guide, other implementation aids, a technical corrections final rule,<sup>5</sup> policy guidance regarding early compliance,<sup>6</sup> and informal guidance in response to regulatory inquiries. Information regarding the Bureau's implementation support initiative and available implementation resources can be found on the Bureau's regulatory implementation website at

<https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/mortserv/>. Based on its ongoing outreach, the Bureau believes that industry has made

substantial implementation progress regarding the 2016 Mortgage Servicing Final Rule.

However, as discussed herein, the Bureau believes that a limited disclosure timing provision under Regulation X from the 2016 Mortgage Servicing Final Rule may pose unintended implementation challenges and is appropriate to address in an interim final rule before it goes into effect.

#### *B. Purpose and Scope of Interim Final Rule*

As a result of feedback and questions received from servicers, the Bureau has decided to issue an interim final rule amending Regulation X relating to the timing for servicers to provide modified written early intervention notices to borrowers who have invoked their cease communication rights under the FDCPA. The Bureau believes this interim final rule provides

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<sup>5</sup> Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z); Correction, 82 FR 30947 (July 5, 2017).

<sup>6</sup> Policy Guidance on Supervisory and Enforcement Priorities Regarding Early Compliance With the 2016 Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 82 FR 29713 (June 30, 2017).

clearer and more flexible standards than the timing requirements adopted in the 2016 Mortgage Servicing Final Rule, offering greater certainty for implementation and compliance, while also not undermining borrower protections.

### **III. Legal Authority**

The Bureau is issuing this interim final rule pursuant to its authority under RESPA and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),<sup>7</sup> including the authorities discussed below. This interim final rule amends a provision previously adopted by the Bureau in the 2016 Mortgage Servicing Final Rule. In doing so, the Bureau relied on one or more of the authorities discussed below, as well as other authority. The Bureau is issuing this interim final rule in reliance on the same authority and for the same reasons relied on in adopting the relevant provisions of the 2016 Mortgage Servicing Final Rule, as discussed in detail in the Legal Authority and Section-by-Section Analysis parts of the 2016 Mortgage Servicing Final Rule.

#### *A. RESPA*

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA, which include its consumer protection purposes. In addition, section 6(j)(3) of RESPA, 12 U.S.C. 2605(j)(3), authorizes the Bureau to establish any requirements necessary to carry out section 6 of RESPA, and section 6(k)(1)(E) of RESPA, 12 U.S.C. 2605(k)(1)(E), authorizes the Bureau to prescribe regulations that are appropriate to carry out RESPA's consumer protection purposes. The

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<sup>7</sup> Public Law 111-203, 1245 Stat. 11376 (2010).

amendments or clarifications to Regulation X in the interim final rule are intended to achieve some or all these purposes.

*B. The Dodd-Frank Act*

Section 1022(b)(1) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(1), authorizes the Bureau to prescribe rules “as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.” RESPA and title X of the Dodd-Frank Act are Federal consumer financial laws.

Section 1032(a) of the Dodd-Frank Act, 12 U.S.C. 5532(a), provides that the Bureau “may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.” The authority granted to the Bureau in section 1032(a) of the Dodd-Frank Act is broad and empowers the Bureau to prescribe rules regarding the disclosure of the “features” of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

Section 1032(c) of the Dodd-Frank Act, 12 U.S.C. 5532(c), provides that, in prescribing rules pursuant to section 1032 of the Dodd-Frank Act, the Bureau “shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.” Accordingly, in issuing the interim final rule to amend provisions authorized under section

1032(a) of the Dodd-Frank Act, the Bureau has considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

#### **IV. Administrative Procedure Act**

To the extent that notice and comment would otherwise be required, the Bureau finds that there is good cause to publish this interim final rule without notice and comment and for the rule to be effective less than 30 days after publication. *See* 5 U.S.C. 553(b)(3)(B), (d)(3). As explained elsewhere in this rule, the Bureau has heard concerns from servicers that the 180-day prohibition in current § 1024.39(d)(3)(iii) requires them to provide the modified early intervention notice to delinquent borrowers who have invoked their right to cease communication under the FDCPA exactly on the 180th day after providing a prior notice. The Bureau did not intend this result and is concerned that current § 1024.39(d)(3)(iii) imposes too narrow a window for compliance and could cause legal risk for servicers, particularly when the 180th day falls on a Saturday, Sunday, or public holiday. This interim final rule amends § 1024.39(d)(3)(iii) to give servicers a 10-day window to provide the modified notice at the end of the 180-day period. The Bureau believes that this amendment will offer greater certainty for implementation and compliance, while also not undermining borrower protections. The Bureau finds that it would be impracticable to provide notice and comment before finalizing this rule because § 1024.39(d)(3)(iii) would otherwise become effective on October 19, 2017, and could cause unintended challenges in the implementation of the notice requirement. For similar reasons, the Bureau finds that it is impracticable to provide a 30-day period between publication of this rule and its effective date. The Bureau is requesting comment on this rule. Based on any



comments received (and mindful of the need to avoid market disruption), the Bureau will consider whether to revisit this rule.

## **V. Section-by-Section Analysis**

### *A. Regulation X.*

#### *Section 1024.39 Early Intervention Requirements for Certain Borrowers*

##### *39(d) Fair Debt Collection Practices Act—Partial Exemption.*

###### *39(d)(3).*

In this interim final rule, the Bureau is amending § 1024.39(d)(3)(iii) to specify in more detail when a servicer must provide the modified written early intervention notice, as required by § 1024.39(b) and (d), at the end of the 180-day period after the servicer provided a prior written notice. In general, § 1024.39(d) provides a partial exemption from the early intervention requirements for servicers that are subject to the FDCPA with respect to borrowers who have invoked their cease communication rights pursuant to section 805(c) of the FDCPA.<sup>8</sup> Section 1024.39(d)(3) requires servicers to provide a modified written early intervention notice to those borrowers under certain circumstances, but § 1024.39(d)(3)(iii) prohibits a servicer from providing the modified notice more than once during any 180-day period. As revised under this interim final rule, § 1024.39(d)(3)(iii) gives servicers a 10-day window to provide the required notices at the end of the 180-day period. In particular, revised § 1024.39(d)(3)(iii) retains the 180-day prohibition and also specifies: (1) if a borrower is 45 days or more delinquent at the end

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<sup>8</sup> This section-by-section analysis discusses § 1024.39(d) generally in terms of a borrower's cease communication notification and its effect on a servicer's obligations under the early intervention requirements, but the provision applies equally to a borrower's notice to the servicer that the borrower refuses to pay a debt. *See* FDCPA section 805(c) ("If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt . . .").

of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 190 days after the provision of the prior written notice, and (2) if a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent or 190 days after the provision of the prior written notice, whichever is later.

Section 1024.39(b) generally requires that a servicer provide a written early intervention notice prior to the 45th day of delinquency, and again no later than 45 days after each payment due date so long as the borrower remains delinquent. Section 1024.39(b) further provides that a servicer is not required to provide a notice more than once in any 180-day period, but also that a servicer must provide the written notice no more than 180 days after the servicer has previously provided the notice if the borrower remains delinquent and is 45 days or more delinquent at the end of the 180-day period.

Among other things, § 1024.39(d) modifies the timing requirements for providing the written notice required by § 1024.39(b) when a borrower has invoked the cease communication right under the FDCPA. Under § 1024.39(d)(2), a servicer subject to the FDCPA with respect to that borrower's loan is exempt from the written notice requirements of § 1024.39(b), but only if no loss mitigation option is available, or while any borrower on that mortgage loan is a debtor in bankruptcy. If neither of those conditions is met, § 1024.39(d)(3) provides that the servicer must comply with the written notice requirements of § 1024.39(b), as modified by § 1024.39(d)(3)(i)

through (iii).<sup>9</sup> The relevant provision for purposes of this interim final rule is § 1024.39(d)(3)(iii), which prohibits a servicer from providing the written notice more than once during any 180-day period. In the preamble to the 2016 Mortgage Servicing Final Rule, the Bureau noted that this 180-day prohibition reduces the risk that the modified written early intervention notice will be used to undermine a borrower's cease communication right under FDCPA section 805(c).

Concurrently with the 2016 Mortgage Servicing Final Rule, the Bureau issued an interpretive rule constituting an advisory opinion under FDCPA section 813(e), 15 U.S.C. 1692k(e), that, in part, interprets the FDCPA cease communication provisions in relation to the written early intervention requirements in Regulation X.<sup>10</sup> Specifically, the interpretive rule provides a safe harbor from liability under FDCPA section 805(c) where a servicer that is a debt collector with respect to a mortgage loan is required by § 1024.39(d)(3) to provide a modified written early intervention notice to a borrower who has invoked the cease communication right.

After issuing the 2016 Mortgage Servicing Final Rule and the interpretive rule, the Bureau received several inquiries about how § 1024.39(d)(3)(iii) modifies § 1024.39(b)'s timing requirements. Section 1024.39(b) does not require a notice more than once in a 180-day period but, except as otherwise provided in § 1024.39(d)(3)(iii), permits more frequent provision of the written notices. It also provides that, if a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the

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<sup>9</sup> Section 1024.39(d)(3)(i) requires that the notice include a statement that the servicer may or intends to invoke its specified remedy of foreclosure and states that Model clause MS-4(D) in appendix MS-4 to Regulation X may be used to comply with this requirement. Section 1024.39(d)(3)(ii) provides that the notice may not contain a request for payment.

<sup>10</sup> See Bureau of Consumer Fin. Prot., Official Bureau Interpretations: Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 81 FR 71977 (Oct. 19, 2016).

written notice again no later than 180 days after the provision of the prior written notice.

However, with regard to a loan for which a borrower has invoked the cease communication right as described above, § 1024.39(d)(3)(iii) prohibits a servicer from providing the notice more than once in any 180-day period.

The Bureau is concerned that, as adopted by the 2016 Mortgage Servicing Final Rule, § 1024.39(d)(3)(iii) imposes too narrow a window for compliance and could provide insufficient guidance as to when and how servicers comply with the timing requirements under certain circumstances. The 180-day prohibition in § 1024.39(d)(3)(iii), read in conjunction with § 1024.39(b), provides only one day for a servicer to provide a subsequent written notice.<sup>11</sup> Therefore, where a borrower that has invoked the cease communication right is 45 days or more delinquent at the end of the 180-day period after the servicer provided a prior written notice, a servicer would have to provide the next notice on the 180th calendar day after the prior notice, whether or not this day falls on a Saturday, Sunday, or public holiday. The Bureau narrowly tailored the timing requirements in § 1024.39(d) to prevent a servicer subject to the FDCPA from sending frequent, repeated notices that may undermine a borrower's cease communication right under section 805(c) of the FDCPA. The Bureau did not, however, intend for servicers subject to § 1024.39(d)(3) to have a one-day window to provide a subsequent written early intervention notice to borrowers who have invoked their cease communication rights. Thus, the Bureau is amending § 1024.39(d)(3)(iii).

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<sup>11</sup> The Bureau also understands that some stakeholders instead may be interpreting § 1024.39(b) and (d)(3)(iii) together as permitting a servicer to provide the subsequent written notice required by § 1024.39(b) sometime after the 180th day but before the end of the next 180-day period (*e.g.*, by the 360th day). The Bureau does not believe such a reading of § 1024.39(b) and (d)(3)(iii) together is tenable and is concerned that, if servicers act in accordance, borrowers would be deprived of timely receiving important loss mitigation information.

As amended § 1024.39(d)(3)(iii) retains the general 180-day prohibition but also specifies that, if a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 190 days after the provision of the prior written notice. If a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent or 190 days after the provision of the prior written notice, whichever is later. In effect, the interim final rule provides servicers a 10-day window to provide any required notices at the end of the 180-day period. The Bureau believes that a 10-day window at the end of the 180-day period affords servicers sufficient time to provide the notice while also ensuring that servicers provide the subsequent notice in a timely way, maximizing a borrower's opportunities to pursue loss mitigation and avoid further delinquency.

The Bureau seeks comment on whether the interim final rule permits servicers to timely provide the notice at the end of the 180-day period. The Bureau also seeks comment on whether the interim final rule adequately protects consumers who have invoked their cease communication rights while affording them timely access to information about loss mitigation.

## **VI. Effective Date**

Section 1024.39(d), as amended by the 2016 Mortgage Servicing Final Rule, becomes effective October 19, 2017. Thus, this interim final rule, which further amends § 1024.39(d)(3)(iii), also becomes effective October 19, 2017.

## **VII. Dodd-Frank Act Section 1022(b) Analysis**

In developing this interim final rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2) of the Dodd-Frank Act. Specifically,

section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of consumer access to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with the objectives those agencies administer. The Bureau consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development (HUD), the HUD Office of Inspector General, the Federal Housing Finance Agency, the Federal Trade Commission, the Department of the Treasury, the Department of Agriculture, and the Department of Veterans Affairs, including regarding consistency with any prudential, market, or systemic objectives administered by these agencies.

The Bureau previously considered the benefits, costs, and impacts of the 2016 Mortgage Servicing Final Rule's major provisions.<sup>12</sup> The baseline<sup>13</sup> for this discussion is the mortgage servicing market as it would exist "but for" this interim final rule; that is, the Bureau considers the benefits, costs, and impacts of this interim final rule on consumers and covered persons relative to the baseline established by the 2016 Mortgage Servicing Final Rule.

In considering the relevant potential benefits, costs, and impacts of this interim final rule, the Bureau has used feedback received to date and has applied its knowledge and expertise

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<sup>12</sup> 81 FR 72160, 72351 (Oct. 19, 2016).

<sup>13</sup> The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline.

concerning consumer financial markets. The discussion below of these potential costs, benefits, and impacts is qualitative, reflecting both the specialized nature of the amendments and the fact that the 2016 Mortgage Servicing Final Rule, which establishes the baseline for the Bureau's analysis, is not yet in effect. The Bureau requests comment on this discussion generally as well as the submission of data or other information that could inform the Bureau's consideration of the potential benefits, costs, and impacts of the interim final rule.

The interim final rule's provisions generally would decrease burden incurred by industry participants by modifying the timing requirements for certain disclosures required under the 2016 Mortgage Servicing Final Rule. As is described in more detail below, the Bureau does not believe that these changes would have a significant enough impact on consumers or covered persons to affect consumer access to consumer financial products and services.

*Timing of written early intervention notice for borrowers who have invoked their cease communication rights under the FDCPA.* The interim final rule revises § 1024.39(d)(3)(iii) to specify when a servicer must provide the modified written early intervention notice, as required by § 1024.39(b) and (d), at the end of the 180-day period after the servicer provided a prior written notice. Section 1024.39(b) requires that a servicer must provide a written early intervention notice to certain borrowers no more than 180 days after the servicer previously provided the notice. Section 1024.39(d) generally provides that servicers that are subject to the FDCPA with respect to borrowers who have invoked their cease communication rights pursuant to section 805(c) of the FDCPA must provide a modified written early intervention notice to those borrowers under certain circumstances. As originally adopted § 1024.39(d)(3)(iii) would have provided that a servicer may not provide the modified notice more than once during any

180-day period. Currently, the 180-day prohibition in § 1024.39(d)(3)(iii), read in conjunction with § 1024.39(b), provides only one day for a servicer to provide a subsequent written notice.

Under the interim final rule, revised § 1024.39(d)(3)(iii) gives servicers a 10-day window to provide the required notices at the end of the 180-day period.<sup>14</sup> This provision will benefit covered persons by modifying the timing requirements for the early intervention notice and providing more than a one-day window. This will benefit servicers by providing additional flexibility in the timing for providing these notices.

The interim final rule may have the effect of delaying the date on which some borrowers receive written early intervention information about loss mitigation options. However, this delay in no case exceeds 10 days, and will affect only a limited subset of delinquent borrowers: those who have invoked their FDCPA cease communication rights and are 45 days or more delinquent at the end of the 180-day period following provision of a prior written early intervention notice. Given that servicers may not be subject to the FDCPA with respect to many of the loans they service and that many borrowers will not choose to invoke the FDCPA's cease communication rights, the Bureau expects that the number of affected borrowers is small.<sup>15</sup> Given that the delay under the interim final rule is limited and would likely apply to only a small subset of borrowers, the Bureau does not anticipate that the overall effect on consumers will be significant.

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<sup>14</sup> In particular, revised § 1024.39(d)(3)(iii) would retain the 180-day prohibition but would also specify: (1) if a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 190 days after the provision of the prior written notice, and (2) if a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent or 190 days after the provision of the prior written notice, whichever is later.

<sup>15</sup> Borrowers generally have FDCPA protections only with respect to debt collectors. A servicer is not considered a debt collector for purposes of the FDCPA based on acquiring servicing rights to a mortgage loan before the mortgage loan is in default. Therefore, if a servicer obtains servicing rights to a mortgage loan and the borrower subsequently goes into default on that mortgage loan, the servicer generally is not covered by the FDCPA with respect to that mortgage loan based on its servicing of that loan.



*Potential specific impacts of the interim final rule.* The Bureau believes that a large fraction of depository institutions and credit unions with \$10 billion or less in total assets that are engaged in servicing mortgage loans qualify as “small servicers” for purposes of the mortgage servicing rules because they service 5,000 or fewer loans, all of which they or an affiliate own or originated. Small servicers are not subject to Regulation X § 1024.39, and so are not affected by the amendments in this interim final rule.

With respect to servicers that are not small servicers as defined in § 1026.41(e)(4), the Bureau believes that the consideration of benefits and costs of covered persons presented above provides a largely accurate analysis of the impacts of the final rule on depository institutions and credit unions with \$10 billion or less in total assets that are engaged in servicing mortgage loans.

The Bureau has no reason to believe that the additional timing flexibility offered to covered persons by this interim final rule would differentially impact consumers in rural areas. The Bureau requests comment regarding the impact of the amended provisions on consumers in rural areas and how those impacts may differ from those experienced by consumers generally.

### **VIII. Regulatory Flexibility Act Analysis**

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>16</sup>

### **IX. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA),<sup>17</sup> Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection

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<sup>16</sup> 5 U.S.C. 603(a), 604(a).

<sup>17</sup> 44 U.S.C. 3501 *et seq.*

requirements prior to implementation. The collections of information related to the 2016 Mortgage Servicing Final Rule have been reviewed and approved by OMB previously in accordance with the PRA and assigned OMB Control Numbers 3170–0016 (Regulation X) and 3170–0015 (Regulation Z). Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that the interim final rule will provide firms with additional flexibility and clarity with respect to what must be disclosed under the 2016 Mortgage Servicing Final Rule; therefore, it will have only minimal impact on the industry-wide aggregate PRA burden relative to the baseline. The Bureau welcomes comments on this determination or any other aspects of this interim final rule for purposes of the PRA. Comments should be submitted to the Bureau as instructed in the **ADDRESSES** part of this notice and to the attention of the Paperwork Reduction Act Officer. All comments will become a matter of public record.

### **List of Subjects**

#### *12 CFR Part 1024*

Condominiums, Consumer protection, Housing, Insurance, Mortgages, Mortgagees, Mortgage servicing, Reporting and recordkeeping requirements.

### **Authority and Issuance**

For the reasons set forth in the preamble, the Consumer Financial Protection Bureau amends 12 CFR part 1024 as follows:

### **PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)**

1. The authority citation for part 1024 continues to read as follows:

**AUTHORITY:** 12 U.S.C. 2603–2605, 2607, 2609, 2617, 5512, 5532, 5581.

**Subpart C—Mortgage Servicing**

2. Amend § 1024.39 by revising paragraph (d)(3)(iii) to read as follows:

**§ 1024.39 Early intervention requirements for certain borrowers.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(iii) A servicer is prohibited from providing the written notice more than once during any 180-day period. If a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 190 days after the provision of the prior written notice. If a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent or 190 days after the provision of the prior written notice, whichever is later.

[THIS SIGNATURE PAGE PERTAINS TO THE INTERIM FINAL RULE TITLED  
“AMENDMENTS TO THE 2016 AMENDMENTS TO THE 2013 MORTGAGE  
SERVICING RULES UNDER THE REAL ESTATE SETTLEMENT PROCEDURES  
ACT (REGULATION X) AND THE TRUTH IN LENDING ACT (REGULATION Z)”]

Dated: October 2, 2017.



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**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*