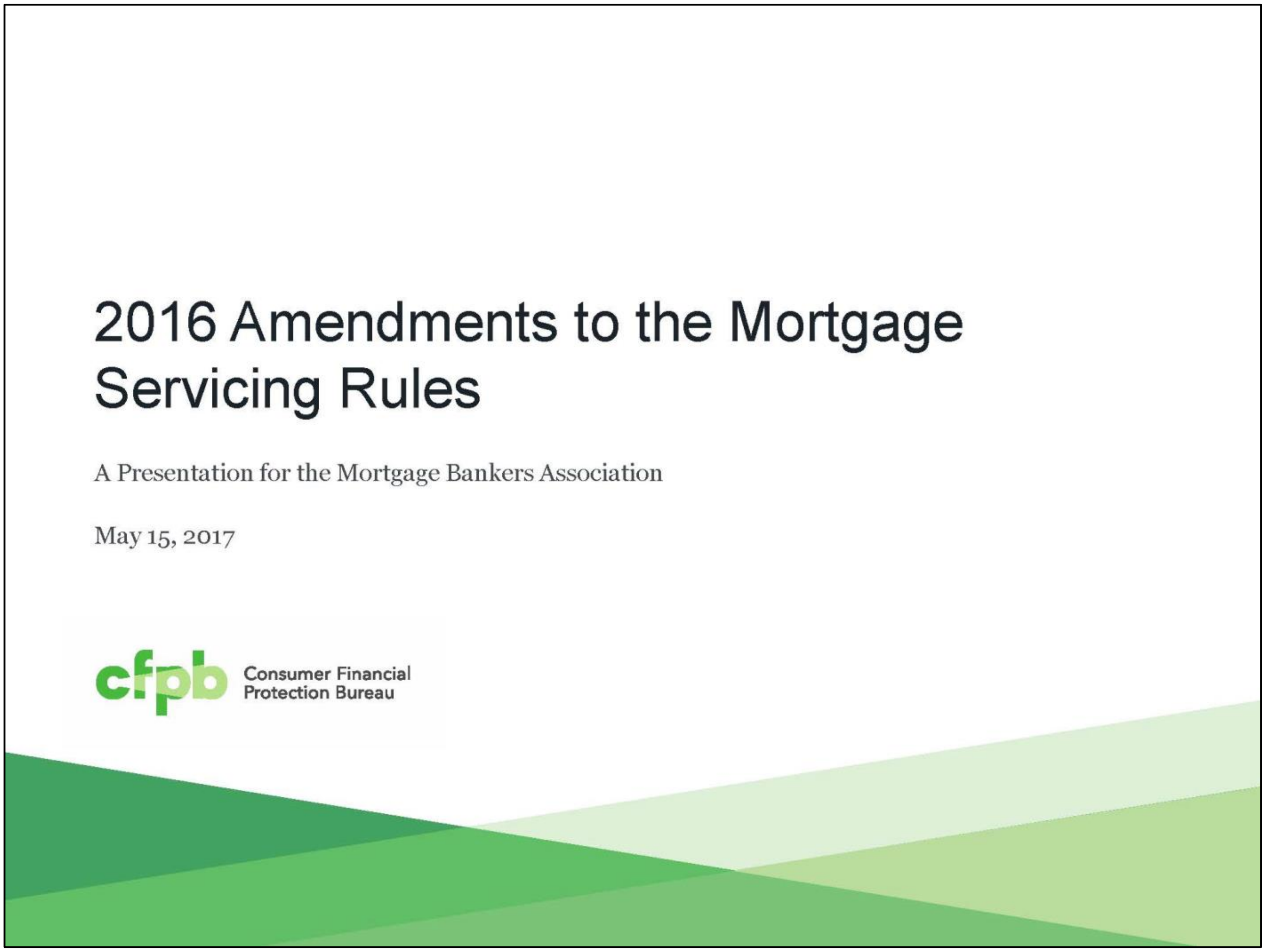
CFPB Staff Webinar

Monday, May 15, 2017

Transcript provided by Buckley Sandler LLP[1]

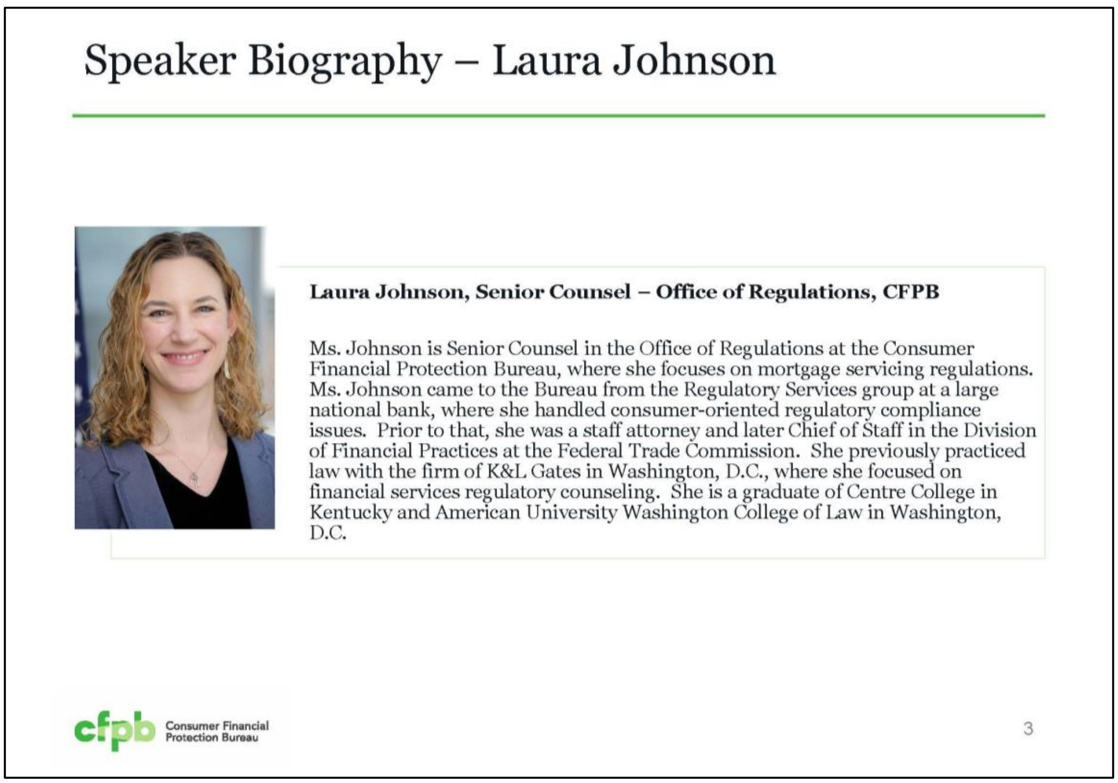


[1] The audio recording is available at: https://mba.adobeconnect.com/pe9aslx4bbi6/. This transcript was prepared from the audio recording and slides provided by the Mortgage Bankers Association ("MBA") and may have minor inaccuracies due to sound quality. This transcript has not been reviewed by the Consumer Financial Protection Bureau ("CFPB") or the MBA for accuracy or completeness. This transcript inserts an image of the slide that corresponds to the discussion, but all insertions are approximate. This transcript also revises citations for clarity and for consistency with the Code of Federal Regulations where appropriate (*e.g.*, "§ 1024.41" instead of "1024.41").

Mr. Justin Wiseman: Hi, thank you very much Lisa. I'm Justin Wiseman, Director of Loan Administration Policy here at the Mortgage Bankers Association, and I would like to say that we're very glad to be able to host the CFPB team today to walk folks through the 2016 amendments to the mortgage servicing rule. Before I do that though, let me address one question that we always get. The presentation is available for download in the far left side under the "download presentation" piece. So, if you do not already have it or you'd like to download a hard copy you can find it there.

I would like to express the appreciation and thanks of MBA to the CFPB team for coming here. I would like to thank the audience for joining us today, as well as sending in the questions that you sent in ahead of time. We got a great response and we hope to work together with the CFPB in the future to address any questions that may not be answered during today's webinar. With that, given the intense interest and limited time, I'm happy to turn it over to the CFPB team.

Ms. Laura Johnson: Great, thanks Justin. This is Laura Johnson. I want to thank Justin and Lisa and the MBA for inviting us to participate in the webinar today, and for gathering questions from MBA members in advance. We appreciate those questions and are really interested in hearing further questions in the future. My colleagues Laurie Maggiano, and Joel Singerman, and I will be providing an overview of several provisions of the new rule.



Speaker Biography – Joel Singerman

Joel Singerman, Counsel – Office of Regulations, CFPB

Mr. Singerman serves as counsel in the CFPB's Office of Regulations. His focus is mortgage servicing, and he has also worked on small dollar lending and debt collection issues. Mr. Singerman worked on the 2016 amendments to the mortgage servicing rules under Regulation X and Regulation Z. Prior to joining the Office of Regulations, Mr. Singerman worked in the Bureau's offices of Consumer Response and Enforcement. He previously worked with Hausfeld LLP on consumer protection litigation and then with the World Bank before joining the Bureau. He earned his law degree from the George Washington University Law School and has a master's degree from Johns Hopkins.

Consumer Financial Protection Bureau

5

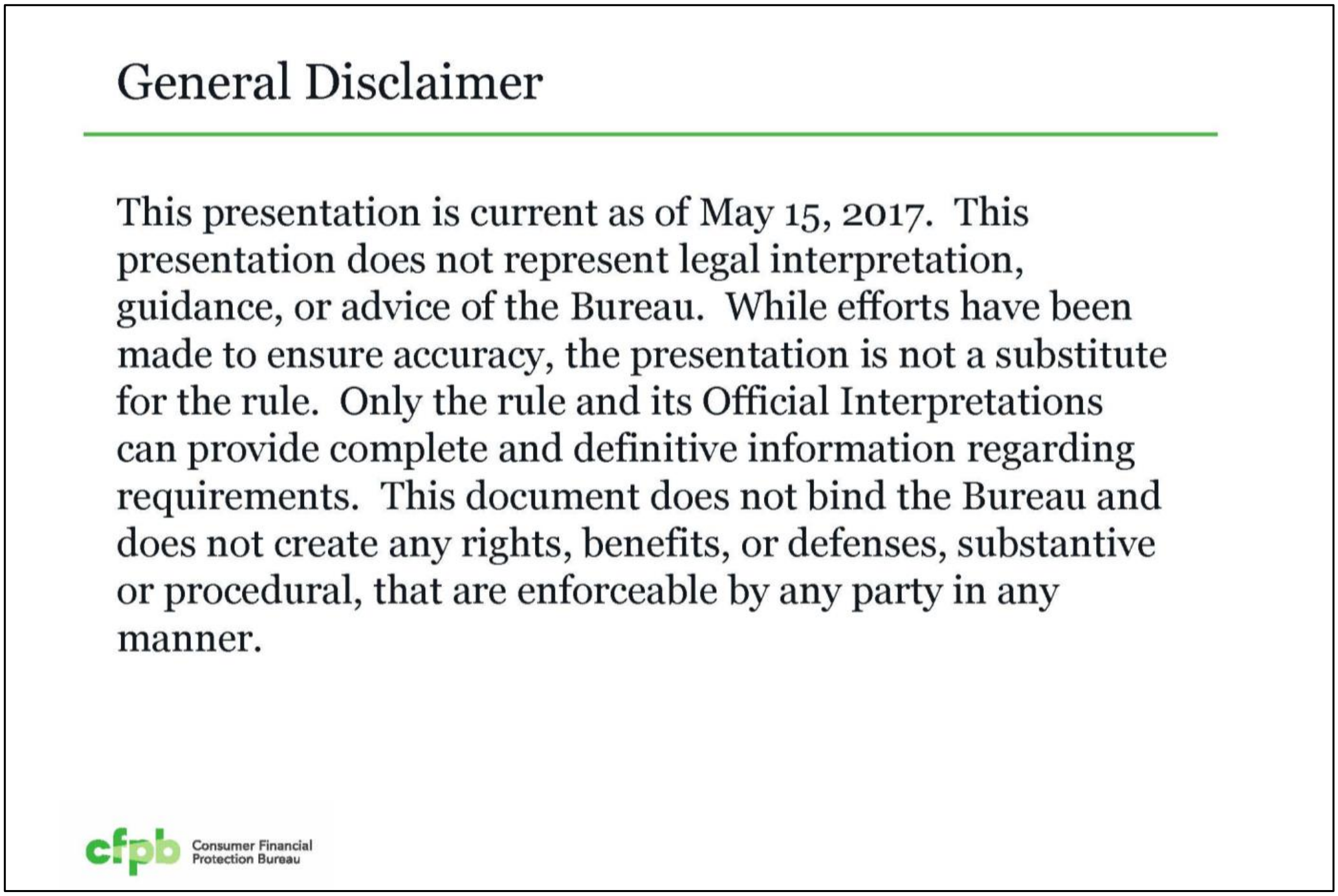
Speaker Biography – Laurie A. Maggiano

Laurie A. Maggiano, Servicing and Secondary Markets Program Manager – Office of Research, Markets & Regulations, CFPB

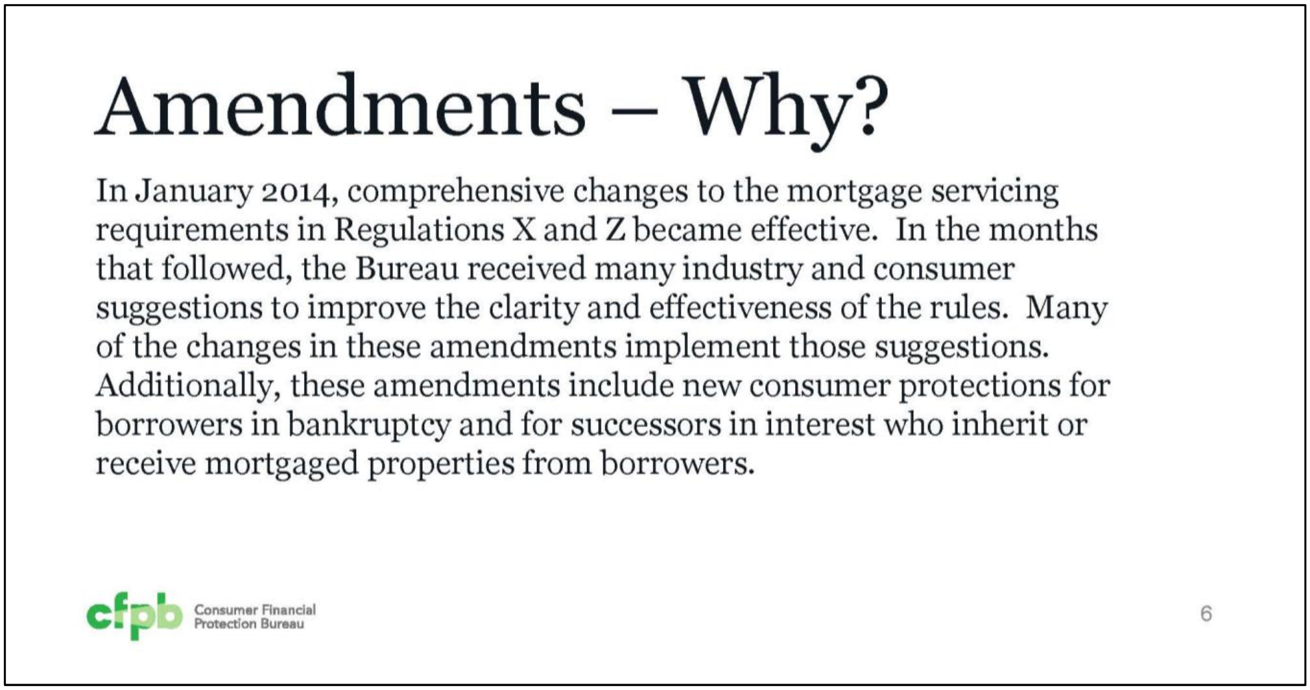
Ms. Maggiano is Program Manager for Servicing and Secondary Markets at the Consumer Financial Protection Bureau, in which capacity she helps to shape and implement Federal housing regulations that make mortgage markets safe and accessible for consumers. Prior Federal service includes four years as Director of Homeownership Policy at the U.S. Department of the Treasury where she was one of the architects of the Making Home Affordable Program, and nine years as manager of mortgage servicing at the U.S. Department of Housing and Urban Development. Before beginning her government career, Ms. Maggiano spent 20 years in the private sector as Director of REO at Freddie Mac and in senior management positions at two West Coast mortgage banks.

Consumer Financial Protection Bureau

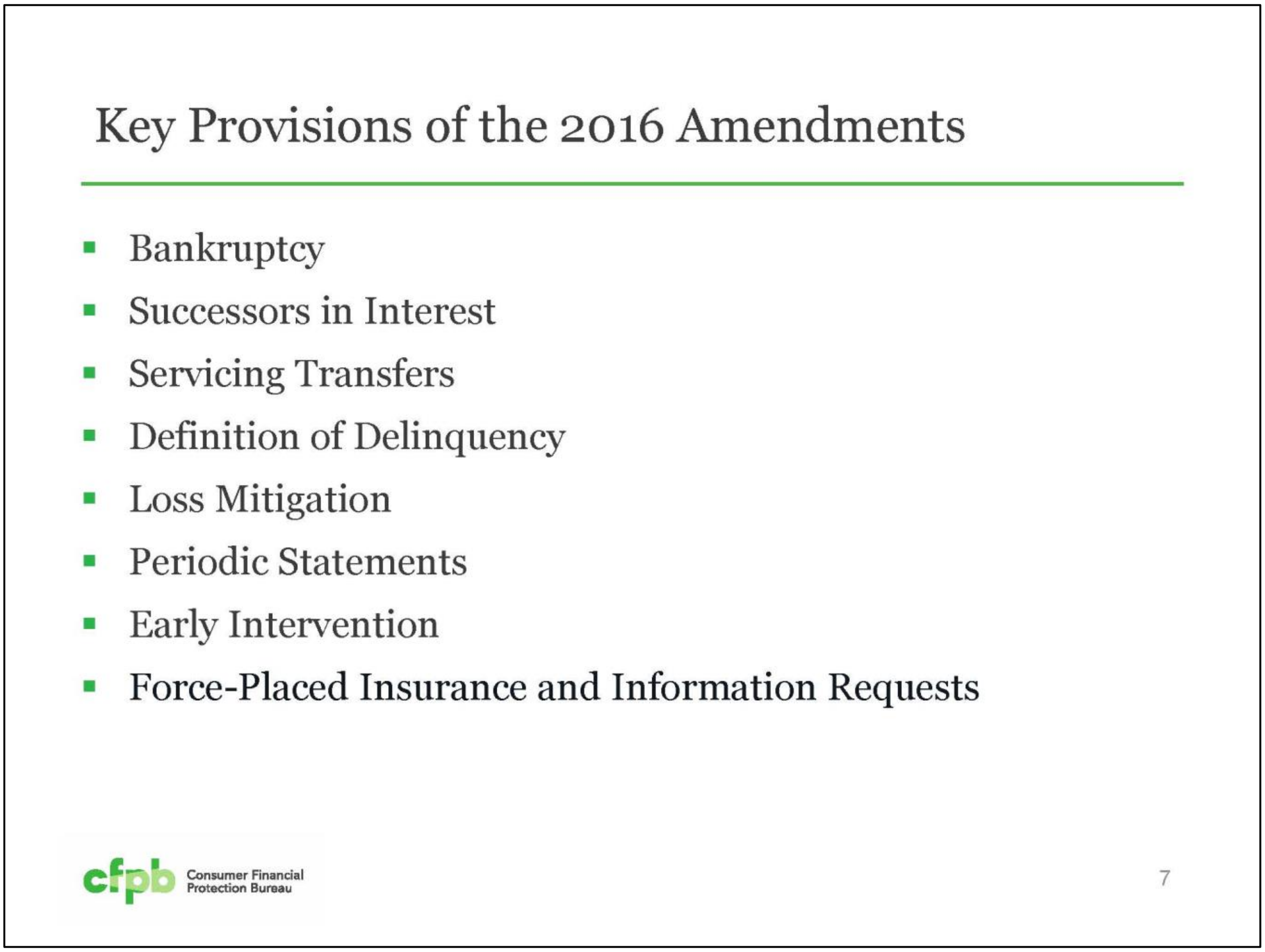
4



Johnson: Could we have one slide back? We did have a disclaimer slide somewhere in here. There we go. So, as noted in the disclaimer slide our presentation obviously is not an official legal interpretation or advice of the Bureau, and it’s not a substitute for the rule itself. The rule is fairly lengthy, and we obviously can’t cover everything in our hour and a half today, but we’ll try to hit the major points. With that, let’s move ahead to the slide with the amendments overview. Great.

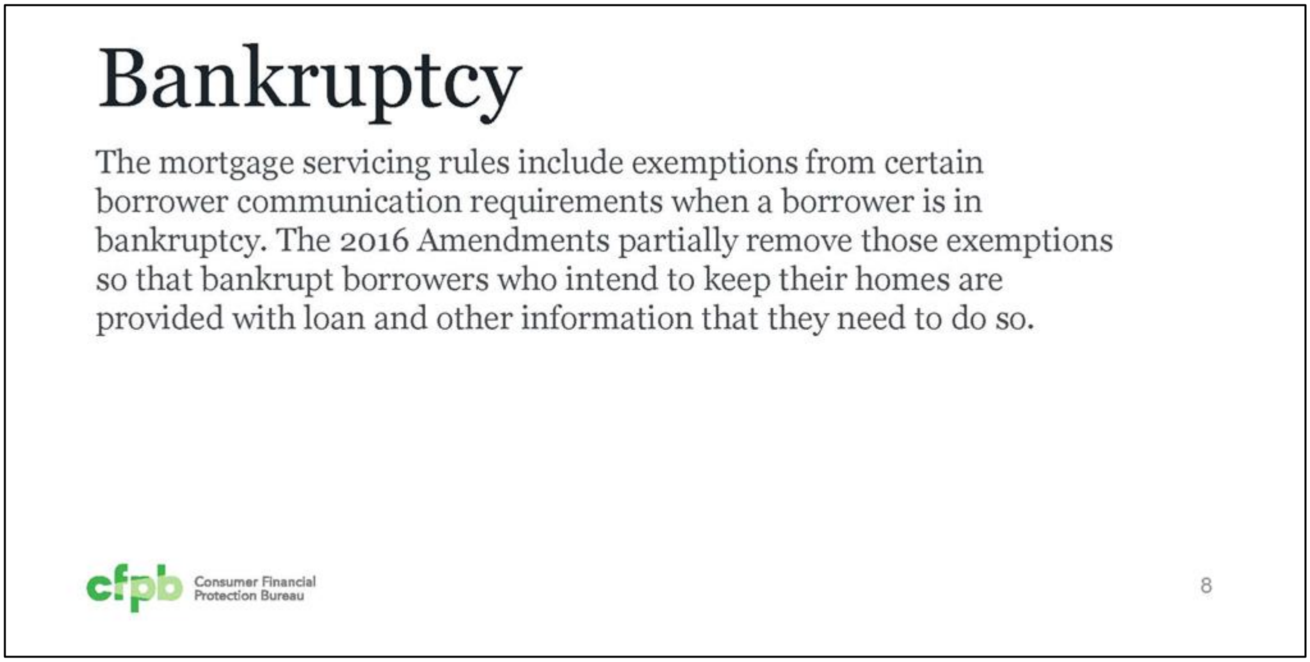


Johnson: So, the question that we've heard a couple of times is why would we issue a new servicing rule when the first one is really only a few years old? Well, within weeks after the effective date of the servicing rules in 2014, servicers began calling us and saying that certain provisions of the rule were either unclear or operationally problematic, and we heard from some housing advocates and consumer groups that there were still some big-ticket consumer protections that really needed to be addressed. For example, extending the lost mitigation protections in the rules to borrowers more than once in the life of the loan. We also looked at the results of some of our supervisory exams and consumer complaints, and identified issues that continue to challenge servicers and pose risks to consumers.



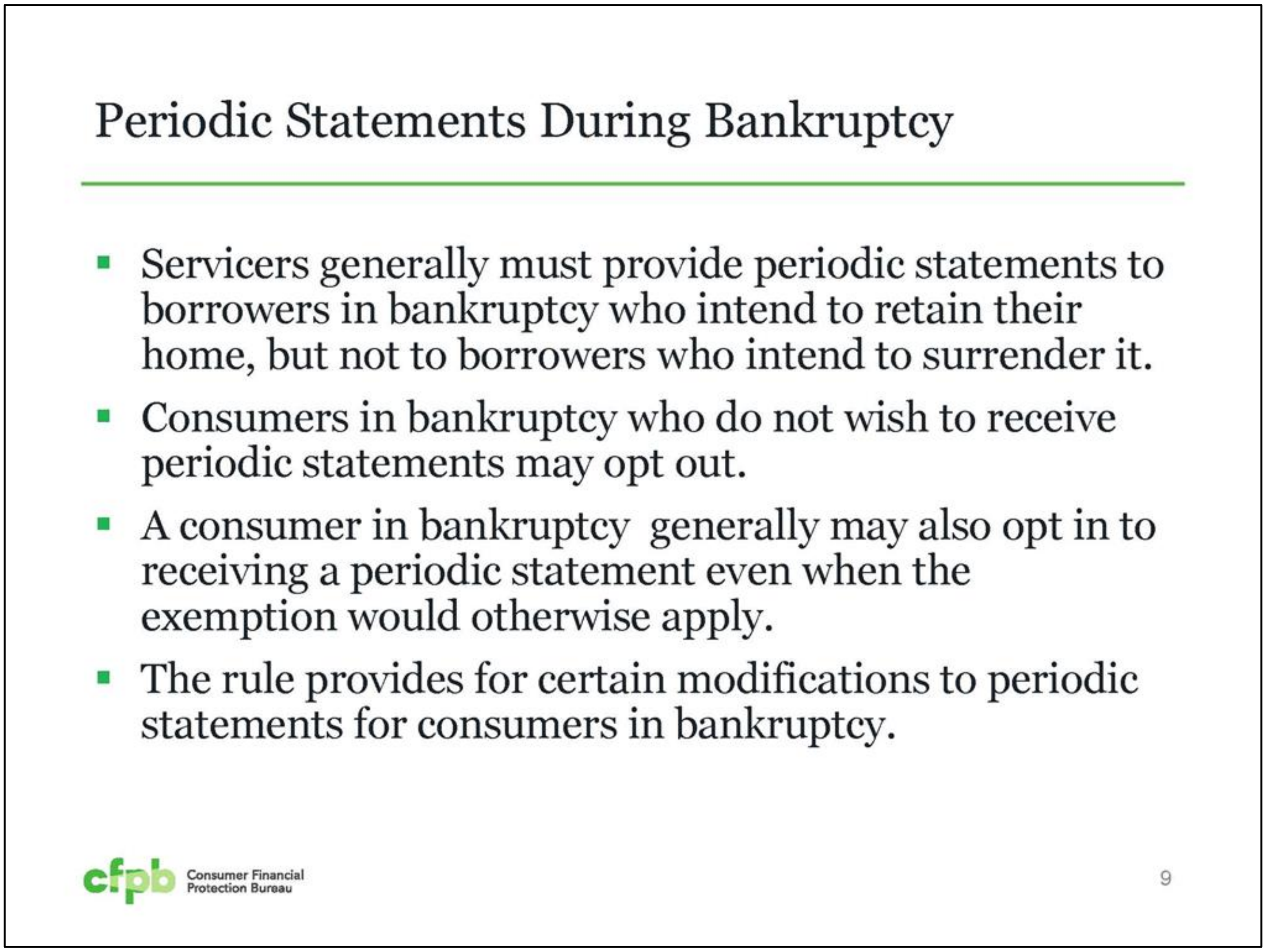
Johnson: So, again, this presentation will provide a high-level overview of the key provisions of the 2016 amendments. It's not intended to be an exhaustive review of the rule, but Joel, Laurie, and I will divide up the topics here, so that you're not just hearing from one of us this whole time, and we're going to intersperse some of the questions that we received from MBA and MBA members as we're talking about each of these topics. As Justin noted, we're prioritizing the questions for the provisions that have the October effective date, but we do have a couple of bankruptcy periodic statements and successor in interest questions that we're going to address as well.

And so, first we'll start with the next slide where Joel will give us an overview of the bankruptcy issues that we covered.



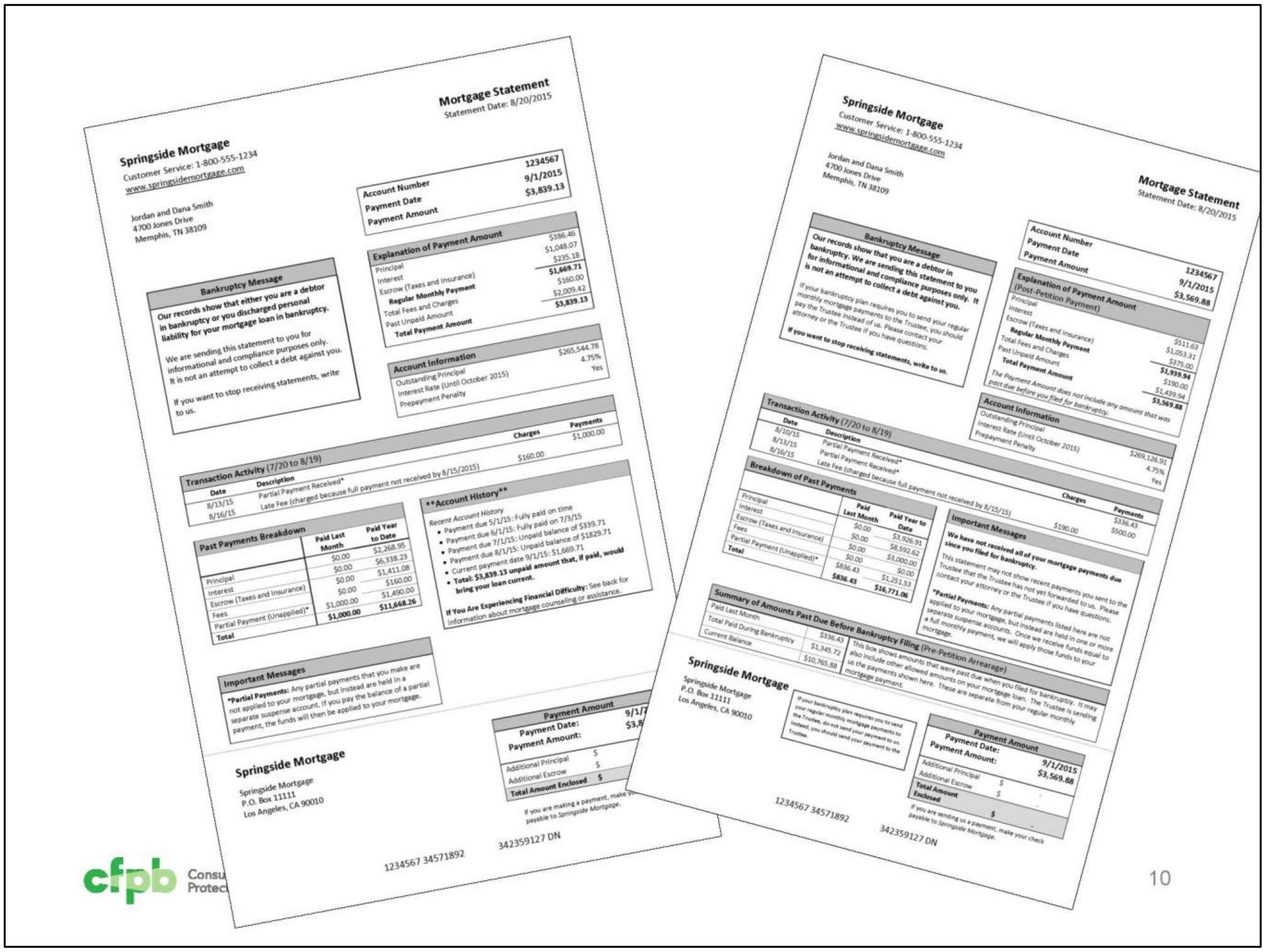
Mr. Joel Singerman: Great. Thank you so much Laura. So, some mortgage servicers provide periodic statements and other types of communications to consumers in bankruptcy, but it hasn't been a consistent or universal practice. Some servicers are concerned that those communications could violate the automatic stay afforded to individuals in bankruptcy. But many bankruptcy courts have held that borrowers in bankruptcy who have a desire to retain home ownership are likely to find information about their mortgages helpful, specifically loss mitigation information and information contained in a periodic statement. So, we finalized rules providing some of this information in both contexts.

Here I'll first talk about periodic statements for consumers in bankruptcy, and then move to the early intervention provisions.



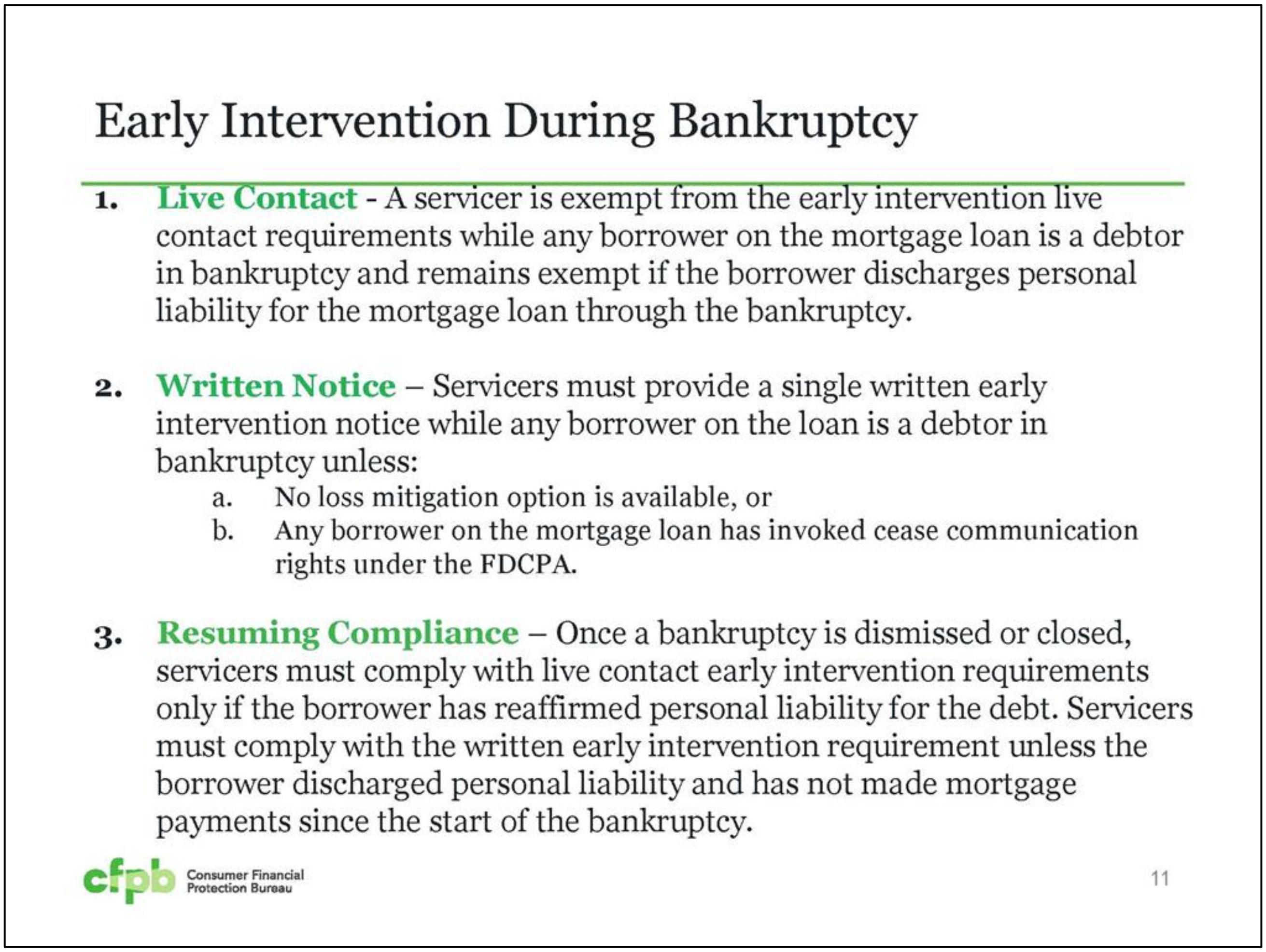
Singerman: With respect to consumers in bankruptcy and the periodic statements, there are two parts to the 2016 amendments. The first speaks to when servicers must provide the periodic statement, and the second speaks to the content and format of those periodic statements. So, as to when servicers must provide the periodic statements to consumers in bankruptcy, generally they must provide periodic statements to consumers in bankruptcy when the consumer intends to retain the home but not to consumers who intend to surrender it. The rule provides greater specificity of course about these provisions.

Consumers in bankruptcy who don't wish to receive periodic statements can opt out, but a consumer in bankruptcy can also opt in, even when an exemption would otherwise apply. As to content and format of periodic statements for these consumers, the rule provides for various modifications to these requirements in this context. If we can move to slide seven, we'll get into more detail about that.



Singerman: So, the amendment includes sample forms, as you can see on the screen, that a servicer can use to comply with the periodic statement requirements when a consumer is in bankruptcy if an exemption doesn't apply. The format and content of these forms are based on the existing periodic statement sample forms for consumers that are not in bankruptcy, but adjusted to account for payment obligations during a bankruptcy and to offer servicers alternative language they can use to describe the disclosures for consumers in bankruptcy. We would note that the Bureau conducted consumer testing on these forms, on the sample forms, to improve understandability, and that proper use of these sample forms afford the servicer a safe harbor under the final rule.

In essence, there are two different forms in the final rule. The first is primarily for consumers in an active Chapter 7 bankruptcy, or who have discharged personal liability for the mortgage loan through bankruptcy, and the second is primarily for a consumer who is in an active Chapter 13 case. Again, I refer you to the rule itself for specific modifications. In essence, the Chapter 7 bankruptcy periodic statements include various omissions and disclaimers, and I would note that a servicer does not need to make many changes to the existing non-bankruptcy periodic statement to tailor it to comply with this new requirement for Chapter 7 consumers. As to Chapter 13 mortgage consumers, the sample form here includes additional omissions and disclaimers, that are additional on top of the omissions and disclaimers in the Chapter 7 form, as well as other content differences. For example, the Chapter 13 form, to take one example, discloses the amount of a consumer's pre-petition arrearage that is the amount of the pre-petition, I'm sorry, the pre-bankruptcy delinquency, as well as payments that have reduced the amount of that arrearage. This is intended to help the consumer understand how close he or she is to becoming current on the mortgage loan. The final rule clarifies that a consumer can include the arrearage information on a separate page or in a separate letter. Other changes, in the Chapter 13 form, modify the way that servicers can disclose the amount due, explanation of amount due, and transaction activity. If we can move to slide eight.



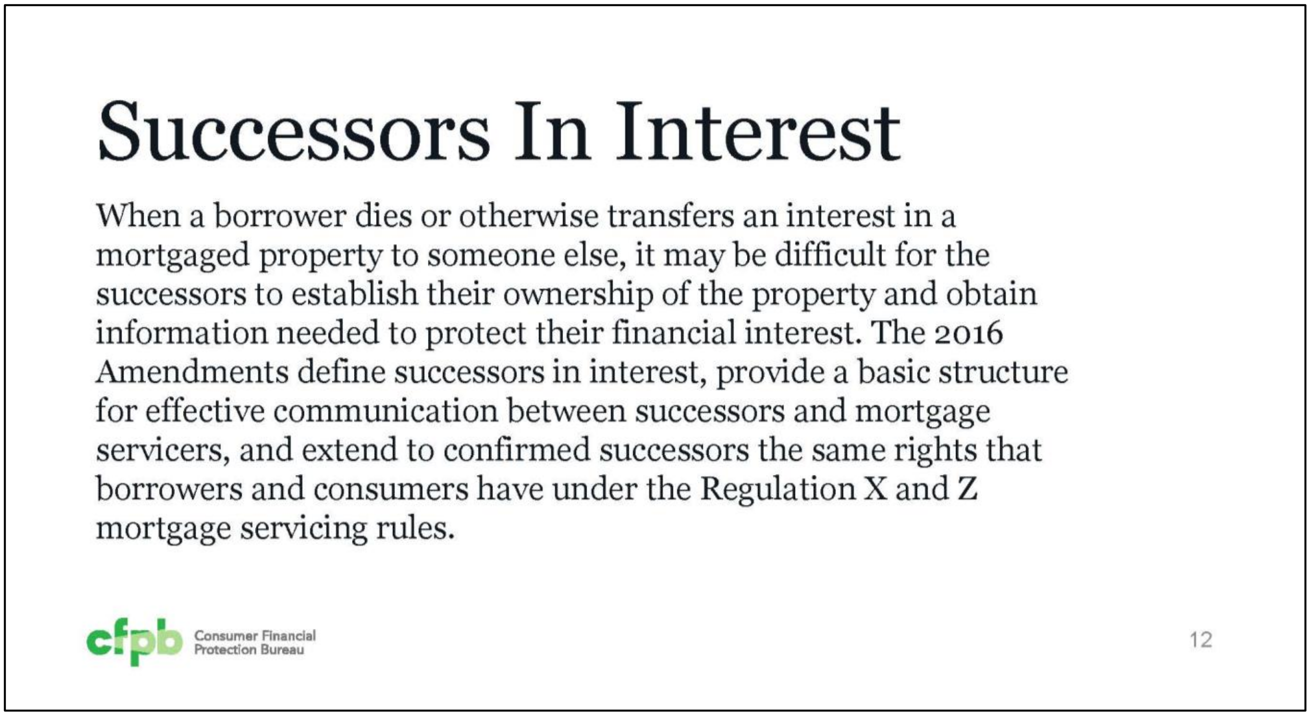
Singerman: So, as to early intervention during bankruptcy, let's take a step back first and understand the existing early intervention rules before we discuss the amendments. Under the existing early intervention rules servicers must attempt to establish live contact with delinquent borrowers within 36 calendar days after a mortgage loan becomes delinquent, and most provide a written early intervention notice to delinquent borrowers within 45 days after the start of the delinquency. With respect to borrowers in bankruptcy, though, servicers are currently exempt from both of these requirements.

The amendments in 2016 retain the exemption for live contact with bankrupt borrowers, or I'm sorry, borrowers in bankruptcy, and for written notices if no loss mitigation opportunity is available to the consumer, or if any consumer on a mortgage loan has exercised an FDCPA cease communication right. Otherwise, servicers will be required to provide a single written early intervention notice while any consumer on the loan is a debtor in bankruptcy. After the bankruptcy case ends, a servicer will generally have to resume providing the written early intervention notice according to the normal schedule, unless the consumer has discharged personal liability for the mortgage loan and has not made any payments since the start of the bankruptcy case. A servicer would have to resume live contact early intervention efforts after the bankruptcy case, only if the consumer has reaffirmed personal liability for the mortgage loan.

Johnson: So, before we move onto the next slide, we're going to pause here because we received a question relating to early interventions during bankruptcy. And the question is relating to the requirements to resume compliance within 45 days of the date that the borrower reaffirmed personal liability. The question was, because there's a period of time until the discharge when the borrower can rescind the reaffirmation agreement, is that the date of reaffirmation, or when the reaffirmation becomes effective, that should be the trigger?

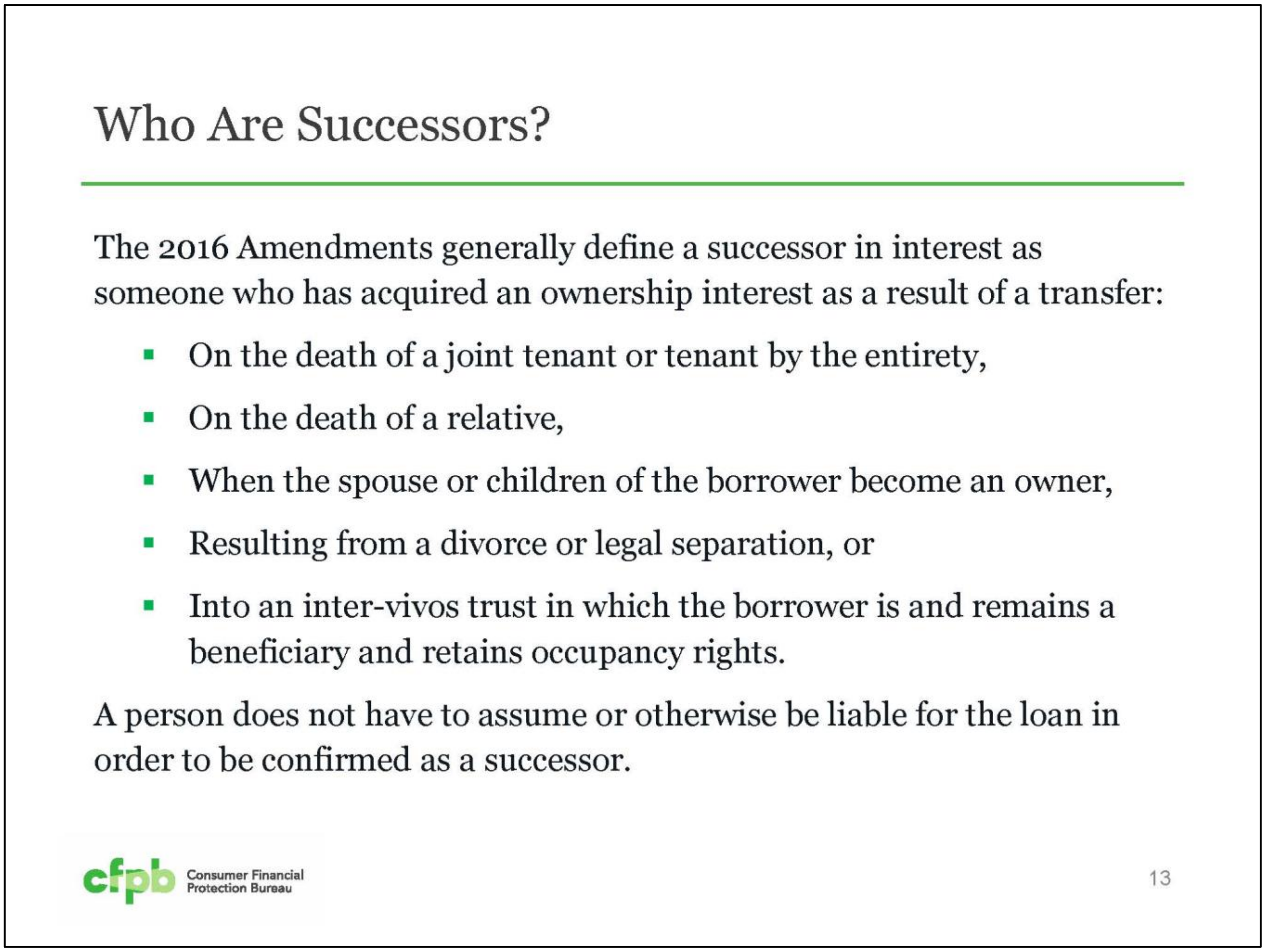
Singerman: It's a good question. So, the rule doesn't specify, but the conservative reading is to resume compliance based on the reaffirmation agreement filing, because it's earlier than the subsequent discharge. I would also note that there is a similar requirement for bankruptcy periodic statements, and the same informal guidance would apply there as well.

Johnson: Okay, thanks. So, I think we'll move to successors in interest, and Laurie will take over.



Ms. Laurie Maggiano: Thank you very much. So, when a borrower dies, or otherwise transfers an interest in the mortgage property to someone else, it may be difficult for the successor to establish their ownership of the property, and obtain the information that they need to protect their financial interest. The 2016 amendments address this concern, basically in three ways. First, the amendments define successors in interest, they provide a basic structure for effective communication between successors and mortgage servicers, and then they extend to confirmed successors the same rights that borrowers and consumers have under Regulations X and Z of the mortgage servicing rules.

I think you will not be surprised to know the Bureau received more comments on the successor in interest proposal than on any other aspect of the proposed rule. We took your comments very seriously, like we do all comments, and we made a number of adjustments from the proposal. So, let's move to the next slide.



Maggiano: First, who are successors? The new definitions of successors in interest in Regs X and Z are modeled on the categories of transfers that the Garn-St. Germain Act protects from due-on-sale enforcement. Since you're already familiar with these categories it should make compliance easier for you. Not that the definitions are, excuse me, the 2016 amendments generally define a successor as someone who has acquired an ownership interest as the result of a transfer on the death of a joint tenant or tenant by the entirety, on the death of a relative, when a spouse or children of the borrower become an owner, or resulting from a divorce or legal separation, or a transfer resulting, a transfer into an inter-vivos trust in which the borrower is and remains a beneficiary, and retains occupancy rights.

Now, note that the definitions are not exclusive to transfers at death. There are several situations where there may be living borrowers and confirmed successors in interest, and also, a person does not have to assume, or otherwise be liable for the loan in order to be confirmed as a successor.

Confirming Successors

1. **Information Requests** – The 2016 Amendments create a new information request that allows potential successors to obtain a description of the documents the servicer reasonably requires for confirmation. Servicers must respond no later than the deadlines for other information requests.
2. **Communication and Evaluation** – Servicers must establish policies and procedures reasonably designed to ensure that they can:
   a. Promptly facilitate communication with potential successors upon notice of a borrower death or property transfer.
   b. Promptly provide a potential successor with a description of the documents the servicer **reasonably** requires for confirmation, and
   c. Promptly notify a potential successor of the servicer's confirmation decision.

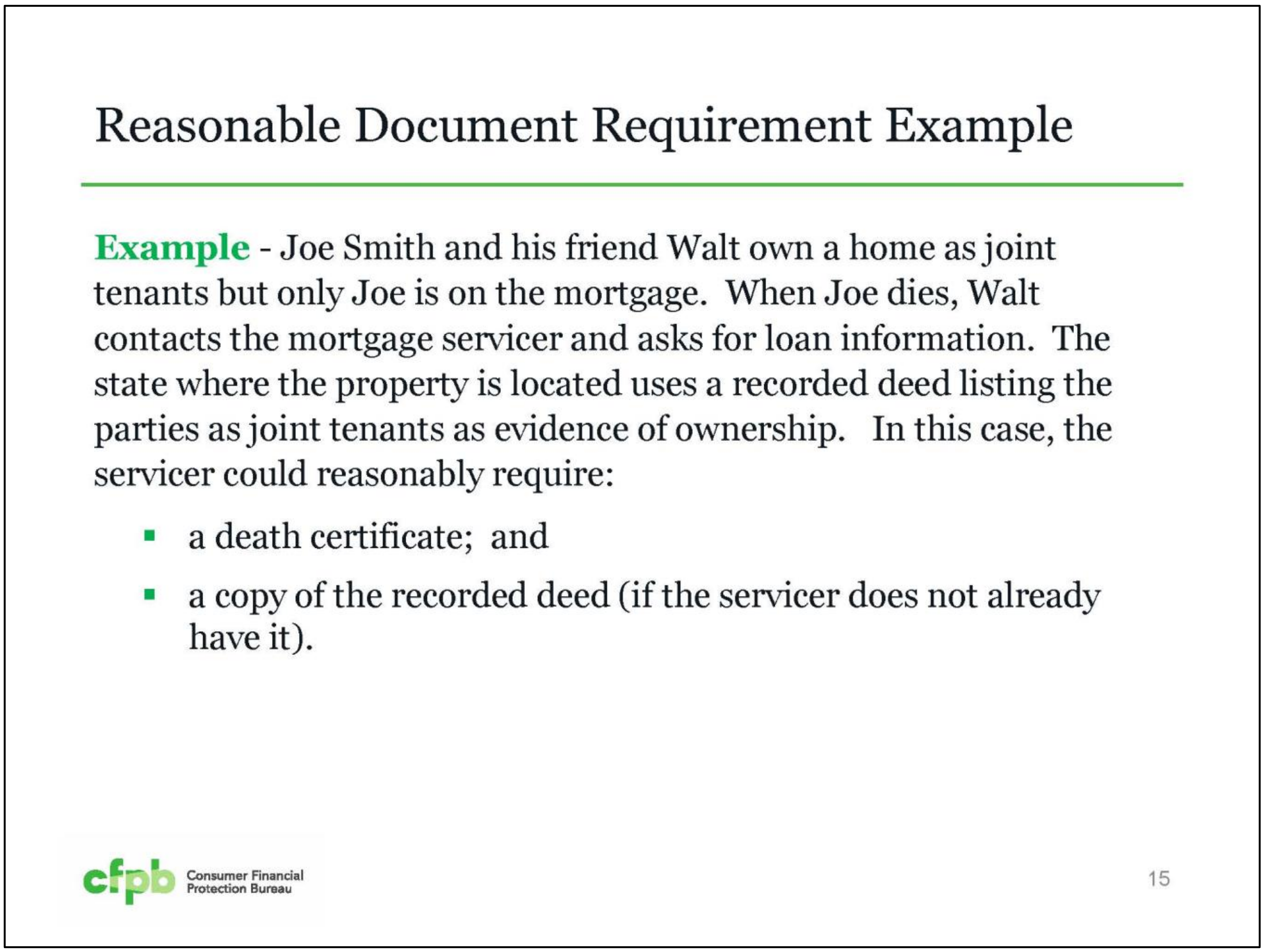
cfpb Consumer Financial Protection Bureau 14

Maggiano: So, how does one confirm successors? The 2014 rule already requires servicers to have certain policies and procedures in place to facilitate interactions with successors in interest. But the 2016 amendments provide more specificity about those policies and procedures, and what is required to create, and it creates a new information request for potential successors in interest. Servicers must treat written requests that indicate a person may be a successor as a request for information, and that includes acknowledging the request within five days and generally responding within 30 days. In that response, a servicer must generally provide a description of the documents the servicer reasonably requires to confirm the successor. As with other requests, servicers may also contact the requestor informally to clarify the request and obtain additional relevant information that may be needed to respond to the request. Through contacts, servicers may be able to obtain any missing information that they need to respond within the time limits.

So, the 2016 amendments also require servicers to have policies and procedures reasonably designed to ensure that they can promptly facilitate communication with potential successors upon notification of a borrower's death or property transfer, that they can promptly provide potential successors with a description of the documents the servicer reasonably requires for confirmation, and that they can promptly notify a potential successor of the servicer's confirmation decision.

One thing is clear, the more information the servicer knows about the ownership interest the more likely they are to request the correct documents. Policies and procedures that stress effective communication with potential successors about how title was acquired, the relationship of the successor to the borrower, the identity of other successors, and the occupancy status of the property will help ensure that document requests are prompt and reasonable. What the 2016 amendments do not do is to require servicers to proactively search for potential successors unless they have actual notice of the successor's existence.

So, let's look at an example of reasonable documentation.

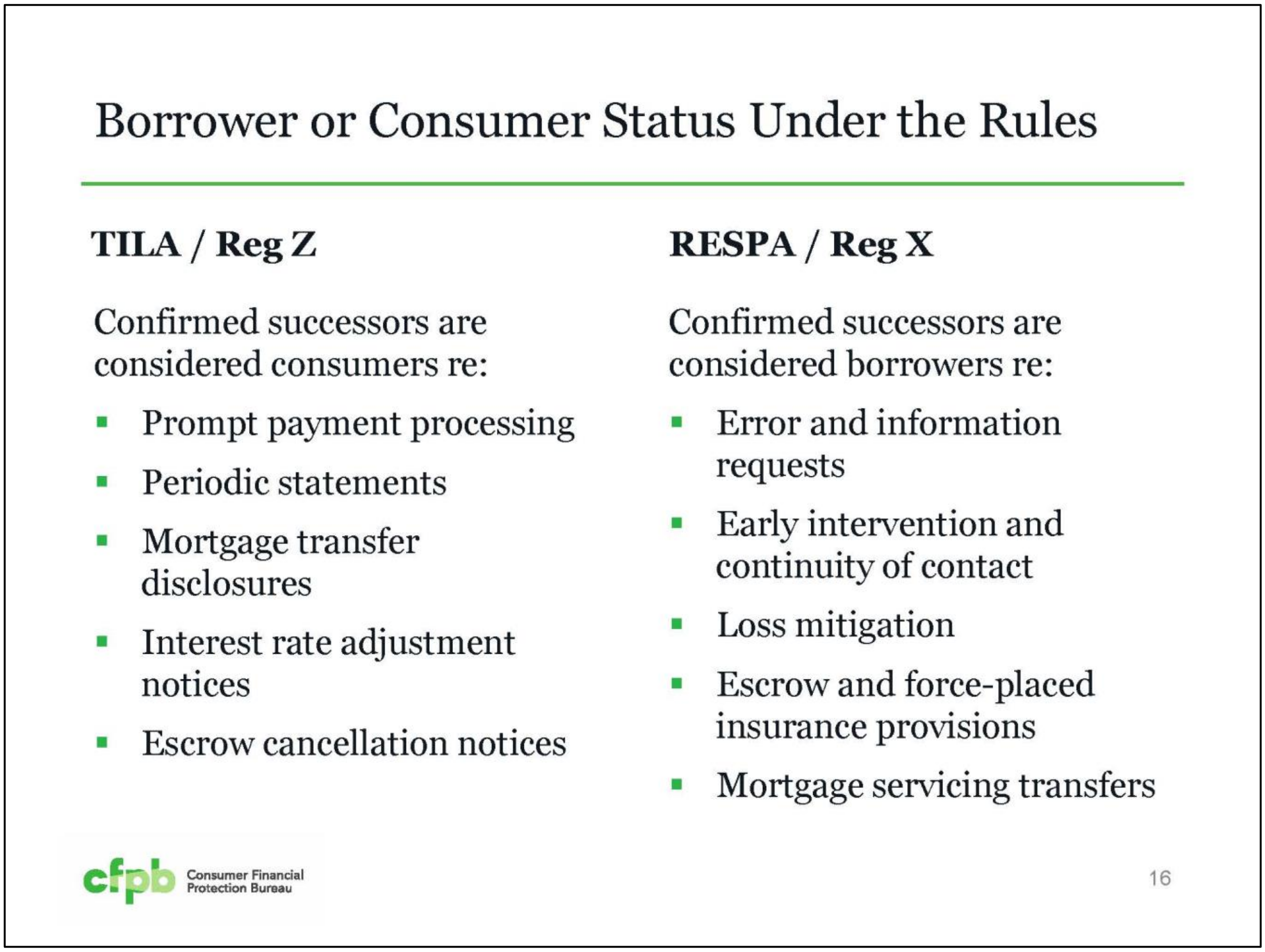


.

Maggiano: We've gotten a lot of questions about what are reasonable documents for a servicer to require when confirming a successor in interest. In general, what is reasonable depends on the laws of the relevant jurisdiction, the specific situation of the potential successor, and the documents already in the servicer's possession. The commentary to the new policies and procedures requirements provide illustrative examples of documents that generally would be reasonable for a servicer to require in four common situations involving potential successors in interest. Each of these examples includes assumptions about relevant law, and of course, if the law is different in a particular jurisdiction, the types of documents that a servicer could reasonably require would also be different.

So, one of the examples is a specific situation involving joint tenancy, and that's described here. So, Joe and his friend Walt own a home as joint tenants but only Joe is on the mortgage. When Joe dies, Walt contacts the mortgage servicer and asks for information about the loan. The state where the property is located uses a recorded deed listing the parties as joint tenants, as evidence of ownership. In this case, the servicer could reasonably require a death certificate, and a copy of the recorded deed, if the servicer doesn't already have it in their possession.

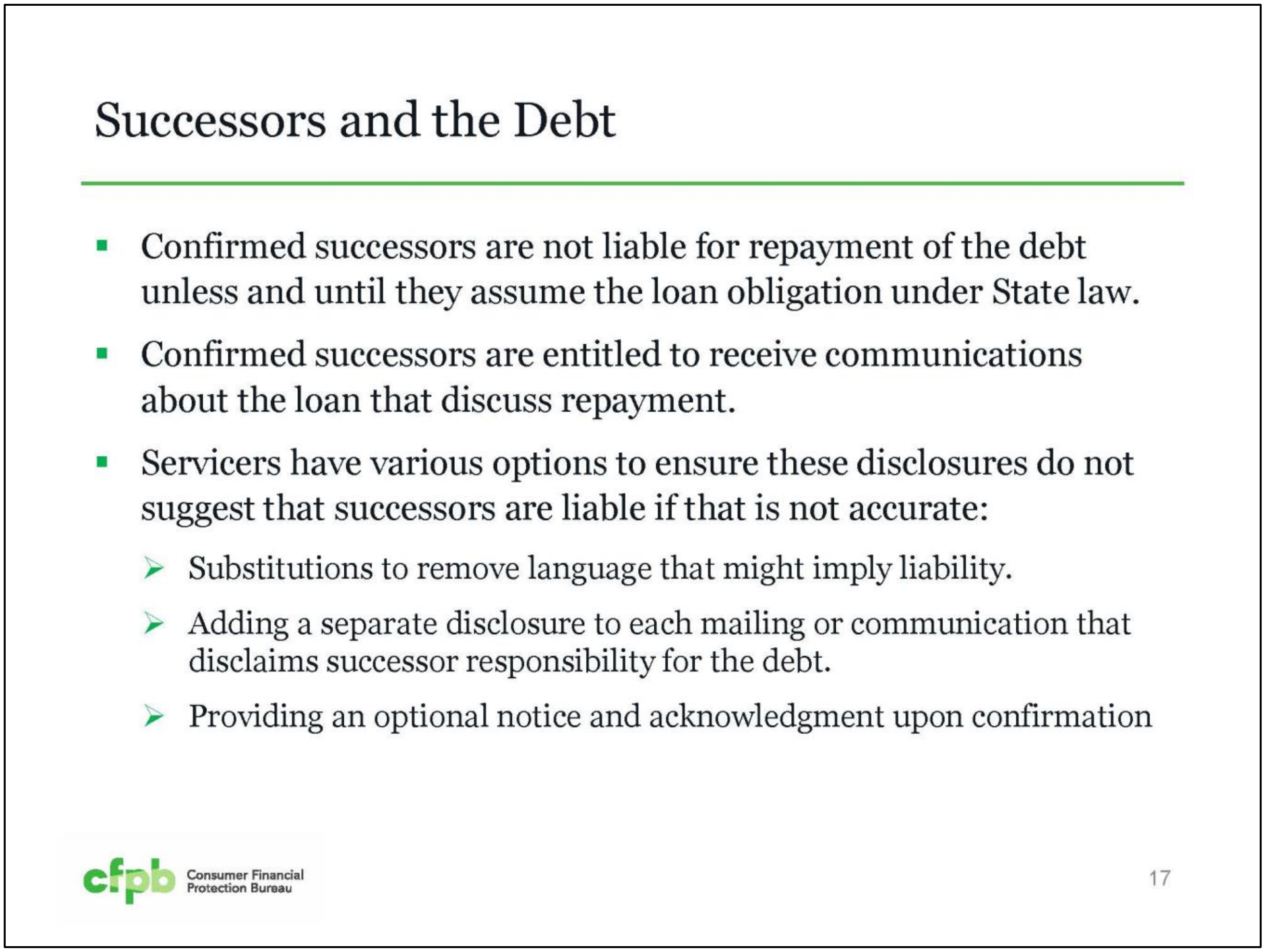
Now, the Bureau is aware that the MBA and other organizations are preparing a compendium of documents by state and ownership acquisition type, and while the Bureau doesn't endorse any of these private sector offerings, we do recognize that they could provide a useful resource for servicers who transact business in multiple states, to help them identify specific documents that are reasonable to be required. So, we'll move on.



Maggiano: So, the other major change in the amendments is that once confirmed, successors are considered borrowers under Reg. X servicing rules, and consumers under Reg. Z's servicing rules. Now, note that TILA and RESPA differ in their terminology, with Reg. X generally referring to borrowers, while Reg. Z generally refers to consumers.

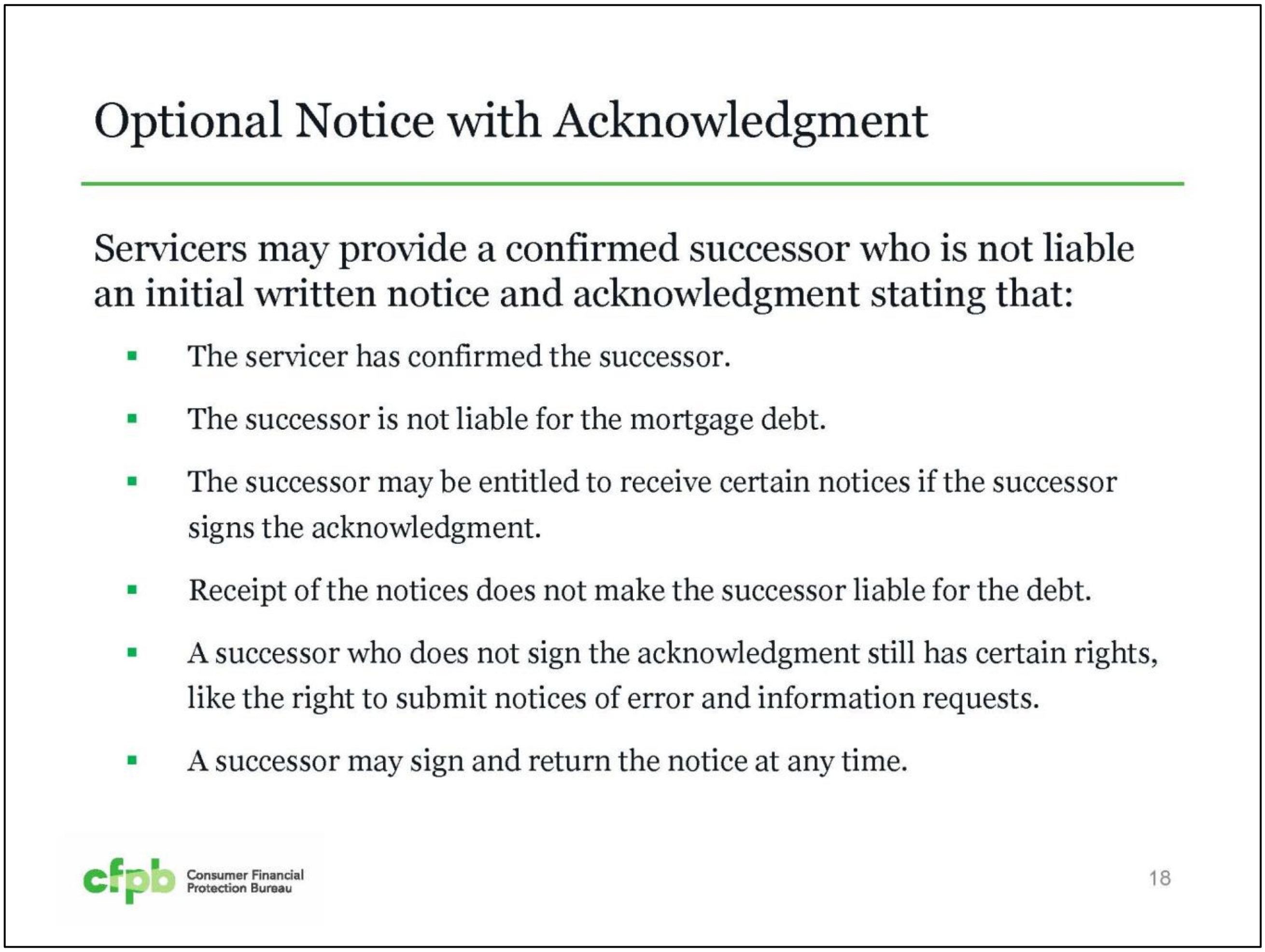
This slide highlights the primary rights that confirmed successors enjoy. So, for example, under TILA, confirmed successors are considered consumers and are entitled to prompt payment processing, periodic statements, mortgage transfer disclosures, interest rate adjustment notices, and escrow cancelation notices. Under RESPA, Reg. X, confirmed successors are considered borrowers and are entitled to information and error requests, early intervention and continuity of contact, loss mitigation, escrow and force-placed insurance provisions, and mortgage servicing transfers.

It's important to note that confirmed successors only have this status to the extent that the rules apply to other borrowers. For example, payment processing applies to all consumers, including confirmed successors. However, loss mitigation provisions only apply to loans secured by property that is a borrower's principal residence. So, if the property is not the confirmed successor's principal residence, those protections wouldn't apply. And finally, with respect to small servicers, the same exemptions that apply to other borrowers or consumers also apply to confirmed successors.



Maggiano: Now, while confirmed successors have borrower status under the rules, they may not be liable for the debt. Now, to be clear, confirmed successors that don't pay the mortgage may be subject to foreclosure just as borrowers are, however, unless the confirmed successor has actually assumed the loan, they are not legally obligated to repay the debt, and servicers need to take care that they don't suggest otherwise. Now, as noted on the slide that we just looked at, there are a number of notices that must be sent, including things like a periodic statement or an ARM adjustment notice. And many of these could infer the used terms like “you owe.” “your payment,” “you are delinquent.” It certainly could suggest that a recipient of that notice is liable for repayment of the debt.

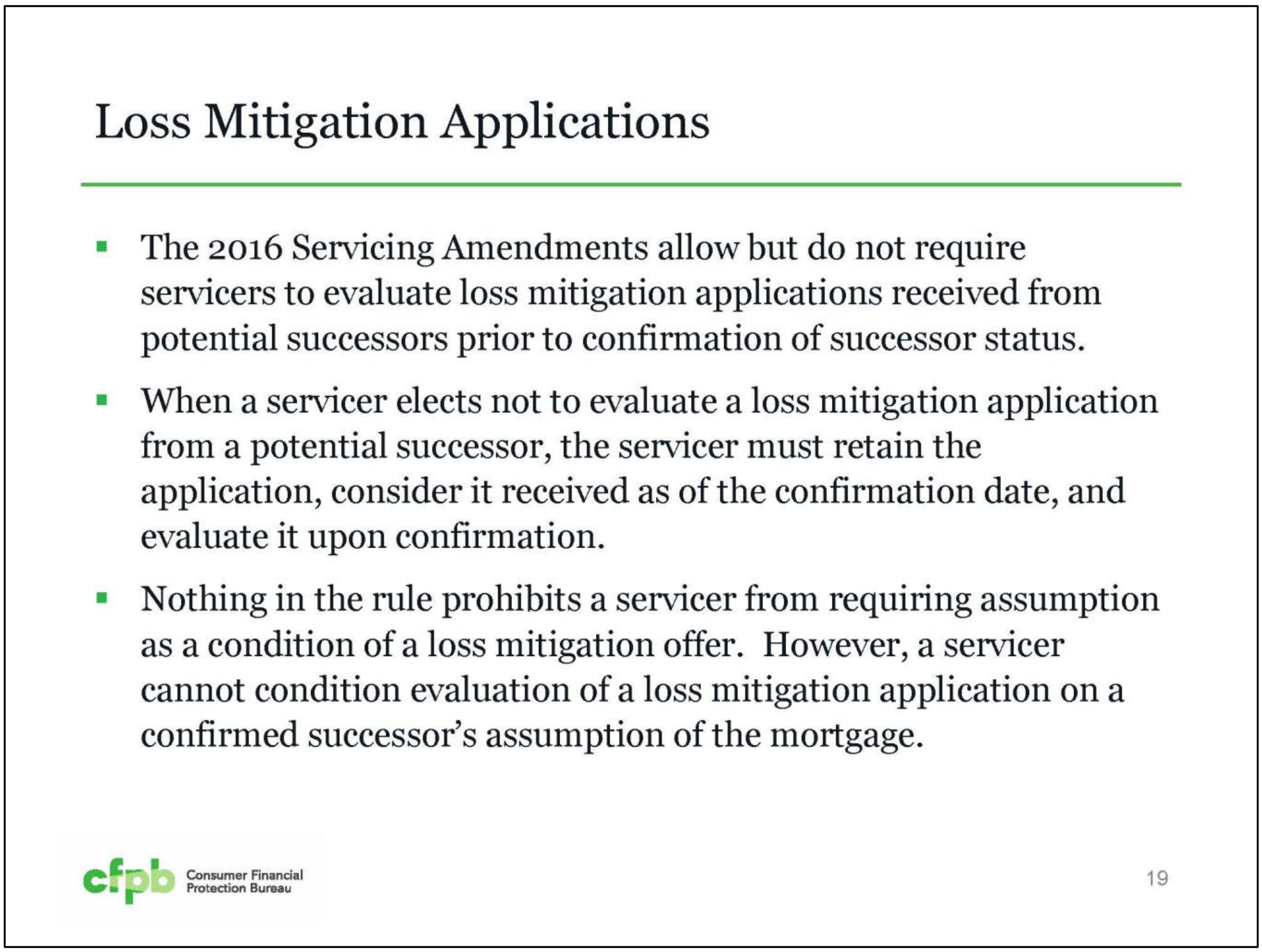
The amendments suggest various options that servicers may use to ensure that the required communications that they send do not suggest that successors are liable if that is not accurate. For example, they could provide substitutions to remove language that might imply liability. A servicer could add a separate disclosure to each mailing or communication that disclaims successor responsibility for the debt. And finally, there is a provision to allow an optional notice and acknowledgement upon confirmation.



Maggiano: Let's review this new notice option. Servicers may provide a confirmed successor who is not liable an initial written notice and acknowledgement that states a number of things that are listed here, such as, that the servicer has confirmed the successor, the successor is not liable for the debt, and the successor may be entitled to receive certain notices. If the successor signs the acknowledgement and receipt of the notice doesn't make the successor liable for the debt. And a successor that doesn't sign still has certain rights, like the right to submit notices of error, and information requests. And finally, this optional notice must say that the successor can sign and return this notice at any time.

Now, if a servicer elects to use this optional notice and acknowledgement, they must send it to the confirmed successor upon confirmation. If a confirmed successor, who is not liable for the debt, doesn't sign and return the acknowledgment, the servicer is not required to send the mortgage servicing rule notices and communications to that successor. However, a confirmed successor can opt in at any time by signing the acknowledgment. And also, a confirmed successor who decides they're not interested and no longer want to receive notices can revoke that acknowledgment as well.

So, another quick point here, servicers are generally not required to provide notices to more than one borrower or confirmed successor on each loan. That means if there is an existing borrower, the servicer may continue to send all notices to that borrower. Those confirmed successors may still obtain loan information through a request for information. And if there are multiple confirmed successors, the servicer only needs to send required notices to one of those confirmed successors.



Maggiano: Transfer of ownership, especially in the context of death or divorce, can often result in delinquency and requests for loss mitigation by unconfirmed successors. The 2016 servicing amendments allow, but do not require, servicers to evaluate loss mitigation applications received from potential successors prior to their confirmation. However, if a servicer elects not to evaluate loss mitigation applications from potential successors, the servicer must retain the application and consider it received as of the confirmation date, and then promptly evaluate it upon confirmation.

Nothing in the rule prohibits a servicer from requiring assumption as a condition of a loss mitigation offer. However, a servicer cannot condition evaluation of a loss mitigation application on a confirmed successor's assumption of the mortgage.

Johnson: Thanks Laurie. So, that leads us to a question that we had received, actually a couple of questions that we've received, relating to the requirements surrounding assumption and loss mitigation. So, if you can just clarify, can a confirmed successor in interest be made to assume the loan when seeking loss mitigation? And if not, how would a servicer handle a modification when it's a modification of the existing loan and mortgage if that successor in interest has not assumed the loan?

Maggiano: Well, thanks Laura. But first, I would like to clarify that a person does not have to assume the loan in order to be treated as a potential successor in interest or a confirmed successor in interest under the rule. We received comments asking us to limit the definition of who is a successor in interest to only people who have assumed the loan. We didn't do this in the final rule because it's important for a successor in interest to have access to information regarding the loan in order to evaluate whether it's even viable for them to assume. The new rules should help provide successors in interest with access to that information. But once a successor is confirmed, the loss mitigation rules generally apply, just like they do with any other borrower.

In the context of this question, let's focus on two distinct aspects of the loss mitigation process. First is reviewing and evaluating the application. The second is making the offer of a loan modification or other loss mitigation option. Servicers cannot condition review and evaluation of a loss mitigation application on the successor in interest assuming the loan beforehand. They must review and evaluate applications even if the successor has not assumed the loan. Servicers can simultaneously review for modification and assumption, and servicers can condition a loss mitigation offer on assumption, and can offer different options that differ based on whether the successor in interest simultaneously assumes. And as I mentioned earlier, confirmed successors in interest have protections under the rules only to the extent that those protections apply to other borrowers, so loss mitigation provisions only apply to loans secured by property that is the borrower's and/or the confirmed successor's principal residence.

At this point, I think we're ready to transition to servicing transfers.

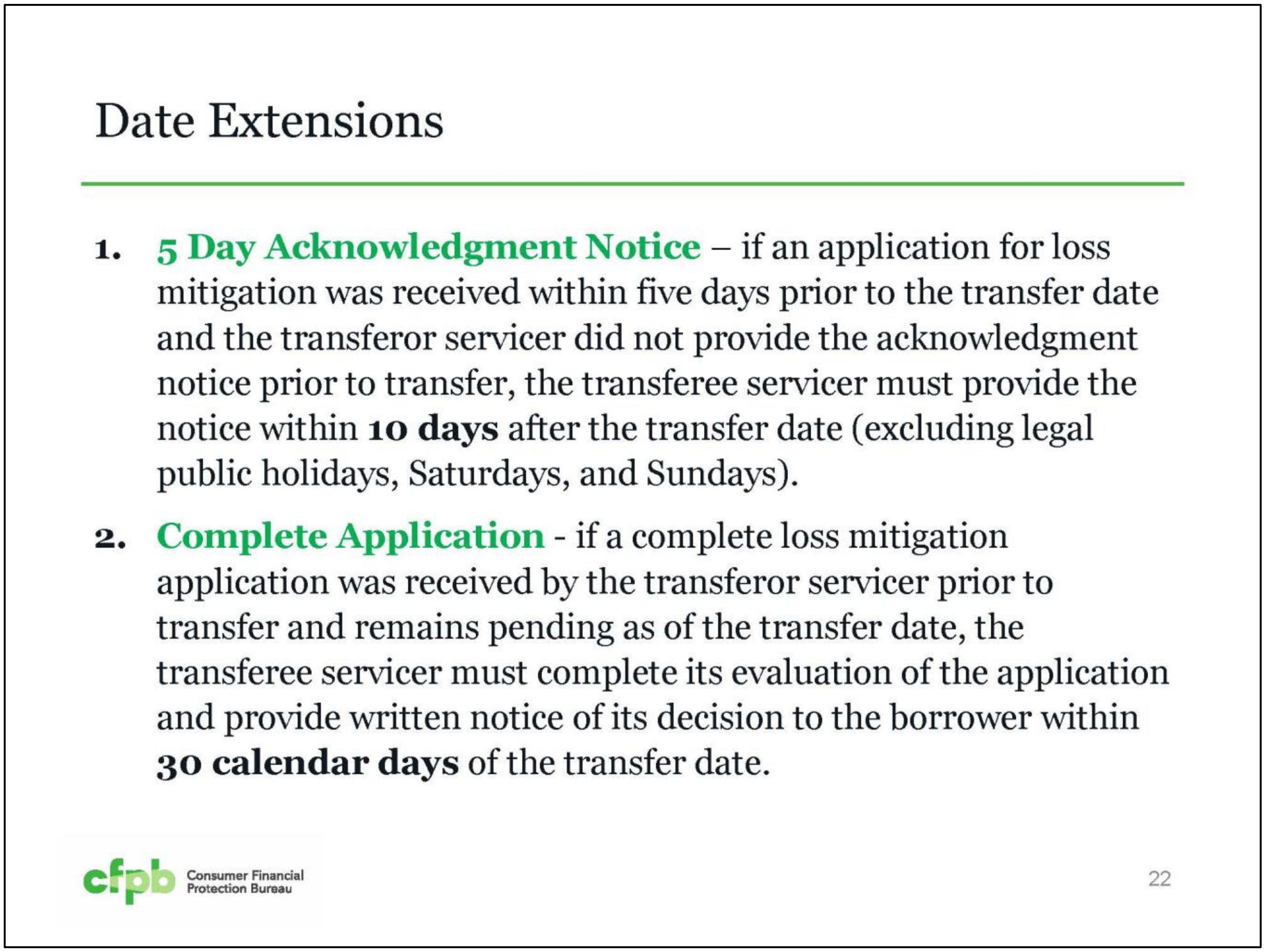
Servicing Transfers

Servicing transfers should be seamless for borrowers. Generally, transferee servicers must comply with the loss mitigation requirements of the servicing rules within the same timeframes that were applicable to the prior servicer. Knowing that this can be challenging when loss mitigation applications are received shortly before transfer or are pending evaluation at the time of a transfer, the 2016 Amendments define transfer date and revise requirements for compliance with certain loss mitigation rules when loans are transferred.

Consumer Financial Protection Bureau

21

Singerman: Sure, thanks Laurie, I'll take that on. So, servicing transfers obviously are a common occurrence. During a servicing transfer under Regulation X, the new transferee servicer steps into the shoes of the prior transferor servicer, and the handoff between the two should be seamless for consumers. For performing loans usually that's not a problem, but transfers obviously can be challenging when loss mitigation applications are received shortly before transfer or are pending at the time of transfer. In those types of circumstances, even short delays can impact a consumer's opportunity to obtain certain rights or foreclosure protections.



Singerman: The 2016 amendments address these concerns. First, the amendment defines the transfer date as the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer that's already required under Regulation X, and second, there are several other timeframes for compliance in the new rule, for compliance with the loss mitigation requirements that are triggered by the transfer dates.

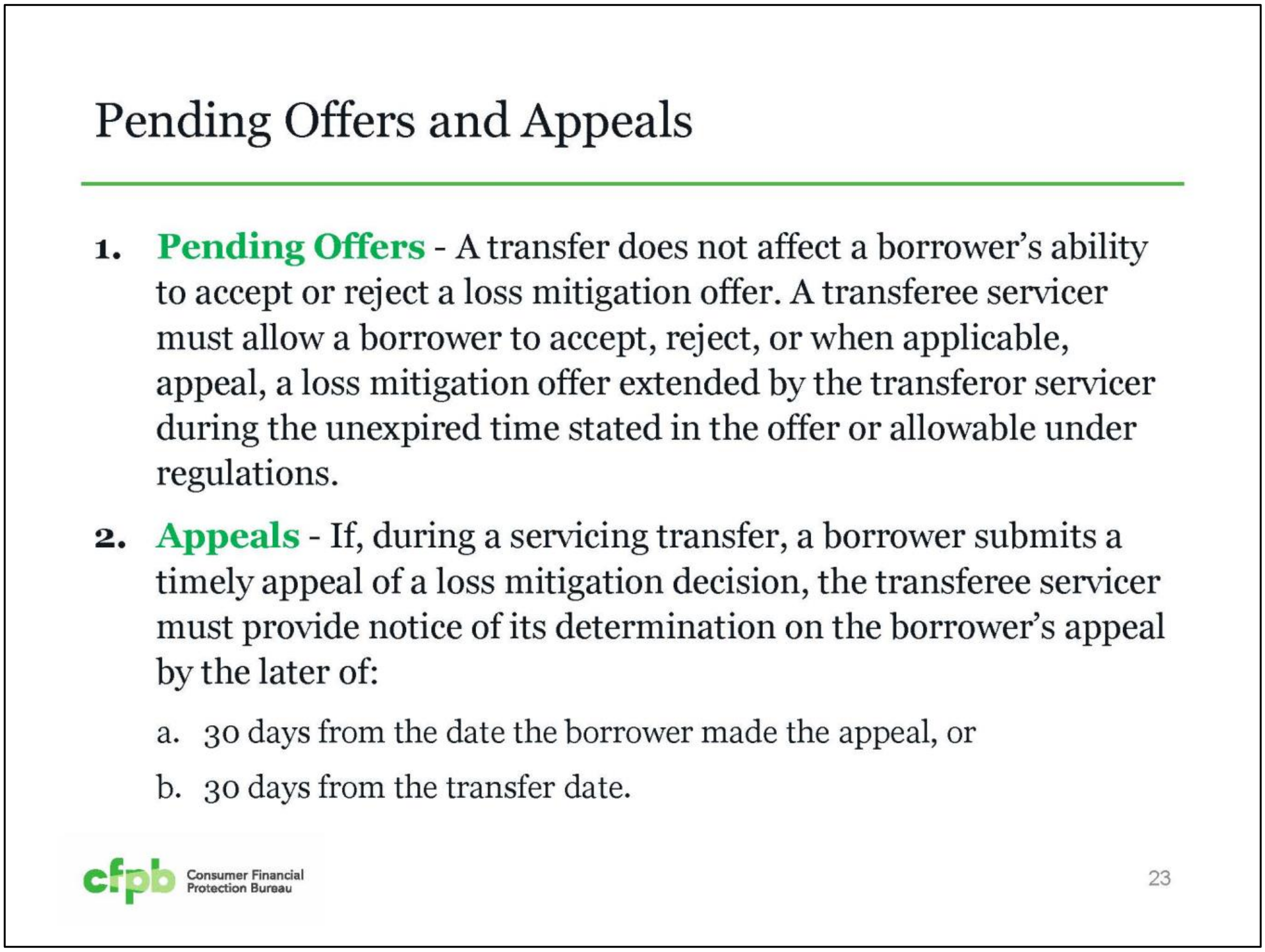
So, there is a lot going on in the days immediately before and after large servicing transfers.

During this busy time, when a consumer submits an initial loss mitigation application, it can be difficult to review the application, determine whether it's complete, and provide the acknowledgement notice within five days as the rule requires. So, under the 2016 amendments the transferee servicer, the new servicer, will have ten days from the transfer date to provide the notice if the transferor didn't send it.

Similar concerns of course exist when the transferee receives a complete application close in time to the transfer date. It's often difficult to properly evaluate the application and provide a written response back to the borrower regarding the determination of the application within the normal 30-day timeline. In these situations, the transferee servicer, the new servicer, must evaluate complete applications that it received from a transferor within 30 days of the transfer date. That's the new rule under the 2016 amendment. Because the application was complete at transfer, the existence and extent of any foreclosure protections under Regulation X are determined as of the date the application was received by the transferor.

So, now we move to how transferees must treat offers made by the transferor servicer, and appeals rights that kick in before the transfer, basically, just a few rules to tick through. First, if the transferor servicer extended a loss mitigation offer that was accepted by the consumer but the transferor servicer didn't finalize the documentation before the transfer date, the transferee servicer needs to honor that commitment. They must honor the commitment under the 2016 amendments. So, that's number one.

Number two, if the transferor servicer extended a loss mitigation offer allowing the borrower, for instance, two weeks to accept or reject the offer, and then transferred the servicing rights two days later, the transferee servicer--the new servicer--must allow the consumer the full two weeks from the offer date to accept or reject the offer.



Singerman: And the same type of logic applies to appeals. If the consumer has the right to appeal a denial of a loan modification, because, for instance, the borrower submitted a complete loss mitigation application 90 days or more before the scheduled foreclosure sale, but the loan is transferred before the appeal period ends, the new servicer – the transferee servicer – must resolve the appeal within 30 days from the date the borrower made the appeal, or 30 days from the transfer date, whichever is later. These timing extensions will help ensure that consumers whose loans are transferred, you know, their applications won't get lost during the transfer, and that the consumers themselves won't lose important protections.

Laurie, can you help us understand the definitions of delinquency next?

Successors and Privacy

1. **Sensitive Information** - Servicers may withhold certain types of sensitive information when responding to notices of error or information requests that are submitted by confirmed successors or that request information about potential or confirmed successors in interest.
2. **Safe Harbor** - Concurrent with the release of the 2016 Servicing Amendments, the Bureau issued an interpretive rule interpreting "consumer" in FDCPA section 805 to include anyone defined in Regulations X and Z as a confirmed successor. This provides a safe harbor from liability under FDCPA section 805(b) for communications by a servicer to a confirmed successor about the mortgage loan in compliance with Regulations X and Z.

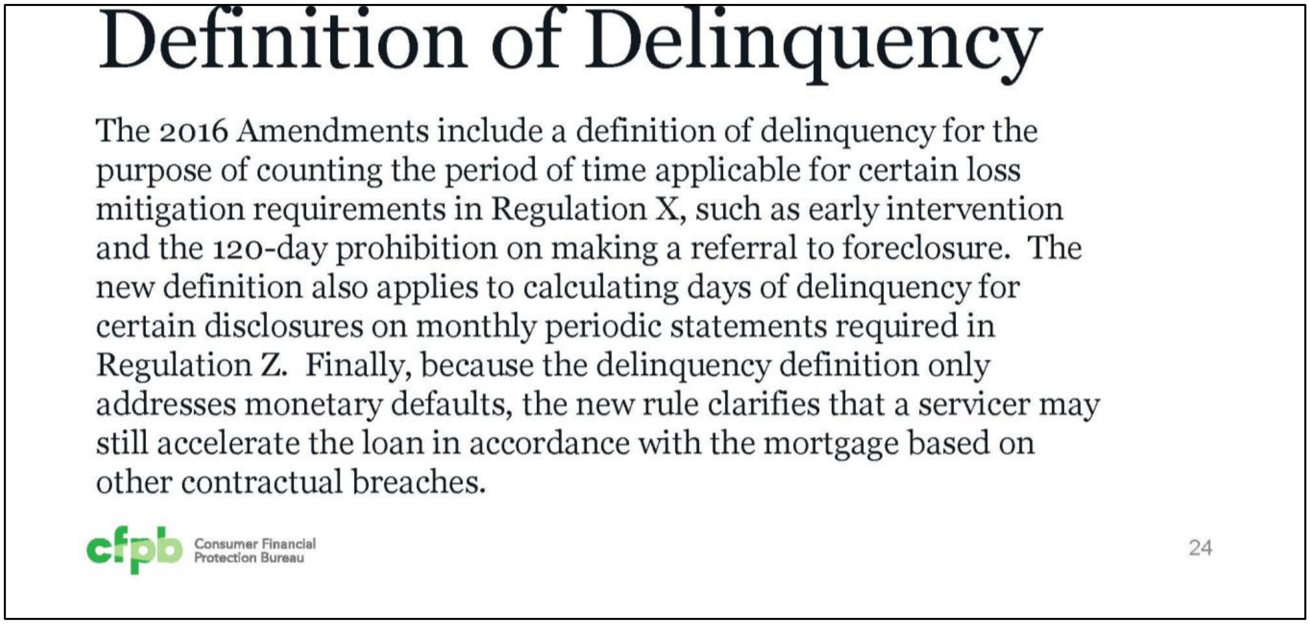
cfpb Consumer Financial Protection Bureau 20

Maggiano: I can do that, but first, congratulations to Darcy, the very perceptive listener who realized that I skipped a slide, and so we're going to go back to slide 20, which is successors and privacy. So, we've received many comments on privacy issues with respect to successors in interest, and again we have addressed those comments in two different ways. First of all, servicers may withhold certain types of sensitive information when responding to the notices of error or information requests that are submitted by confirmed successors, or that request information about potential or confirmed successors in interest.

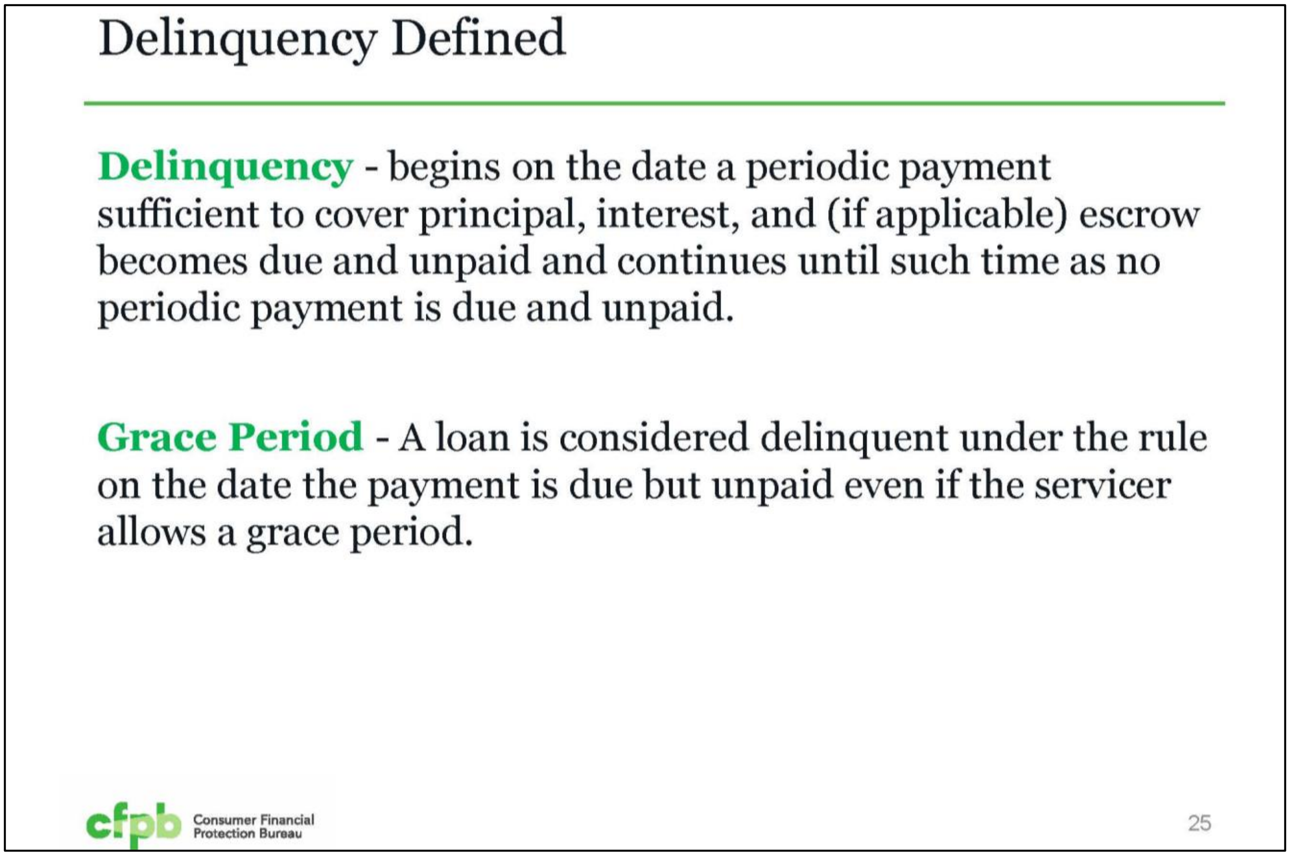
Specifically, the amendments allow servicers to withhold location and contact information and personal financial information, other than information about the term status or payment history of the mortgage loan, if two conditions exist; the information pertains to a potential or confirmed successor in interest who is not the requestor, or the requestor is a confirmed successor in interest and the information pertains to any other borrower who is not the requestor.

And, we also have provided a safe harbor; concurrent with the release of the amendments, the

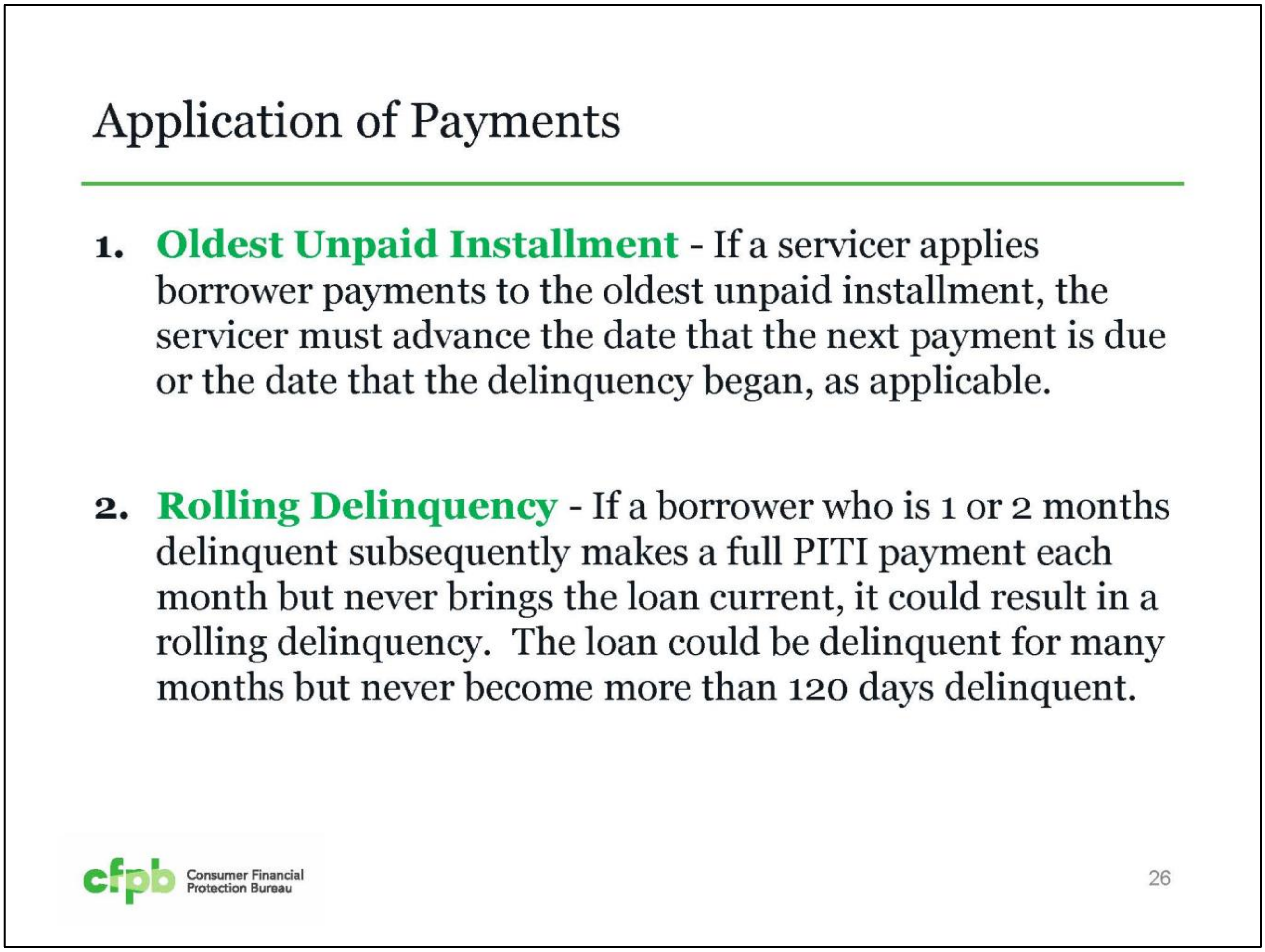
Bureau issued an interpretive rule interpreting "consumer" in the FDCPA, the Fair Debt Collection Practices Act, Section 805, to include anyone identified in Regulations X and Z as a confirmed successor. This provides a safe harbor from liability under that act, Section 805(b) specifically, for communications by a servicer to a confirmed successor about the mortgage loan in compliance with Regs X and Z.



Maggiano: So, let's now move on to, where are we going? So, the definition of delinquency. Thank you. And we are on slide 24. There are a number of requirements in Reg. X that are timed based on the date a loan becomes delinquent. For example, making live contact with the borrower by the 36th day of delinquency, sending written early intervention notices by the 45th day, et cetera. But what we discovered through supervision is that servicers were counting the start date for delinquency differently. Some servicers considered the loan delinquent if it was not paid on the date due, which is basically our definition, while others didn't start counting days of delinquency until after the 15-day grace period or after the loan was a full 30 days late. These counting conventions also impacted how delinquencies were disclosed on the monthly periodic statements required in Reg. Z. The Bureau thought it was important for both servicers and consumers to get on the same page. So, the 2016 amendments include a definition of delinquency, which I will describe in just a moment. And also, the amendments also address non-monetary defaults. The definition of delinquency in the current rule only addresses monetary defaults, and the new rule clarifies that a servicer may still accelerate a loan in accordance with the mortgage, based on other contractual breaches.



Maggiano: So, as defined in the amendments, delinquency begins on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow, becomes due and unpaid, and continues until such time as, until no periodic payment, excuse me, is due and unpaid. The loan is also considered delinquent, under the rule, on a date that the payment is due but unpaid, even if the servicer allows a grace period. So, for example, if a mortgage payment is due on January 1st and not received, the borrower is one day delinquent on January 2nd, even if there is a grace period. Now, this definition of delinquency applies to several provisions of Reg. X and also applies to the periodic statement provisions in Reg. Z, which require certain information regarding delinquency to be disclosed on a periodic statement, if a consumer is more than 45 days delinquent.



Maggiano: This section of the rule also addresses application of payments. Many servicers apply payments to the oldest unpaid installment. The rule doesn't require that payments be applied in this way; however, if that is the servicer's payment application method, they must advance the delinquency date with each payment applied. This could potentially result in a rolling delinquency, and create a situation where the loan stays delinquent for an extended period of time. But, the servicer could not initiate foreclosure because the loan is never more than 120 days delinquent. So, let's say a borrower who is one or two months delinquent subsequently makes a full PITI payment each month, but never brings the loan current. This could result in a rolling delinquency. The loan could be delinquent for many months but never become more than 120 days delinquent.

Payment Tolerance

Payment Tolerance - A servicer may accept a payment that is less than the full amount due without considering the loan delinquent, but then must not consider the loan delinquent for any other provision under the rule.

> **Example** - Sonya's payment of $1010 per month is due on January 1 but she sends a check for $1001. If the servicer agrees to accept the $1001 and advances the due date for the next payment, the early intervention requirements would not apply because the loan is considered current. The servicer may contact the borrower to collect the $9. However, if the servicer tries for three months but is unable to collect the $9, the servicer can't decide in April that Sonya was actually delinquent on January 1.

cfpb Consumer Financial Protection Bureau 27

Maggiano: Many servicers also allow a small payment tolerance as a courtesy to their customers, and they don't consider a loan to be delinquent if that payment is short by a few dollars. At the request of servicers, the rule has been clarified to permit this payment tolerance. Servicers may accept a payment that is less than the full amount due without considering the loan delinquent, but they then must not consider the loan delinquent for any other provision under the rule. So, here is our example. Sonya's payment is 1,010 dollars per month and its due on January 1st, but she inadvertently writes her check wrong and sends a check in for 1,001 dollars. If the servicer agrees to accept the 1,001 dollars and advances the due date for the next payment, the early intervention requirements would not apply because the loan is considered current. The servicer can contact the borrower and try to collect the nine dollars; however, if the servicer tries for several months, or some period of time, and is unable to collect the nine dollars, the servicer can't decide later on that Sonya was actually delinquent on January 1st.

Other Contractual Breaches

- A breach of the mortgage contract, other than the failure to make the periodic payment, does not begin a delinquency under the rule.
- In the event of another contractual breach (i.e. waste or abandonment), a servicer may accelerate payment if permitted by the mortgage loan and applicable law.
- The amount due after acceleration would be the new periodic payment for purposes of calculating the period of delinquency.
- Delinquency begins on the day the borrower fails to remit the accelerated payment.

cfpb Consumer Financial Protection Bureau 28

Maggiano: Lastly, in this section, the definition of delinquency in the rule only addresses the borrower's failure to make periodic payments. It does not define delinquency resulting from other breaches of the mortgage. These are often called non-monetary defaults, and these breaches may include a failure to pay property taxes when they're not escrowed, committing waste, or failing to occupy the property when the mortgage requires it.

In order to initiate foreclosure on a non-monetary default, the servicer can accelerate the loan if allowed by the note and under state law. The amount due after acceleration would be the new periodic payment for purposes of calculating the period of delinquency. If the borrower fails to pay the accelerated amount, that would begin or continue the delinquency. Of course, if the property is the borrower's principal residence, the account would have to be more than 120 days delinquent before the servicer could initiate foreclosure.

And that wraps up definition of delinquency. Laura, should we move to you and talk about loss mitigation?

Loss Mitigation

The 2016 Amendments include both changes to and clarifications of the 2014 loss mitigation rules. Perhaps the most significant change extends the loss mitigation protections under the rule to borrowers more than once during the life of the loan. Many of the amendments - for example, those relating to the 120 day rule, reasonable date for document collection, and use of short term repayment plans - are responsive to constructive industry feedback.

cfpb Consumer Financial Protection Bureau

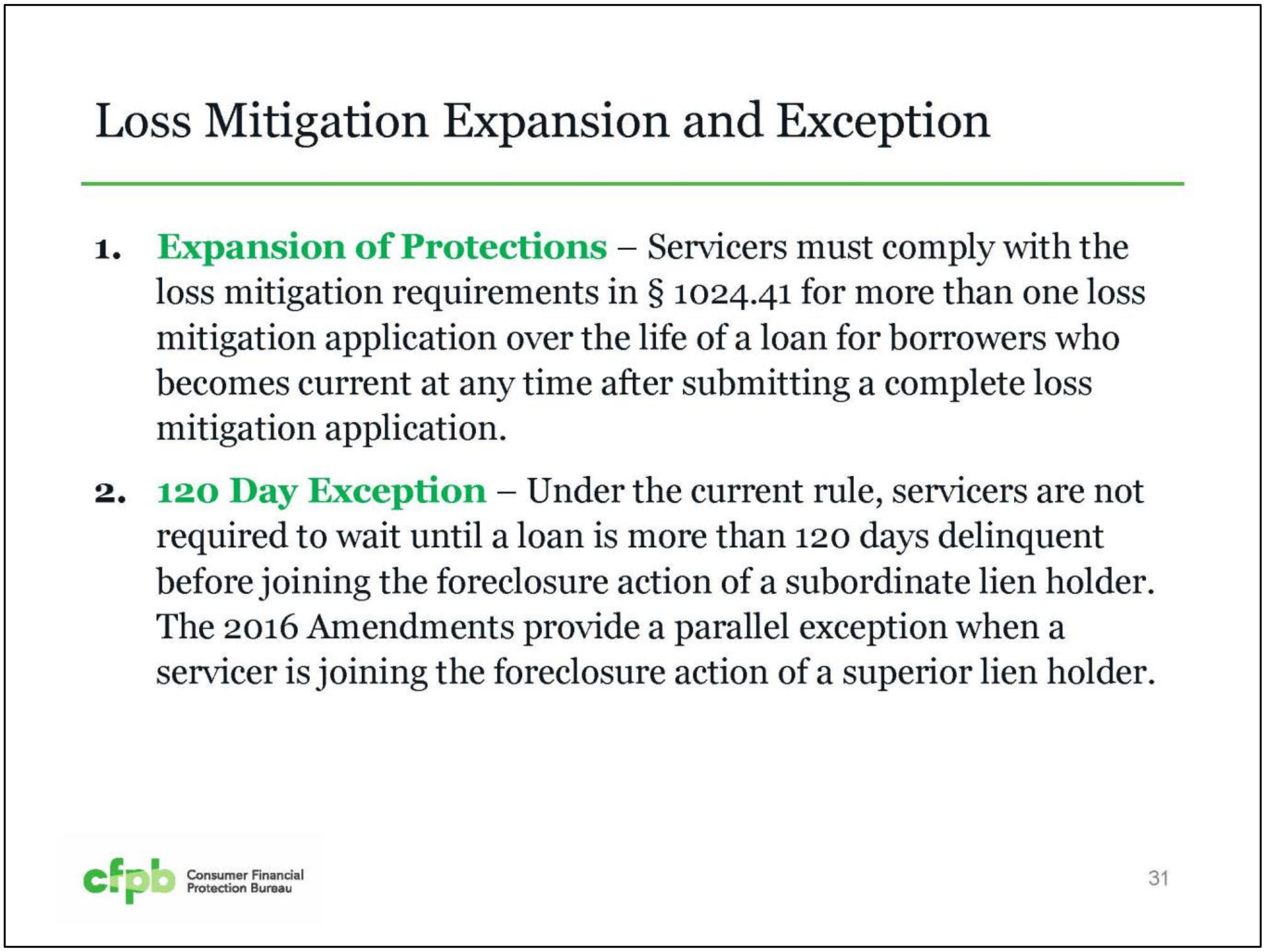
29

Overview of Loss Mitigation Changes

- Loss mitigation protections available more than once
- Exception to 120 day rule
- Use of short term repayment plans
- Reasonable date for submission of borrower documents and information
- Clarification on reasonable diligence
- Written notice of complete application
- Missing non-borrower information
- Clarification of foreclosure prohibition in § 1024.41(g)

cfpb Consumer Financial Protection Bureau 30

Johnson: Great, thanks Laurie. So, the 2016 amendments made a number of changes and clarifications to the loss mitigation rules, and many of those changes were the direct result of constructive feedback that the Bureau got, both from mortgage servicers and consumer advocates.



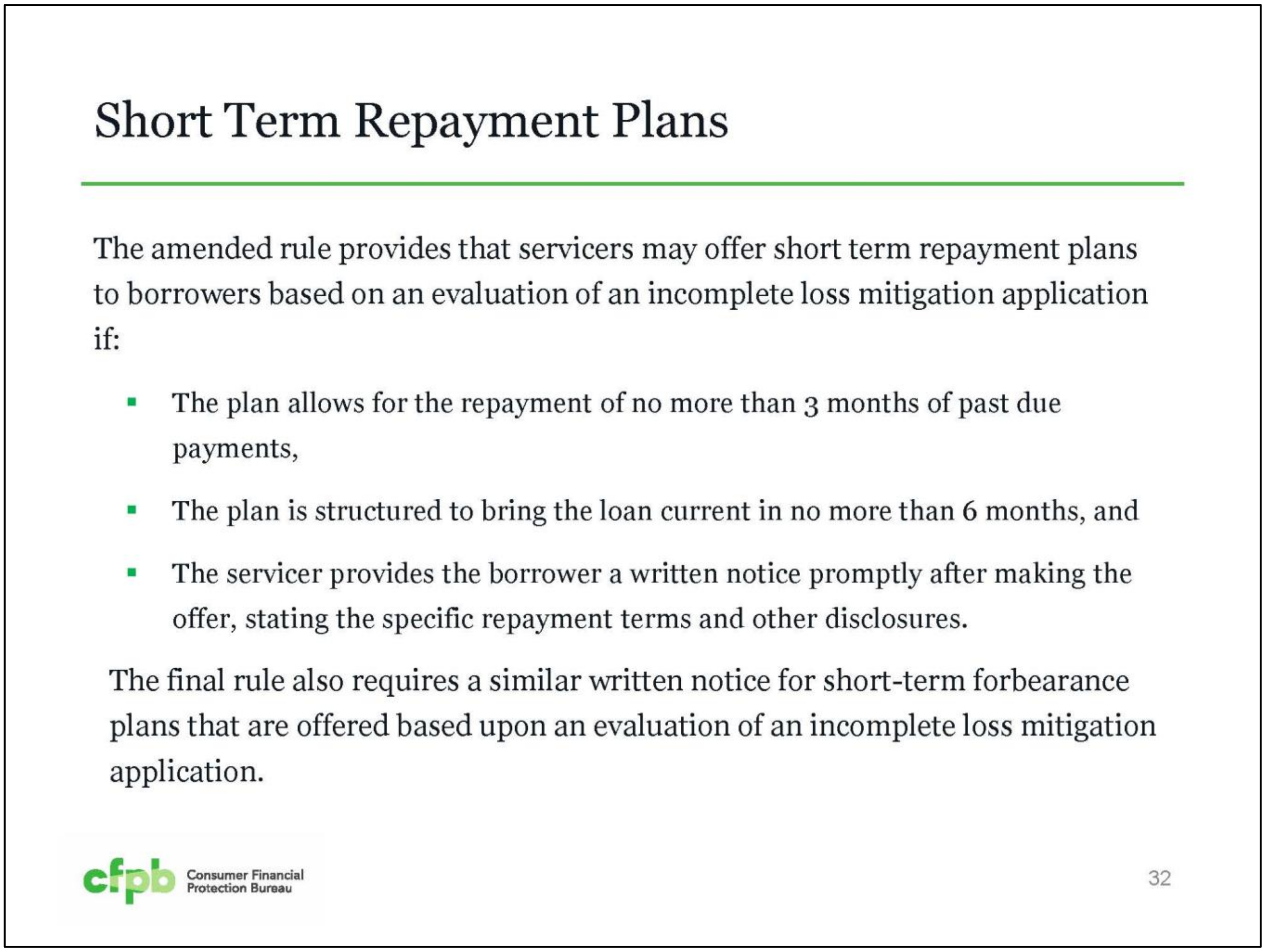
Johnson: The next slide here includes a list of some major changes to the loss mitigation section of the rule, and I'll walk through each of these over the next several slides. So, the next slide, the first topic here is the expansion of protection. Previously, servicers only had to apply the loss mitigation protections in the rule once during the entire life of the loan, and this was sometimes called the one-bite rule. Consumer advocates pointed out that this did not help borrowers who experience a new economic challenge later in the life of the loan. So, under the 2016 amendments, if a borrower submits a complete application for loss mitigation, whether or not they're actually offered assistance, they're entitled to the loss mitigation protections again, essentially if they bring the loan current at any time before they reapply.

Singerman: Before we move on Laura, let me ask you this question. Some investors have life of loan limits on loss mitigation, for example, they only allow a given mortgage loan to be modified, you know, three times over the life of a loan. Does the rule allow a servicer to deny that, to deny a loss mitigation application for loan modifications because of this type of restriction?

Johnson: Thanks Joel. So again, under the new rule, servicers have to comply with their requirements more than once for certain borrowers. One of the concerns that we were trying to address in this situation was, in one example, a situation where a borrower went through this process, got a loan mod, and then, for example, 15 years later had some new hardship where they might need help again. So, as I noted, under the new rules, the servicer would have to follow the procedures under § 1024.41 again, if the borrower applied for loss mitigation under those circumstances.

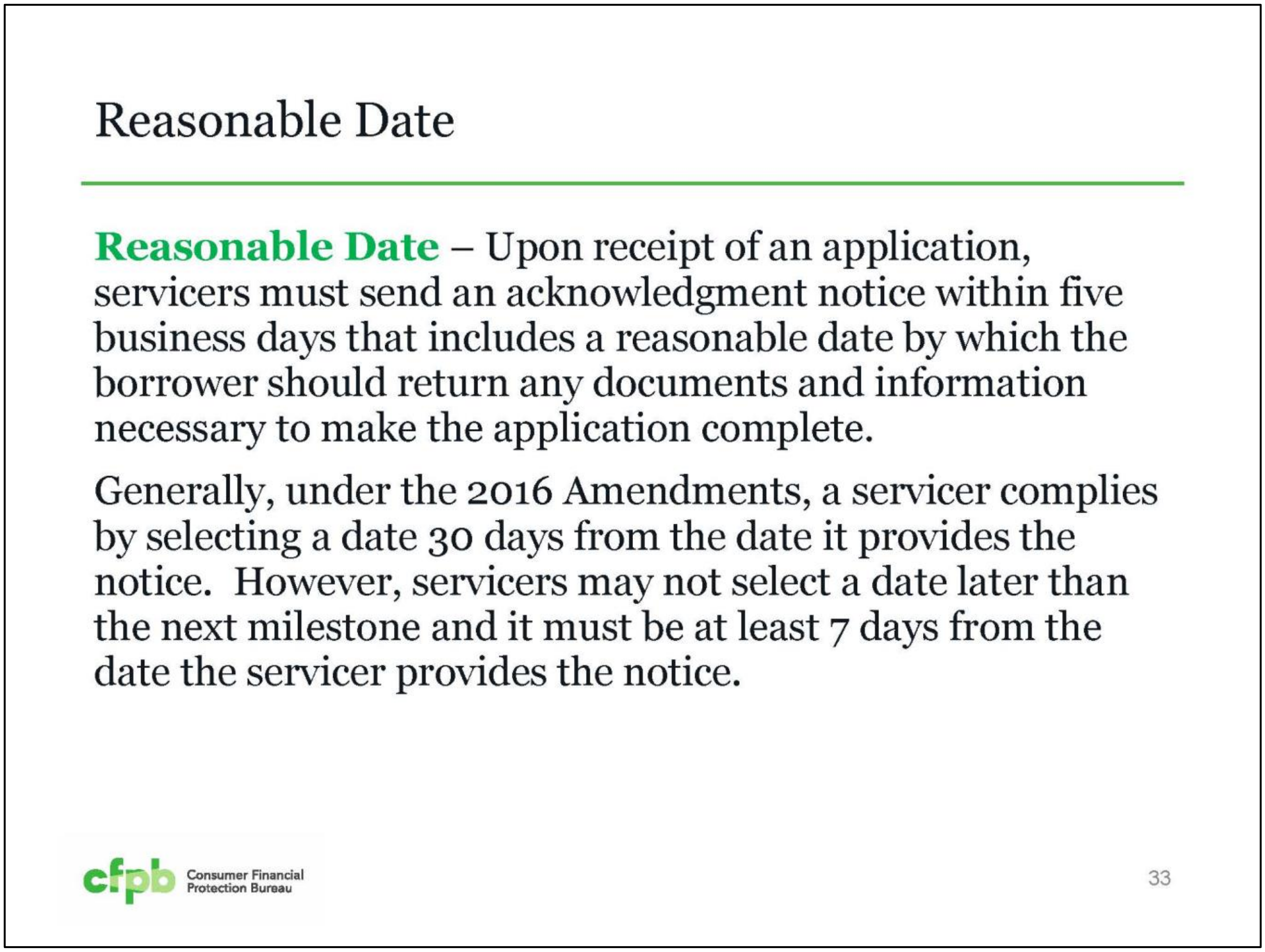
Our rules do not change investor guidelines for offering loss mitigation. Under the amended rules, certain borrowers are entitled to apply and be evaluated for loss mitigation more than once in the life of the loan. But, the loss mitigation options that are available to those borrowers continue to be determined by investor guidelines. If an investor limits the number of times that a borrower's loan can be modified, or sets a minimum time between modifications, then the borrower would be evaluated for all available options subject to the applicable investor requirements. So, for example, that could mean that they are reviewed and denied for a loan modification, but, would be potentially approved for a short sale or a deed in lieu, if that was permitted under the investor guidelines.

And that leads to the second topic here, which is the 120-day exception. The current rule requires servicers to wait until a loan is more than 120 days delinquent before making the first notice or filing in the foreclosure process, if the property is the borrower's principal residence. There are a few exceptions to this 120-day pause, including an exception that allows a servicer to join an existing foreclosure action brought by a subordinate lien holder without waiting until the loan is more than 120 days delinquent. The 2016 amendments provide a new parallel exception, when the servicer is joining the foreclosure action of a superior lien holder.



Johnson: We'll talk about short-term repayment plans for a few minutes. The current rule is clear that a servicer may offer a short-term forbearance program allowing a borrower to forego making payments or portions of payments due over no more than six months, even if the borrower has not submitted a complete loss mitigation application. But the current rule is less clear about whether a servicer can offer a short-term repayment plan without a complete application. And servicers asked the Bureau to specifically address the use of short-term repayment plans.

So, the amended rule provides that servicers may offer short-term repayment plans to borrowers based on an evaluation of an incomplete application, under certain circumstances. Those circumstances are that the plan allows for the repayment of no more than three months of past-due payments; the plan has to be structured to bring the loan current in no more than six months; and the servicer has to provide the borrower with a written notice promptly after making the offer. The notice has to state the specific repayment terms and provide some other disclosures. In addition, the final rule also requires a similar written notice for short-term forbearance plans that are offered based on an evaluation of an incomplete loss mitigation application.



Johnson: The next topic we'll talk about is the reasonable date requirements. So, under the current rule, within five business days after receiving a loss mitigation application, servicers have to provide a written notice to the borrower, acknowledging receipt of the application, and telling the borrower that the servicer has determined the application is either complete or incomplete. If the application is incomplete, as is often the case, the notice needs to state the additional documents and information that the borrower must submit to complete the application, and the notice must provide a reasonable date by which the borrower should submit that information.

When determining the reasonable date, the current rule directs the servicer to consider four specific milestones that correlate to important borrower protections, such as the date any document will become stale, the 120th day of the delinquency, or 90 or 38 days before a scheduled foreclosure sale. A number of both industry representatives and consumer advocates asked that the reasonable date be a fixed period. So, the 2016 amendments generally established 30 days after the date that the servicer provides the notice as a reasonable date for the return of documents. However, servicers still have to pay attention to the milestones. The reasonable date cannot be later than the next milestone, and it must be at least seven days away.

Reasonable Date Example

Example– John is 60 days delinquent on his home loan. He submits an application for loss mitigation assistance but it doesn't include all of the documents and information his mortgage servicer needs from him. Within 5 business days, John's servicer provides an acknowledgment notice stating the additional documents and information he must submit to complete the application and stating that John should submit them within 30 days from the date of the notice. In this example, assuming no document John already submitted will go stale in the meantime, 30 days is a reasonable date because it is before the next milestone, which would be when John's loan becomes 120 days delinquent.

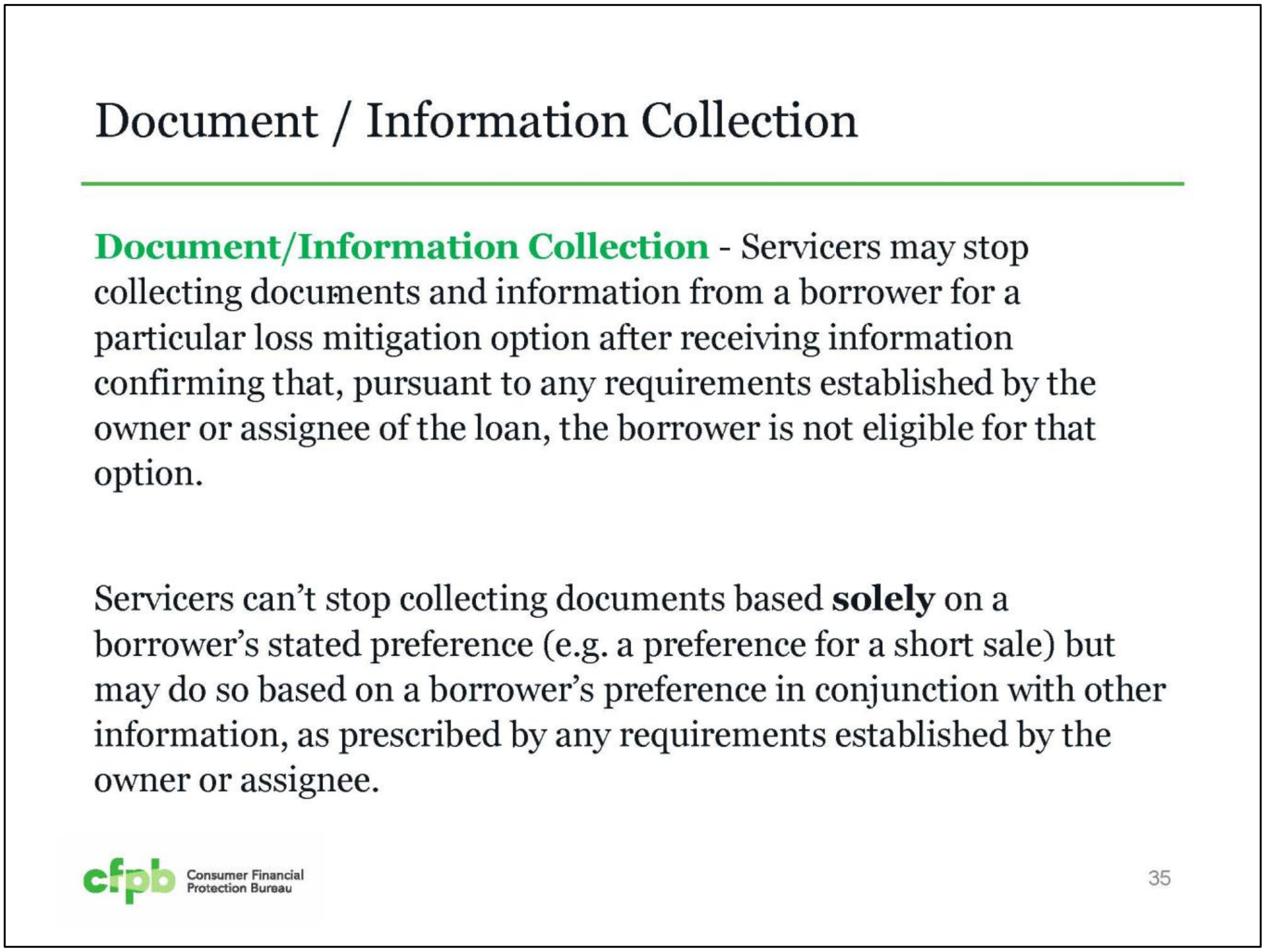
If however, John was already 95 days delinquent, 30 days would not be a reasonable date because it would be later than at least one milestone - the 120th day of delinquency, and John could lose the protection of the pause on the initiation of foreclosure. In that case, the servicer might, for example, select 15 days as a reasonable date for return of the needed documents or information.

cfpb Consumer Financial Protection Bureau 34

Johnson: This slide provides an example of how the reasonable date change might work. So, in this example, John is a few days delinquent on his loan. He submits an application, but doesn't include all of the documents and information that the mortgage servicer needs. Within five business days, the servicer provides an acknowledgment notice that states the additional documents and information that John must submit to complete the application. And the notice states that John should submit them within 30 days from the date of the notice. In this example, if we assume that no document that John has already submitted will go stale in the meantime, 30 days is a reasonable date because it's before the next milestone, which would be when the loan becomes 120 days delinquent. However, if John was already 95 days delinquent, 30 days would not be a reasonable date because it would be later than at least one milestone, which would be the 120th day of delinquency, and John could lose the protection of the 120-day pause on the initiation of foreclosure. In that case, the servicer might select 15 days as a reasonable date for the return of needed documents or information.

Again, I'll note that the examples here were of when 30 days would be considered reasonable, and when it might not be considered reasonable, under certain circumstances. It's important to keep in mind whether there is any milestone that occurs before the 30th day. So, I encourage you all to go back and take a close look at the section and think about how to implement that.

I will note one more nuance here that we've heard some questions about. The question that we've heard is whether servicers could potentially delay the next milestone and give the borrower more time for the reasonable date. So, for example, if the application was received at day 105 of the delinquency and the next milestone would be day 120, the rule requires the servicer to give the borrower 15 days to provide the documents. But the question that we've received is if the servicer will not actually make the first notice or filing on day 120, could the servicer give more than 15 days? The short answer to that question is no. The reasonable date cannot be later than the nearest remaining milestone, even if the servicer is not actually going to act at the time of that milestone. The milestone dates are meant to coincide with when borrower protections could be lost, not when the servicer will actually take action. I will note, though, that servicers do not have to make the first notice or filing on day 120, and that they can treat the reasonable, that they do not have to treat the reasonable date as a hard deadline for when borrowers must send in the information. If the borrower does not send the information in time based on the deadline that was provided in the letter, the application isn't over, the application process isn't over, if the borrower completes the application later.



Johnson: Another aspect of the rule that we addressed in the 2016 amendments was document and information collection requirements. The current rule generally prohibits a servicer from evaluating a loss mitigation application until it has received a complete application. The rule defines that as an application where the servicer has received all of the information it requires from a borrower in evaluating applications for the loss mitigation options available to that borrower. Servicers and investors often make available a variety of loss mitigation options, some of which may have specific eligibility requirements. For example, the investor could require that only borrowers who are service members or victims of a natural disaster are eligible for a particular option.

The 2016 amendments clarify that servicers may stop collecting documents or information for a particular loss mitigation option when the servicer has sufficient information to confirm that the borrower is not eligible for that option. For example, after determining that the borrower is not a service member or a victim of a natural disaster, if those investor requirements provide that other borrowers are ineligible for those options. Additionally, the rule clarifies that servicers cannot stop collecting documents necessary to evaluate a borrower for any particular loss mitigation option based solely on the borrower's stated preference for a particular option. However, a servicer may consider a borrower's preference in conjunction with other information as prescribed by investor requirements.

Document Collection Example

Example - A servicemember submits a loss mitigation application and asks for a short sale. The servicer can't stop collecting documents and information needed to evaluate the application for all other loss mitigation options based **solely** on the borrower's stated preference.

However, if requirements established by the owner or assignee provide that stated preference plus confirmed permanent change of station orders are sufficient evidence of hardship to justify a short sale, the servicer may consider the borrower's preference in conjunction with the confirmed PCS orders and may stop collecting documents needed for home retention options.

cfpb Consumer Financial Protection Bureau 36

Johnson: This is an example of the document collection provisions. So, if a service member submits a loss mitigation application and asks for a short sale, the servicer cannot stop collecting documents and information needed to evaluate the application for all other options, based solely on the borrower's stated preference. However, if the requirements established by the owner or assignee provide that the stated preference, plus confirmed permanent change of station orders, for example, are sufficient evidence of a hardship to justify a short sale, the servicer may consider the borrower's preference in conjunction with the confirmed PCS orders, and may stop collecting documents needed for home retention options. In other words, there essentially needs to be some other corroborating information that is consistent with investor guidelines. Servicers cannot rely only on a borrower's stated preference.

Two New Notices

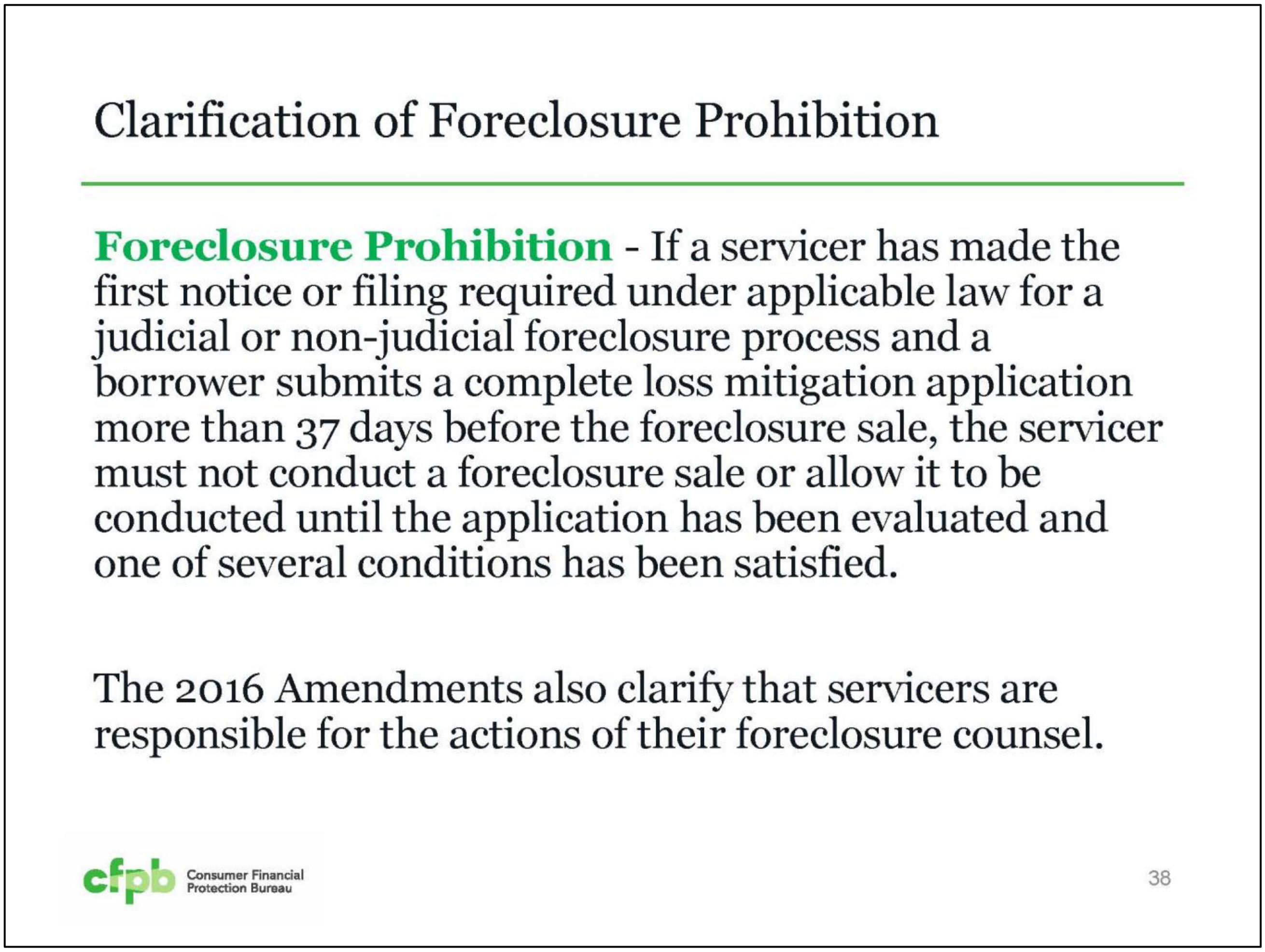
1. **Notice of Complete Application** - Servicers must notify a borrower in writing within 5 business days of receiving a complete loss mitigation application.
2. **Non-Borrower Information** - If a servicer needs information from a party other than the borrower to make a loss mitigation decision, the servicer must exercise reasonable diligence to obtain it, and if the servicer doesn't have essential third-party information within 30 days of receiving a complete application from the borrower, the servicer must delay the loss mitigation decision and must provide the borrower a written notice explaining what is missing.

cfpb Consumer Financial Protection Bureau

37

Johnson: The new rule includes two new notice requirements relating to loss mitigation options and applications. In the current rule, unless a borrower's application is complete when initially submitted, servicers are not required to send any confirmation when the application becomes complete. The Bureau received some complaints from borrowers who were confused about their application status. So, the 2016 amendments include a new notice of complete application that must be sent in writing within five business days of receiving a complete application. The new notice must include the date that the application became complete, and a notice that the servicer expects to complete its evaluation within 30 days, as well as certain other disclosures.

Similarly, if a borrower has a complete application, or if the servicer has a complete application, again generally defined as an application where the servicer has received all of the information it needs from a borrower, but if the servicer is missing third-party information it needs in order to make the loss mitigation offer, under the new rules, the servicer must now send a notice stating the specific documents or information that the servicer lacks, and explaining that the servicer has requested the documents or information, and will complete the evaluation promptly upon receipt.



Johnson: And the last point we'll touch on under the big umbrella of loss mitigation is the clarification of the foreclosure prohibition in the new rules. An essential consumer protection under the 2014 rule is that a borrower who submits a complete application more than 37 days prior to a scheduled foreclosure sale is entitled to evaluation and response to the application before a foreclosure sale occurs. In the new rule, the Bureau is clarifying that this prohibition on the conduct of a sale during the pendency of a loss mitigation application is absolute, and that the servicer is not excused from compliance because it acts through a service provider including foreclosure counsel.

I know we've received a few questions related to the topic, and I think Laurie is going to address one of those.

Maggiano: Yeah, so we, actually, an MBA member asked this specific question, Laura: "The amended rules prohibit servicers from proceeding with foreclosure when we have a complete application, and they no longer prevent us, or permit us to exercise best efforts to stop or postpone the sale. In some jurisdictions," this questioner writes, "this will require dismissal of the case. In jurisdictions where servicers are unable to unilaterally dismiss the case, and experience pushback from the courts, is there any guidance on actions to be taken in those scenarios?"

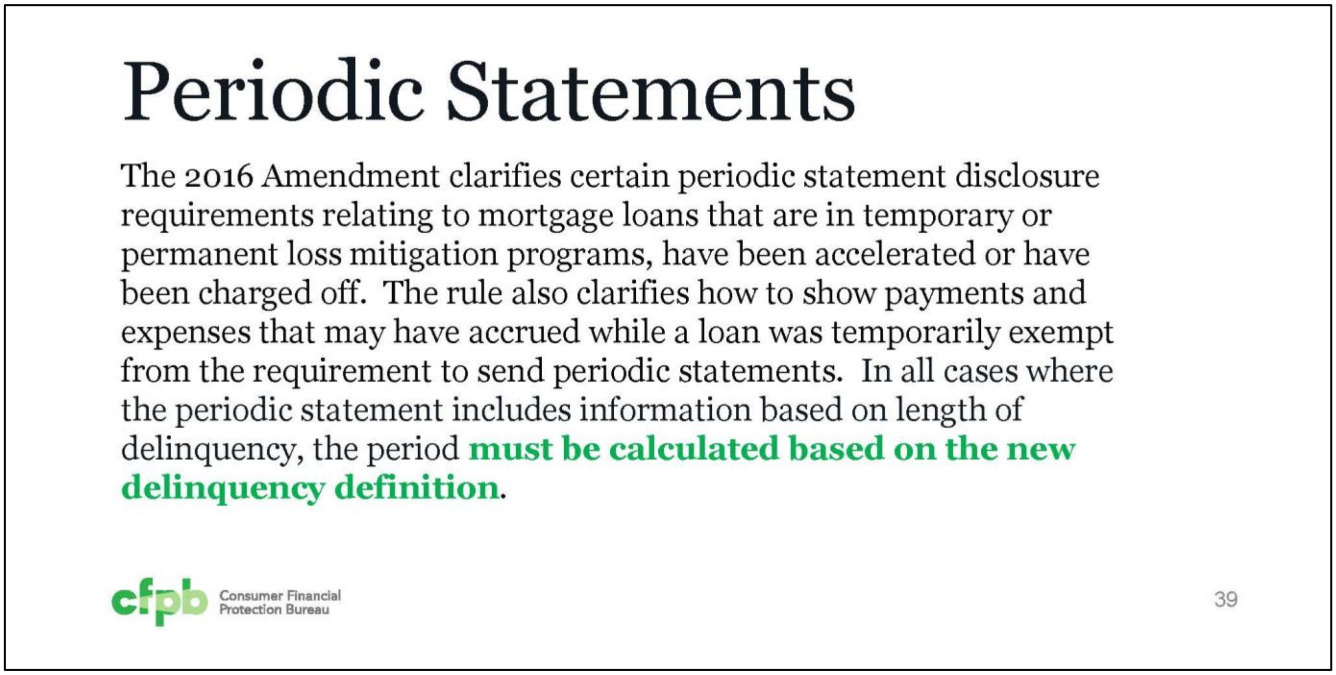
Johnson: Thanks Laurie. So, again, for putting the question in context, the requirement that we've been discussing is triggered in the event that a complete application is received more than 37 days prior to a scheduled foreclosure sale, and the servicer generally has not evaluated the application or communicated a denial to the consumer as required, or has not allowed the consumer appropriate time to accept the offer or exercise any appeal rights with respect to a denial.

The amended rule clarifies that the current rule's prohibition on conducting the sale is absolute, as I noted. However, we believe that dismissals to avoid an illegal sale should be a rare situation, and that servicers should have several other opportunities to avoid getting to a place where a dismissal would be the final option necessary to avoid a sale.

One effective way for a servicer to avoid the necessity to dismiss in these cases is to be sure to complete the evaluation of a complete application, and communicate the results to the consumer quickly. Another is making sure that there is timely communication with your foreclosure counsel and with the court as to the status of the application, and to the servicer's obligations under the rule. We believe that the amended rule provides much greater clarity for servicers and the courts under these circumstances.

Maggiano: Thank you.

Johnson: And with that, we'll move on to periodic statements, and Joel will discuss some of the new requirements under the rule.



Singerman: Thank you so much Laura. So, servicers are currently required to provide a periodic statement or coupon book with specific information and specific formatting. We had received feedback from servicers that there were certain questions where it wasn't clear how information should be displayed on the form, so the 2016 amendments addressed some of those concerns.

Temporary Plans and Permanent Modifications

1. **Temporary Repayment Plans** – short term repayment or trial modification
   a. A partial payment received under a temporary payment plan may be held in suspense until the servicer receives a full contractual payment, then it must be promptly credited to the account.
   b. The amount due section of the periodic statement may show *either* the temporary payment or the contractual payment.
   c. If the amount due section of the periodic statement shows the temporary payment, the contractual payment must also be included in the explanation of amount due on the statement.
2. **Permanent Modifications** – If the loan contract has been permanently modified, the periodic statement must show only the modified payment.

cfpb Consumer Financial Protection Bureau 40

Singerman: So, here we're discussing how to treat temporary loss mitigation and permanent modifications on a periodic statement. Many servicers, of course, use short-term repayment plans when the cause of a delinquency is temporary or they, you know, also require consumers to enter into trial modification plans before permanently modifying the loan terms. In both of these situations, using temporary loss mitigation option, payments under these temporary plans might be considered partial payments under the mortgage contract. Servicers can hold partial payments in suspense, but they need to apply them promptly when they have received enough of a payment to make a full contractual payment.

So, periodic statements provided during temporary loss mitigation options may reflect either, under the 2016 amendments, the temporary payment or contractual payment as the amount currently due. If servicers display the temporary payment as the amount currently due, the explanation of amount due disclosure on the periodic statement must show how payments are being applied according to the contract, and that's so that the consumer can keep track of any growing or declining delinquency under the plan. Once the loan is permanently modified, the periodic statement will only show the modified payment.

Accelerated Loans

Accelerated Loans – When a loan has been accelerated the periodic statement must:

- Generally, show the accelerated amount in the amount due section.
- If the servicer is willing to accept a reinstatement amount that is less than the accelerated amount, the lesser amount MUST be shown as the amount due, though the accelerated amount must also be shown on the periodic statement.
- Servicers may use a "good through" or "as of" date when disclosing the reinstatement amount.

cfpb Consumer Financial Protection Bureau 41

Singerman: So, we move now to questions about how to address accelerated loans on the periodic statement. When a loan has been accelerated, the periodic statement should show the accelerated amount in the amount due section of the form. However, if the servicer is willing to accept less, or in some states is required to accept a reinstatement amount, it's important that the consumer know that. So, in those cases, the reinstatement amount must be reflected in the amount due section of the periodic statement. Servicers must also include the full accelerated amount in the, I'm sorry, in the explanation of amount due on the form. In comments to the proposal, servicers had expressed concern that showing the accelerated balance in the amount due section of a periodic statement could lead consumers to believe that this was a payoff amount, when in fact interest continues to accrue daily, and some additional expenses might be incurred between the periodic statement date and the payoff date. Acknowledging this concern, we attempted to address it in the rule. The rule allows servicers to express the reinstatement amount either "as of" the date of the periodic statement, or "good through" a future date. This signals that this amount may only be accurate for a specified period of time and doesn't represent a payoff statement.

Maggiano: So, interestingly enough, we received a number of questions about acceleration, and Joel or Laura, I don't know who wants to take these questions, but, with respect to accelerated loans, in the explanation of the amount due section on the periodic statement, if the servicer will accept the lesser reinstatement amount, is the servicer required to show a breakdown of both the accelerated amount and the lesser reinstatement amount?

Johnson: Thanks Laurie, I'll take that one. Again, the short answer is no. The servicer does not need to break down the component parts. Comment 41(d)(2), paragraph 1, states that the explanation of amount due has to list both the reinstatement amount that is disclosed, excuse me, has to list both the reinstatement amount that is disclosed as the amount due, as well as the accelerated amount, but it does not have to provide the monthly payment amount that would otherwise be required under § 1026.41(d)(2)(ii). The requirement to disclose the breakdown of principal, interest, and escrow is only required for the monthly payment amount under that section. That amount and the breakdown are not required to be disclosed when the loan has been accelerated, but the servicer will accept a lesser amount to reinstate the loan. I will note, however, that the servicer is still required to disclose the total fees and charges, as well as any amount past due under § 1026.41(d)(2).

Maggiano: So, follow-up questions ask, what dollar amount is acceptable for the reinstatement amount for accelerated accounts, in the amount due section of the periodic statement? And certain fees may be known or may be charged by a third party such [unintelligible] may be unknown. So, when fees are unknown and they're charged by a third party, how do you handle that? What if the residual fees continue to register to the account after the reinstatement amount was paid? How is that amount collected?

Johnson: So again, as Laurie mentioned, we have received several questions relating to how to disclose the reinstatement amount, what to do under these types of circumstances where later fees may come up, et cetera. So, I'll try to address those questions here.

We had proposed to require that the amount due disclosure, originally, without addressing the need for any additional information, but we received numerous comments from servicers indicating that they were concerned that the amount disclosed might not be accurate on the due date of the periodic statement, because reinstatement amounts can change frequently, including because of third-party fees, as you mentioned. So, as a result of these comments, we clarified in the rules that the amount disclosed must be accurate when provided, that servicers can add language to the statement indicating that the amount due is accurate "as of" a certain date, or "good through" a certain date. The "as of" date can be different from the payment due date, and from the date that the periodic statement is provided. But again, the periodic statement has to be accurate when it's provided. And if the servicer includes an "as of" date on the statement, then it must provide an amount due that will actually reinstate the loan as of that date. So, this approach would capture fees that were actually known as of the dates provided. As a practical matter, then, the "as of" date generally would have to be that date that the servicer actually calculates the reinstatement amount or a date in the past. It would not be a future date, unless the servicer knows 100% that there will not be any new fees or charges to the amount disclosed after that date. Based on what I just explained, I would not expect to see an “as of” date using an estimate. It must be the amount that actually will reinstate the loan, as of the "as of" date provided.

With these concerns about not including potentially all, you know, other outstanding fees or potential future fees, servicers have the option instead of using a “good through” date approach, and servicers could use estimated future fees and provide certain required other disclosures about those estimates. We've had some questions about whether the “good through” date could be the date of the statement itself, or some future date, and the answer to both of those questions is yes. If any information necessary for an accurate disclosure of the “good through” date, and the accurate disclosure of the amount for that date, is unknown to the servicer, then the servicer has to make the disclosure based on the best information reasonably available at the time the disclosure is provided. The disclosure must state clearly that the disclosure is an estimate, and it must describe the circumstances under which the disclosure may change.

So, one example of that description could be that the amount may change due to unknown changes in fees or costs. If the fees or costs have already been posted, though, and the servicer is aware of them, then those actual amounts should be used in the disclosed amount due.

As to the actual dollar amount to provide for the reinstatement amount, that's not addressed in our rule, and it's up to the servicer, within applicable state law, to determine how to calculate the reinstatement amount, and within applicable state law, to determine whether to accept any amount less than the accelerated amount. So, servicers will have to make their own assessments of when either option, or potentially neither option, is appropriate. But I will say that both of the options for the “as of” date and the “good through” date contemplate that the actual amount that the borrower owes might change after the servicer provides either disclosure on the periodic statements.

Again, if the servicer uses a future “good through” date, and the borrower pays the amount disclosed by that date, then the servicer has to accept that amount to reinstate. But then there is a question about making adjustments for any fees after that. Our understanding is that any bona fide charges from third parties that are incurred during the time between the periodic statement is provided and the “good through” date could still be collected from the consumer after reinstatement, where permitted by applicable state law. And under applicable law, consumers could have a right to recover any fees that they paid, based on the estimated disclosure and statement amount, where the servicer does not actually incur those fees during the time between when the statement is provided and the “good through” date. Again, the overarching concern here is just to be clear in your disclosures and make sure that you add applicable information to the periodic statement as needed to clarify any estimates. And next I think we'll move to--

Singerman: We have one more, one more question on charge-offs, one more slide on charge-offs.

Johnson: Yes.

Charge-Offs

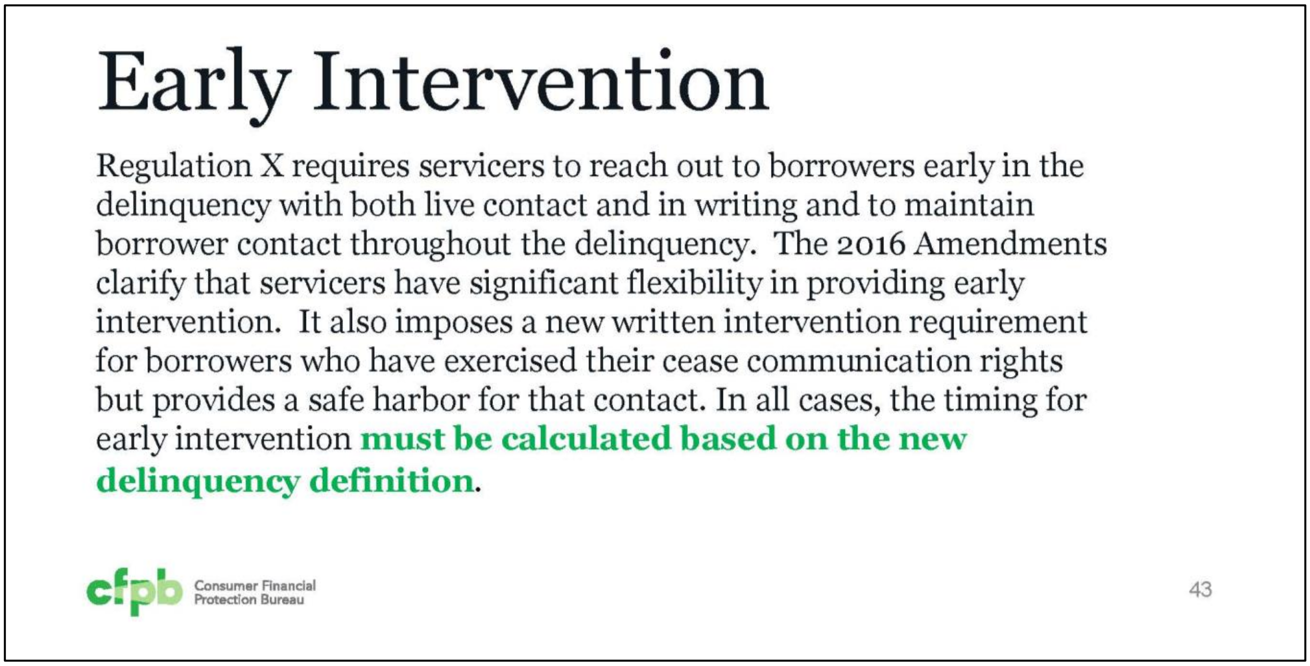
Charge Offs – Periodic statements are not required following charge off of a loan if the servicer will not charge any additional fees or interest on the account and, within 30 days of the charge off or the most recent statement, the servicer provides a notice clearly and conspicuously labeled "Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records" that states, among other things:

- The mortgage loan has been charged off;
- The servicer will no longer provide a periodic statement for each billing cycle;
- The lien remains in place and the consumer remains liable for the loan and any obligations which may include property taxes;
- The balance is not being canceled or forgiven, and the consumer may be required to pay the balance on the account in the future; and
- The loan may be purchased, assigned, or transferred.

cfpb Consumer Financial Protection Bureau 42

Singerman: So, to finish out the section on periodic statements, we will discuss charge-offs. So, the rule, as it currently exists, requires servicers to send most borrowers either a monthly periodic statement or coupon book for the life of the loan, as we've said. However, servicers pointed out that if they charged off a loan and are no longer assessing fees or interest or making collection attempts, it's really not that useful to consumers, and, you know, it could potentially confuse consumers to continue receive periodic statements. So, in the 2016 amendments, the Bureau eliminated the requirement to provide periodic statements after charge-off, if, number one, the servicer will not charge additional fees or interest, and, number two, within 30 days of the charge-off or the most recent statement, the servicer provides a notice that clearly indicates that the loan is being charged off; the servicer will no longer provide a periodic statement for each billing cycle; the lien remains in place; and the consumer remains liable for the loan and any obligations, which may include property taxes;. the balance is not being canceled or forgiven, and the consumer may be required to pay the balance on the account in the future; and finally, the loan may be purchased, assigned, or transferred. So, those are the requisite disclosures in a notice if the servicer wishes to cease providing periodic statements for charged-off loans, as provided under the rule, as allowed under the rule.

So, with that I'm going to kick it over to Laurie to discuss early intervention.



Maggiano: I feel like we're in the seventh inning stretch here. Should everybody get up and stand and do the wave or sing a song or something? All right, moving forward, just a couple more topics for you all. Early intervention, establishing contact with at-risk borrowers early in the delinquency, and maintaining contact until the delinquency is resolved, is really key to providing effective loss mitigation. No later than the 36th day of delinquency, and every 36 days thereafter that the borrower remains delinquent, servicers have to make a good faith effort to establish live contact with the borrower. But this can be a challenge during long delinquencies when the borrower is unresponsive or has already been determined to be ineligible for any loss mitigation option. The amendments provide significant flexibility in the ways that servicers may satisfy the ongoing requirement to make these good faith efforts to establish live contact, including substituting written notices or through responding to borrower-originated calls.

The amendments also provide that when the servicer is acting as a debt collector under the FDCPA, and again that's the Fair Debt Collection Practices Act, regarding a borrower's loan,when the borrower invokes the cease communication rights under the FDCPA, that servicer will continue to be exempt from the live contact requirements for early intervention, but must provide modified written early intervention notices if any loss mitigation option is available to the borrower, and so long as no borrower on the loan is a debtor in bankruptcy. This is similar to the early intervention requirements that we discussed earlier for borrowers in bankruptcy. Now, concurrent with the release of the final rule, the Bureau also issued an interpretive rule, creating a specific safe harbor from liability under the FDCPA regarding this written early intervention requirement, and other specified communications with these borrowers who invoke a cease communication right.

Now I'm just going to mention a couple of other changesin the amended rules. First, force-placed communication and information requests. So, both of these changes are responsive to specific mortgage industry suggestions. Currently, the rules do not specify what a force-placed insurance notice must state if a borrower has insufficient coverage, such as when the borrower's hazard insurance coverage is less than is required by the mortgage loan contract. Additionally, under the current rules, servicers cannot include the loan number on force-placed insurance notices. The 2016 amendments resolve both of those concerns. So, when the rule becomes effective, servicers can now amend the force-placed insurance notice to include a loan number and also to provide the same notice for a borrower who has insufficient coverage, not just is missing coverage altogether.

Similarly, when a borrower submits an information request asking for the owner of a loan, the borrower generally does so to determine what type of loss mitigation options are available, what foreclosure processes the servicer must follow, and other information applicable to the loan. Currently, if the loan in question is in a Fannie Mae or a Freddie Mac security, the servicer must provide the legal trust name and trustee contact information in response to every request for information. But because the loss mitigation provisions for the loan sold to Fannie Mae and Freddie Mac are determined by each GSE and not by the unique trust, the trust-identifying information may be of limited value to GSE borrowers. Both servicers and the FHFA suggested to us that the rule be changed to allow servicers to respond to requests for GSE loan ownership information by giving the contact information for Freddie Mac or Fannie Mae, as applicable, rather than the specific trust information, which we understand servicers generally do not have. The only time servicers must provide the specific trust information is when a borrower specifically asks for it.

Maggiano: So, that is it folks, that is the summary of the mortgage servicing rules. These rules become effective, most portions of the rule actually become effective, on October 19, 2017. The bankruptcy periodic statement requirements, and the successors in interest requirements, become effective on April 19, 2018. However, yes, so that's, it's, we--

Johnson: However.

Maggiano: Oh yeah, however, there was a however there somewhere, yes.

Johnson: Yeah, so we have received several questions relating to effective dates, and we'll address a couple of those now. So, the first question is, if we could provide further examples of any areas where a servicer may be able to comply before the effective date; specifically, the example provided was, if a servicer could begin using the new versions of the force-placed insurance notices ahead of the effective dates.

Maggiano: So, we decided to not offer a safe harbor across the board for early compliance for a number of reasons, including that we didn't believe servicers would comply with all of the provisions early, and we didn't really get comments specifying which provisions servicers would want to comply with early. So, it would have been speculative on our part to try to list those out in the final rule. However, we certainly realize that many of the final rule provisions do not conflict with the current rule, and in many cases the new commentary clarifies or reinforces the current rule. We know that in some instances servicers may already be operating in a manner that's consistent with both the current rule and the new rule, and we certainly don't want to dissuade that. Even if they don't, servicers don't have to currently meet all of the new rule requirements yet. For example, the notice of complete application, and evaluating for borrowers more than once in the life of a loan.. We know that servicers, many servicers are already providing these benefits.

We also know that some servicers are already providing periodic statements to consumers in bankruptcy. That is not prohibited. A servicer can comply early with those provisions, but there are a few direct conflicts where we would caution you. For example, servicers cannot include anything additional on the force-placed insurance forms right now, and shouldn't send out new versions of those forms in advance of the effective date. They currently must provide with, provide periodic statements for charged-off loans, and they currently must provide the trust name and number for GSE loans if someone requests information about the loan owner. This is not a comprehensive list, but they're the types of examples that you should think about when you are considering early compliance.

Johnson: Thanks Laurie. I know a lot of questions have also come in specific to successor in interest issues and whether a servicer could comply with some of those requirements early. Specifically, we received questions about whether servicers could build out potential successor in interest review processes and confirmation letter processes using the new rule's definitions of successor in interest ahead of the effective date.

Maggiano: So, the refining rule provisions related to successors in interest and the Bureau's interpretive rule and safe harbor regarding the FDCPA will not be effective until April 19, 2018. However, the final rule does not prevent servicers from reviewing and confirming successors using the expanded definition, beyond just successors of deceased borrowers, for example, prior to the effective date, to the extent that servicers are able to do so in compliance with their obligations under the current rules. You know, in talking about all of these successor in interest issues, it's important to remember that successors in interest are a particularly vulnerable group of consumers who often must make complex financial decisions during a period of extreme emotional stress. We already encourage servicer communications with successors in interest as a general matter under our rule, and as we discuss in more detail in the bulletin from 2013. It's a really good idea to start looking at your policies and procedures on all of these successor in interest issues now, to see where you can go ahead and start making adjustments in compliance with the current law.

Johnson: Thanks Laurie. So, one more question on the effective date, and then I have a couple of topics that I would like to circle back to, if we have a little bit more time left. So, the last effective date question that we received is, given the executive orders that have come out regarding issuing regulations, will the Bureau delay the effective date of the 2016 rule?

Maggiano: So, at this time we do not anticipate any delays in the effective date of the 2016 amendments to the servicing rule, but I do see Justin Wiseman giving me the high sign over here, so I must acknowledge that we have heard from several sources, including the MBA, that there is a concern about the mid-week implementation date and that implementing in mid-week may have an impact on servicers' ability to do successful system testing and make any last minute changes necessary to implement the rules, and that that could potentially negatively impact consumers. We are very sensitive to that concern. There are a number of reasons why changing implementation dates is extremely complicated, which I won't go into right now, but I will say that we are working on it, and although I can make no promises whatsoever, we do hope to get back to you soon with a determination of whether or not we'll be able to accommodate that request.

Johnson: Great, thanks Laurie. So, I have a couple of sort of jumping around topics here that I would like to circle back to because we've received some additional questions. One, a couple of questions have come in relation to the reasonable date, and specifically, if there's an application that comes in less than seven days before the next milestone. I just want to clarify that the minimum number of days that you can give for the reasonable date is seven days. That is the absolute minimum. So, hopefully that addresses those questions that we've received.

Maggiano: And so, if seven days is after the next milestone, then you would have to go beyond the next milestone. Is that correct?

Johnson: Yes.

Maggiano: Yes, right, just to clarify that.

Johnson: Again, sort of jumping around topics here in our last couple of minutes where we can do a little bit of a cleanup, we have gotten some other questions about whether we'll be issuing new forms or sample forms on the new periodic statements with respect to accelerated loans. So, we're not planning on issuing any new forms on those statements. As I discussed a little bit earlier, really the new rule only requires a few items to change regarding statements for accelerated loans. It changes the amount to use for the amount due and how to describe that in the explanation of amount due. And it requires, if applicable, an explanation that the amount due is "as of" or "good through" a given date, as well as any special instructions about submitting the payments.

So, as a reminder, the explanation and instructions that might be applicable here could be provided either on the front of the statement, or on a separate page enclosed with the statement. The explanation can include additional information, such as that the amount is not a payoff amount, but again, that's permitted, but not required, under the new rule. And again, if the "good through" date uses estimates, then the servicer has to make that disclosure based on the best information available at the time the disclosure is provided, as I noted before.

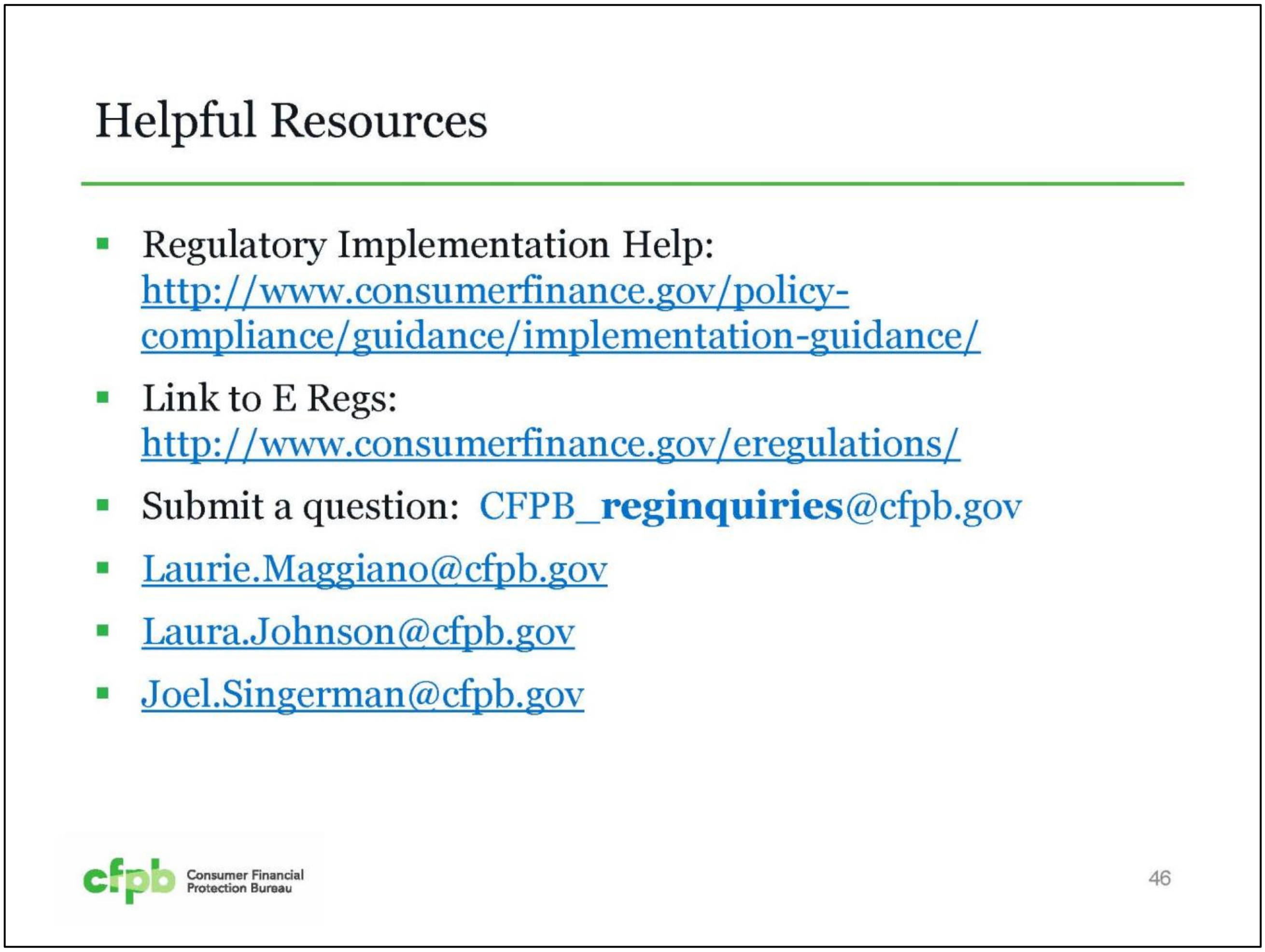
One other piece of the new rule that should help with respect to this, is that the new rule also gives servicers more flexibility in the requirements for grouping certain information on the periodic statement. So, under the current rule and the new rule, certain items are required to be provided in close proximity to each other, such as the requirements for the amount due and the explanation of amount due. This means that that information must be grouped together and set off from other groupings of items. So, under the current rule, there is a requirement that says there cannot be any intervening text between the items in these groupings, but under the new rule, we've permitted more flexibility by providing that there cannot be any unrelated text between the items instead. So, text is considered unrelated if it does not explain or expand on the required disclosures. So, to flip that around, in other words, you can now add related text that explains or expands on the information that's required in those groupings under the new rule.

Maggiano: So, we have a question that came in regarding repayment plans of more than three months that would require a complete application, and the question was three months, is that 60 days or 90 days of delinquency? And based on the definition of delinquency in the rule, being that it's the due date of the last unpaid installment,that would be 90 days, so three full payments that were due and unpaid. And then the follow-up question was, can we still accept a simple promise to pay, or does that invalidate the rule? I think that's what the question was. So, in order to accept a promise to pay, or anything that does not have a complete loss mitigation application, the payments cannot be more than 90 days' delinquent. In order to offer a longer term repayment plan, you would have to have a complete loss mitigation application. So, short term is less than 90 days delinquent, a longer term repayment plan is more than 90 days delinquent, and I hope that answers the question.

Singerman: Can I just add a little bit of context to that?

Maggiano: Absolutely.

Singerman: I would just remind folks who are interested in this question that the short-term repayment plan provision in the new rule, and the existing short-term forbearance program provision, those allowances are triggered off of the receipt of an incomplete application. If you haven't received any application, the rule is, I think, pretty clear, that you can offer, you know, whatever loss mitigation options you like, and it's not based on any application, and you haven't received any loss mitigation application. Once you do receive a loss mitigation application, then, you know, the question of whether you can accept a simple promise to pay, you know, raises other questions as to compliance. Right? So, you know, if the consumer submitted an incomplete loss mitigation application but, you know, is more than three months' delinquent, for instance, you know, accepting a simple promise to pay could theoretically constitute a loss mitigation offer, in which case, you know, you might have to collect a complete application and go through that process first. But it's very fact specific, you know, so just adding a bit of context to that, to Laurie's very good response.



Johnson: Thanks Joel. So, yeah, just about a minute left. So, we can go to the last slide. These are some helpful resources that we've provided here, including our e-mail addresses. If you have any questions please do submit them to the CFPB_reginquires e-mail address. That is more likely to get a faster response.

The other thing that I would mention is, I would like to put in a plug requesting comments, actually, so this is going back to the original 2013 rules, but we are required under the Dodd-Frank Act to do a five-year lookback assessment of the effectiveness of those rules with respect to meeting certain criteria. And we just published, or we just issued the Federal Register notice. I'm not sure if it's been published yet. But we issued the Federal Register notice discussing that assessment and seeking comments. The comments are due back 60 days after the publication in the Federal Register, and again that's on the current existing rules, not the new rules that we were talking about today, but on the rules that are currently in effect.

So, with that we'll close it up. Yes?

Wiseman: Thank you very much, and for folks on the phone, MBA is planning to comment on that RFI, so also a useful resource to aggregate comments.

Additional Contact Information

For more information from Buckley Sandler LLP, please contact:

- Jeffrey P. Naimon
- Benjamin K. Olson
- Kathleen C. Ryan

For additional training resources from the Mortgage Bankers Association, please contact:

- Justin Wiseman
- David Upbin