

2017

1-Day Symposium

MAY 12 • Philadelphia, PA

DoubleTree by Hilton Philadelphia Center City



America's Mortgage Banking Attorneys®

EARLY INTERVENTION AND LOSS MITIGATION:

**EXPANDED PROTECTIONS AND OTHER
CHANGES**

PANELISTS

Wendy Walter (Facilitator) – McCarthy & Holthus, LLP

Roy Diaz – SHD Legal Group, P.A.

Robert King – Rosicki, Rosicki & Associates, P.C.

Doug Oliver– Anselmo Lindberg Oliver, LLC

Panel Outline

- Early Intervention
- One Bite at the Apple No More
- 120 day rule changes
- New rules on acknowledgment of applications
- The Document Chase
- Dual Tracking Protections Strengthened
- Loss Mitigation & Servicing Transfers
- Definition of Delinquency

Early Intervention Requirements

Wendy Walter

Early Intervention Basics

You must, at a minimum, establish or make good faith efforts to establish **live contact** with borrowers by the 36th day of delinquency and, if appropriate to their situation, promptly inform them of loss mitigation options that may be available.

In addition, you must, at a minimum, provide borrowers with a **written notice** about any available loss mitigation options by the 45th day of delinquency.

Live Contact

- What is *good faith*?
 - “Reasonable steps under the circumstances to reach a borrower.”
 - Phone calls
 - Written letter of encouragement
- What is live contact?
 - In-person meeting
 - Telephone call
 - Electronic chat
- Does talking to borrower’s representative count?

Written Notice

- Timing Considerations
 - No later than the 45th day after delinquency
 - Required only once during 180-day period
 - Servicing transfer during delinquency
 - Once per 180-day period rule no longer applies
 - Notice is required within 45 days of first payment due after transfer
 - ✓ Ex: payment due 3/1, borrower fails to make payment and servicer A sends notice on 4/10, service transfer on 4/12, first payment post transfer is due to servicer B on 5/1, notice is due no later than 45 days after 5/1
 - Best practice is to send a notice upon transfer

Written Notice

- Contents
 - Statement of encouragement to contact servicer
 - Telephone number for loss mitigation group
 - Mailing address for servicer
 - Brief description of potential loss mitigation options
 - Application instructions (if applicable)
 - Website to access CFPB or HUD list of approved housing counselors and HUD number
 - Add'l helpful information
- Form notice available

Exemptions

- HELOC and open ended lines of credit
- Small servicers
- Reverse mortgage transactions
- Loan secured by property that is NOT the borrower's principal residence
- Loans where FDCPA cease communication order was placed
- Loans in bankruptcy (until 10/19/2017)

FDCPA:

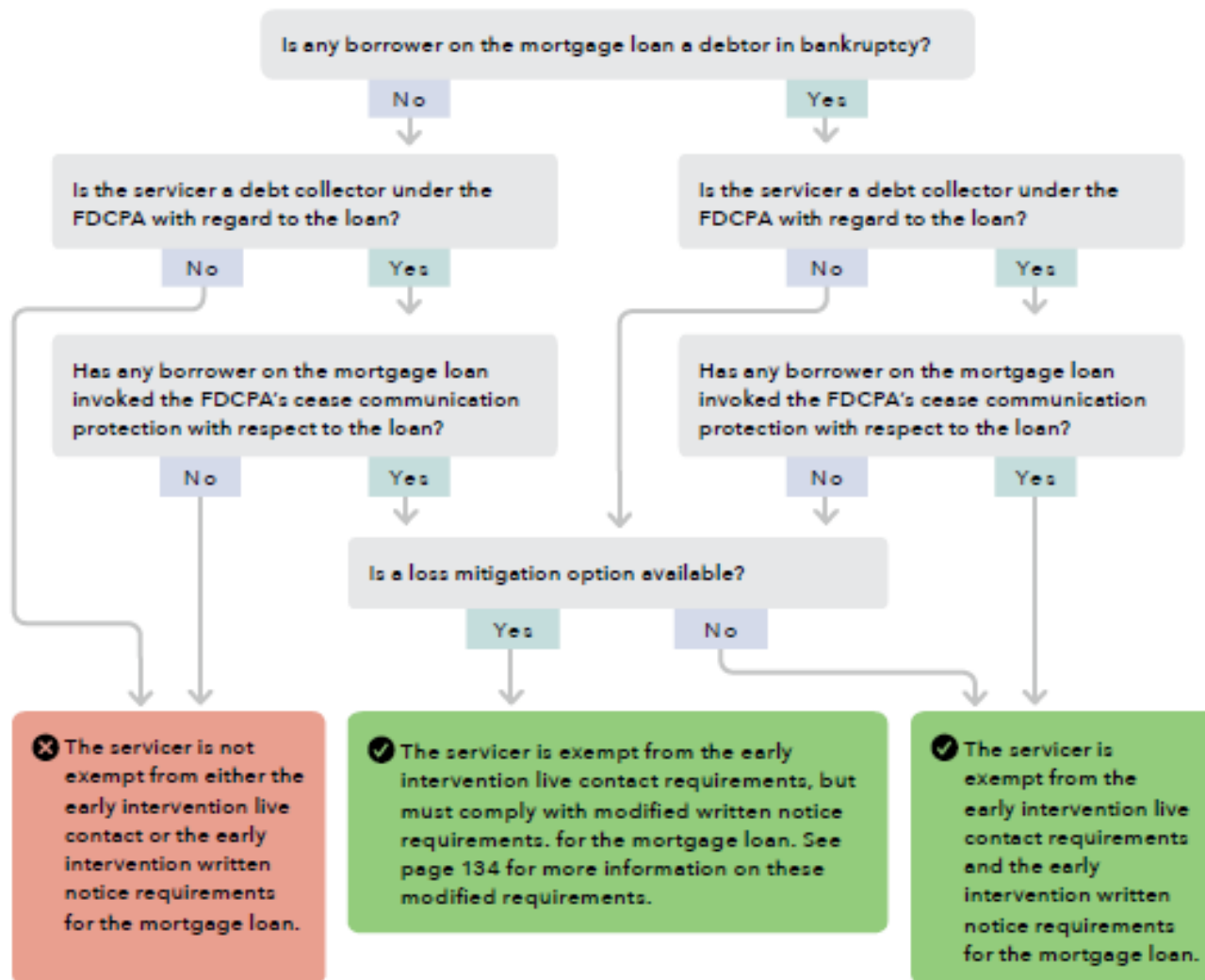
Safe Harbor or Sophie's Choice?

- Successor in interest exemption FDCPA 805(b)
- Cease communication protection FDCPA 805(c)
 - Prohibits communication if consumer notifies a debt collector in writing that consumer wishes the debt collector cease further communication with the consumer
 - Interpretive rule 81 FR 71977 provides safe harbor if servicer attempts early intervention after cease communication notice

Bankruptcy Exemption Changes

- No live contact requirement when a borrower is in bankruptcy
- Written notice requirements will change
 - Modified written notice - doesn't request payment
 - Modified notice when borrower goes into default while in bankruptcy
 - Only one modified notice required during a single bankruptcy case
 - When borrower emerges from bankruptcy, if they are discharged in any chapter, no notice unless they made a payment after commencement of BK case
 - Compliance must resume if BK case is dismissed, closed, or borrower reaffirms

Early intervention bankruptcy and FDCPA exemptions



One Bite at the Apple? No longer

Roy Diaz

Why only one bite to begin with?

- The Bureau believes that it is appropriate to limit the requirements in § 1024.41 to a review of a single complete loss mitigation application.
- Specifically, the Bureau believes that a limitation on the loss mitigation procedures to a single complete loss mitigation application provides appropriate incentives for borrowers to submit all appropriate information in the application and allows servicers to dedicate resources to reviewing applications most capable of succeeding on loss mitigation options.
- Further, the Bureau is cognizant that the borrowers may pursue a private right of action to enforce the procedures set forth in § 1024.41 and significant challenges exist to determine whether a material change in financial circumstances has occurred and, if so, what procedures should be required.

Amended 12 CFR 1024.41(i)

- Borrowers who have submitted a complete loss mitigation application may submit another if they cure the default under that original submission and then re-default.

Consider service transfers

- *Servicing transfers.* A transferee servicer is required to comply with the requirements of § 1024.41 regardless of whether a borrower received an evaluation of a complete loss mitigation application from a transferor servicer. Documents and information transferred from a transferor servicer to a transferee servicer may constitute a loss mitigation application to the transferee servicer and may cause a transferee servicer to be required to comply with the requirements of § 1024.41 with respect to a borrower's mortgage loan account.

120 Day Rule: expanded exception

Wendy

Vacant Properties?

- Current Bureau interpretation that will be documented and effective October 19, 2017
- comment 30(c)(2)-1, if property ceases to be borrower's principal residence the loss mitigation rules, including the 120 day rule, no longer apply

Exception to join action of Senior Lienholder

- Original rules contemplate when a servicer must join the foreclosure action of a junior lien holder
- 2016 rulemaking acknowledged omission of actions of senior lienholder and amendments carve this out from the 120-day rule

Acknowledgment of Complete LMAs

Doug Oliver

Acknowledgment of Complete LMAs

- Upon receipt of an application, servicers must send an acknowledgment notice within five business days. If the application is complete, the notice must include:
 - ⑩ The date the application became complete,
 - ⑩ A statement that the servicer expects to complete evaluation of the app within 30 days of the date it was received, and
 - ⑩ Other disclosures about the application process and borrower's rights.

The Document Chase:

Communicating Deadlines for Return of
Documents & Obtaining Documents from Third
Party Sources

Doug Oliver

The Document Chase:

If loss mitigation application is **not complete** the 5-day notice must:

- Include “reasonable date” by which the borrower should needed docs or info.
- Generally, under the 2016 Amendments, 30 days is a reasonable date.
- Exception: date cannot be later than the next milestone unless the next milestone is less than 7 days away.

The Document Chase:

Continued

If a servicer needs info from a third party, it must exercise reasonable diligence to obtain it. If this takes more than 30 days from complete application, servicer must delay decision and must provide borrower a written notice that stating:

- The specific documents or information the servicer lacks,
- That the servicer has requested the documents or information, and
- That the servicer will complete the evaluation promptly upon receipt.

Dual Tracking Protections Strengthened:

Communication with Counsel is Paramount
Loss Mitigation & Servicing Transfers

Dual Tracking Protections Strengthened:

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The Consequences of A Complete Application And Foreclosure

- Before Foreclosure Filing: After Servicer Receives Complete Loss Mitigation Application servicer must not make first notice or filing required to commence or initiate foreclosure application before evaluating complete application.
- After Foreclosure Filing: Servicer Cannot Conduct Sale (Bureau's Interpretations)

After Foreclosure Process

- Bureau's Official Interpretations
- Upon a complete application, 12 CFR§ 1024.41 requires servicer to instruct foreclosure counsel not make a dispositive motion;
- Avoid a ruling on a motion, if one is pending
- Avoid a motion or order of sale;
- If sale scheduled, prevent conduct of sale

Servicer Responsibility : Complete Application and Pending Foreclosures

- Servicer must have policy and procedures to facilitate sharing of information with foreclosure counsel regarding complete loss mitigation applications “...reasonably designed...” to ensure prompt notification

Servicing Transfers

- What we already know:

12 CFR 1024.33 Requirements for mortgage servicing transfers:

Notice to borrower of servicing transfers:
transferee: within 15 days prior to transfer;
transferor: within 15 days after transfer

“Grace Period” for Payments: not late if made during 60 day grace period from servicing transfer effective date

Payments made to transferor servicer should:
a) Be sent to transferee; b) return payment

What we already know: Servicing Transfers: Policy and Procedures

12 CFR 1024.38

- Policies and procedures “reasonably designed”:

Transferor: to ensure accurate information to transferee servicer

Transferee: identify necessary documents or information not transferred by transferor

File Retention: transferee servicer must retain records for 1 year after servicing was transferred to transferee.

What We Already Know: Loss Mitigation

- Servicers must comply with 1024.41 regardless of whether a complete loss mitigation application was evaluated by transferor
- Documents transferred from transferor to transferee may constitute a loss mitigation application
- Complete loss mitigation application

Loss Mitigation During Servicing Transfer

- Loss Mitigation in Process: transferee must obtain documents in connection with loss mitigation application during transfer
- Evaluation of complete loss mitigation application should be continued by transferee
- Transferee must consider documents/info sent from transferor as received on the date received by transferor

New Rules: Servicing Transfers: **Loss Mitigation**

- New Section K Lots of obligations for transferee servicers:

Section K reiterates that an application is received by transferee servicer on the date the transferor servicer received it—all rights continue.

Definition of transfer date: when transferee servicer will begin accepting payments

Notice to borrower of incomplete package within 10 days of the transfer date.

New Rules: Foreclosure Prohibition

- When transferee servicer sends notice of incomplete package, the first filing of foreclosure process notwithstanding, State law.
- A Complete loss mitigation application within 37 days of foreclosure sale requires compliance with notice, review requirements, and, prohibition on foreclosure sale.
- Appeals of denials must be decided if not already resolved by transferor, and if transferee servicer is able.---if unable transferee servicer must consider appeal to be a complete package

New Transferee Loss Mitigation

Rules: Appeals and Offers

Appeals :If transferee must decide appeal, then it must complete review of the appeal within 30 days of transfer date, or 30 days from the date of the appeal.

- If transferee servicer is unable to determine appeal , it must treat the appeal as complete loss mitigation application , and evaluate for all loss mitigation options.

Loss Mitigation Offers: If acceptance period has not expired as of date of transfer, transferee must allow borrower to accept or reject during the unexpired timeframe for acceptance.

Definition of Delinquency

Roy Diaz

New Term Added 12 CFR 1024.31

- Delinquency means a period of time during which a borrower and a borrower's mortgage loan are delinquent.
- A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid, until such time as no periodic payment is due and unpaid.

Thank you for attending

Please complete
EVALUATIONS.

It will be emailed next week.

