

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**Request for Information Regarding 2013 RESPA Servicing Rule Assessment**

[Docket No. CFPB-2017-0012]

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

**ACTION:** Notice of assessment of 2013 RESPA servicing rule and request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is conducting an assessment of the Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), as amended prior to January 10, 2014, in accordance with section 1022(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Bureau is requesting public comment on its plans for assessing this rule as well as certain recommendations and information that may be useful in conducting the planned assessment.

**DATES:** Comments must be received on or before: **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB-2017-0012, by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov). Include Docket No. CFPB-2017-0012 in the subject line of the email.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

*Instructions:* All submissions should include the document title and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

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

**FOR FURTHER INFORMATION CONTACT:** Erik Durbin, Senior Economist; Laura A. Johnson, Senior Counsel; Laurie Maggiano, Servicing and Secondary Markets Program Manager; Division of Research, Markets, and Regulations at (202) 435-9243.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Congress established the Bureau in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>1</sup> In the Dodd-Frank Act, Congress generally consolidated in the Bureau the rulemaking authority for Federal consumer financial laws previously vested in certain other Federal agencies. Congress also provided the Bureau with the authority to, among other things, prescribe rules as may be necessary or appropriate to enable the Bureau to

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<sup>1</sup> Public Law 111-203, 124 Stat. 1376 (2010).

administer and carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof.<sup>2</sup> Since 2011, the Bureau has issued a number of rules adopted under Federal consumer financial law.<sup>3</sup>

Section 1022(d) of the Dodd-Frank Act requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The Bureau must publish a report of the assessment not later than five years after the effective date of such rule or order. The assessment must address, among other relevant factors, the rule's effectiveness in meeting the purposes and objectives of title X of the Dodd-Frank Act and the specific goals stated by the Bureau. The assessment must reflect available evidence and any data that the Bureau reasonably may collect. Before publishing a report of its assessment, the Bureau must invite public comment on recommendations for modifying, expanding, or eliminating the significant rule or order.

In January 2013, the Bureau issued the "Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)" (2013 RESPA Servicing Final Rule).<sup>4</sup> The Bureau amended the 2013 RESPA Servicing Final Rule on several occasions before it took effect on January 10, 2014.<sup>5</sup> As discussed further below, the Bureau has determined that the 2013 RESPA Servicing Final Rule and all the amendments related to it that the Bureau made that took effect on January 10, 2014 collectively make up a significant rule for purposes of section 1022(d). The

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<sup>2</sup> 12 U.S.C. 5512(b)(1).

<sup>3</sup> 12 U.S.C. 5512(d).

<sup>4</sup> 78 FR 10695 (Feb. 14, 2013). In January 2013, the Bureau also issued separate "Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z)" (2013 TILA Servicing Final Rule). 78 FR 10901 (Feb. 14, 2013). As discussed below, the Bureau has determined that the 2013 TILA Servicing Final Rule is not a significant rule (either individually or collectively with any amendments to the 2013 TILA Servicing Final Rule that took effect on January 10, 2014) for purposes of Dodd-Frank Act section 1022(d). Therefore, the Bureau is not seeking comment on the 2013 TILA Servicing Final Rule or its related subsequent amendments in this notice.

<sup>5</sup> See *infra* note 9.

Bureau will conduct an assessment of the 2013 RESPA Servicing Final Rule as so amended, which this notice refers to as the “2013 RESPA Servicing Rule.” In this notice, the Bureau is requesting public comment on the issues identified below regarding the 2013 RESPA Servicing Rule.

## **II. Assessment Process**

Assessments pursuant to section 1022(d) of the Dodd-Frank Act are for informational purposes only and are not part of any formal or informal rulemaking proceedings under the Administrative Procedure Act. The Bureau plans to consider relevant comments and other information received as it conducts the assessment and prepares an assessment report. The Bureau does not, however, expect that it will respond in the assessment report to each comment received pursuant to this notice. Furthermore, the Bureau does not anticipate that the assessment report will include specific proposals by the Bureau to modify any rules, although the findings made in the assessment will help to inform the Bureau’s thinking as to whether to consider commencing a rulemaking proceeding in the future.<sup>6</sup> Upon completion of the assessment, the Bureau plans to issue an assessment report no later than January 10, 2019.

## **III. The 2013 RESPA Servicing Rule**

Congress adopted the Dodd-Frank Act in response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression. In the Dodd-Frank Act, Congress enacted a number of new provisions governing the origination and servicing of consumer mortgages. Beginning in 2013,

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<sup>6</sup> The Bureau announces its rulemaking plans in semiannual updates of its rulemaking agenda, which are posted as part of the Federal government’s Unified Agenda of Regulatory and Deregulatory Actions. See Off. of Info. and Reg. Affairs, Off. of Mgmt. and Budget, *Current Regulatory Plan and the Unified Agenda of Regulatory and Deregulatory Actions*, <http://www.reginfo.gov/public/do/eAgendaMain> (last visited Mar. 22, 2017).

the Bureau issued several final rules to implement these new statutory provisions. Those rules generally took effect in January 2014.

In January 2013, the Bureau issued the 2013 RESPA Servicing Final Rule.<sup>7</sup> The 2013 RESPA Servicing Final Rule contained a number of new borrower protections, which are summarized below. After finalizing the rule, consistent with its obligations under section 1022(c) of the Dodd-Frank Act, the Bureau continued to monitor the mortgage servicing market and consider whether changes to the 2013 RESPA Servicing Final Rule were appropriate.<sup>8</sup> During 2013, the Bureau amended the rule to address important questions raised by industry, consumer advocacy groups, and other stakeholders.<sup>9</sup> As noted above, the effective date of the 2013 RESPA Servicing Rule, including these amendments, was January 10, 2014.<sup>10</sup>

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<sup>7</sup> 78 FR 10695 (Feb. 14, 2013). In January 2013, the Bureau also issued the 2013 TILA Servicing Final Rule. 78 FR 10901 (Feb. 14, 2013). The Bureau amended the 2013 TILA Servicing Final Rule on several occasions before it took effect on January 10, 2014. *Infra* note 9. As discussed below, the Bureau has determined that the 2013 TILA Servicing Final Rule is not a significant rule (either individually or collectively with any amendments to the 2013 TILA Servicing Final Rule that took effect on January 10, 2014) for purposes of Dodd-Frank Act section 1022(d). Therefore, the Bureau is not seeking comment on the 2013 TILA Servicing Final Rule or its related subsequent amendments in this notice.

<sup>8</sup> Section 1022(c) provides that, to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in the markets for such products or services.

<sup>9</sup> In the summer and fall of 2013 the Bureau finalized the (1) Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (July 2013 Mortgage Final Rule) and (2) Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z) (September 2013 Mortgage Final Rule). 78 FR 44685 (July 24, 2013); 78 FR 60381 (Oct. 1, 2013). In October 2013, the Bureau clarified compliance requirements in relation to successors in interest, early intervention requirements, bankruptcy law, and the Fair Debt Collection Practices Act (FDCPA), through an Interim Final Rule (IFR) and a contemporaneous compliance bulletin. Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 FR 62993 (Oct. 23, 2013); Bureau of Consumer Fin. Prot., CFPB Bulletin 2013-12, *Implementation Guidance for Certain Mortgage Servicing Rules* (Oct. 15, 2013), available at [http://files.consumerfinance.gov/f/201310\\_cfpb\\_mortgage-servicing\\_bulletin.pdf](http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf).

<sup>10</sup> After the January 10, 2014 effective date of the rules described above, the Bureau made additional changes to the rule. In October 2014, the Bureau added an alternative definition of small servicer that exempted nonprofit entities that meet certain requirements from certain provisions of the 2013 RESPA Servicing Final Rule, as well as from other requirements. Amendments to the 2013 TILA Servicing Final Rule, 79 FR 65299 (Nov. 3, 2014). The effective date of that rule was November 3, 2014. In August 2016, the Bureau issued numerous additional amendments to provisions of the 2013 RESPA Servicing Final Rule. Amendments to the 2013 Mortgage Rules

The 2013 RESPA Servicing Rule in part implements section 1463 of the Dodd-Frank Act, which amended RESPA. Section 1463(a) imposed new mortgage servicing requirements and prohibitions under RESPA on servicers of federally related mortgage loans with respect to force-placed insurance, borrower assertions of error, and borrower requests for information.<sup>11</sup> It also provided the Bureau authority to establish obligations on servicers of federally related mortgage loans appropriate to carry out the consumer protection purposes of RESPA. The Bureau also has the authority under RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of RESPA.<sup>12</sup> Accordingly, the 2013 RESPA Servicing Rule included not only provisions that implemented the specific Dodd-Frank Act requirements mentioned above but also provisions regarding servicing policies and procedures, early intervention with delinquent borrowers, continuity of contact with delinquent borrowers, and loss mitigation procedures, as well as certain exemptions, all of which the Bureau found to be appropriate to carry out or necessary to achieve the purposes of RESPA and title X and prevent evasion of those laws.

*A. Major Provisions of the Servicing Rule*

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under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 81 FR 72160 (Oct. 19, 2016). The effective dates of these amendments are October 19, 2017 and April 19, 2018, depending on the specific requirements. In this notice, the Bureau is not seeking comment on the amendments to the mortgage servicing rules that became or will become effective after the January 10, 2014 effective date of the 2013 RESPA Servicing Rule.

<sup>11</sup> For example, the 2013 RESPA Servicing Rule's force-placed insurance provisions implement sections 6(k)(1)(A), 6(k)(2), 6(l) and 6(m) of RESPA, which were added by section 1463 of the Dodd-Frank Act. The 2013 RESPA Servicing Rule's error resolution and information request provisions implement section 6(k)(1)(B) through (D) of RESPA, which was added by section 1463 of the Dodd-Frank Act. The Dodd-Frank Act also imposed certain new requirements under TILA relating to mortgage servicing, and the Bureau issued rules in TILA's implementing Regulation Z. As noted above and below, the Bureau is not seeking comment on the 2013 TILA Servicing Final Rule or its related subsequent amendments in this notice.

<sup>12</sup> 12 U.S.C. 2617(a).

The 2013 RESPA Servicing Rule addressed six major topics, which are summarized below. Many of these requirements do not apply to small servicers, generally defined as servicers that service 5,000 mortgage loans or fewer and only service mortgage loans the servicer or an affiliate owns or originated.<sup>13</sup> Small servicers are exempt from: certain requirements relating to obtaining force-placed insurance; the provisions relating to general servicing policies, procedures, and requirements; and certain requirements and restrictions relating to communicating with borrowers about, and evaluation of, loss mitigation applications.

*1. Force-placed insurance.* The rule prohibits servicers from charging a borrower for force-placed insurance coverage unless the servicer has a reasonable basis to believe the borrower has failed to maintain hazard insurance required by the loan agreement. Where the borrower has an escrow account for the payment of hazard insurance premiums, the servicer is prohibited from obtaining force-placed insurance where the servicer can continue the borrower's homeowner insurance, even if the servicer needs to advance funds to the borrower's escrow account to do so. The rule also requires servicers to send two notices before charging the borrower for force-placed insurance coverage and provides other requirements regarding force-placed insurance.

*2. Error resolution and information requests.* The rule requires servicers to comply with certain error resolution procedures for written notices of error relating to the servicing of a mortgage loan. Servicers generally are required to acknowledge the notice of error within five days and to investigate and respond in writing within 30 days, either correcting the error or notifying the borrower that no error occurred. Similar procedures and timeframes apply to

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<sup>13</sup> See 12 CFR 1024.30(b)(1); 12 CFR 1026.41(e)(4).

servicer acknowledgment of and response to borrower written requests for information.

3. *General servicing policies, procedures, and requirements.* The rule requires servicers to establish policies and procedures reasonably designed to achieve objectives specified in the rule.

4. *Early intervention with delinquent borrowers.* The rule generally requires servicers to establish or make good faith efforts to establish live contact with borrowers by the 36th day of their delinquency (for each billing cycle for which a payment sufficient to cover principal, interest, and, if applicable, escrow is due and unpaid) and to promptly inform such borrowers, where appropriate, that loss mitigation options may be available. In addition, servicers must generally provide borrowers a written notice with information about loss mitigation options by the 45th day of their delinquency.

5. *Continuity of contact with delinquent borrowers.* The rule requires servicers to maintain reasonable policies and procedures with respect to providing delinquent borrowers with access to personnel to assist them with loss mitigation options where applicable.

6. *Loss mitigation procedures.* The rule requires servicers to follow specified loss mitigation procedures for a mortgage loan secured by a borrower's principal residence. Servicers generally must provide a written notice acknowledging receipt of a borrower's loss mitigation application within five days and exercise reasonable diligence in obtaining documents and information to complete the application. For a complete loss mitigation application received more than 37 days before a foreclosure sale, the rule requires the servicer to evaluate the borrower, within 30 days, for all loss mitigation options available to the borrower in accordance with the investor's eligibility rules. The rule also prohibits a servicer from making the first notice or filing required by applicable law for any judicial or nonjudicial foreclosure process



until a mortgage loan is more than 120 days delinquent and places certain restrictions on “dual tracking,” where a servicer is simultaneously processing a consumer’s loss mitigation application at the same time that it advances the foreclosure process.

*B. Significant Rule Determination*

The Bureau has determined that the 2013 RESPA Servicing Rule is a significant rule for purposes of Dodd-Frank Act section 1022(d). The Bureau makes this determination partly on the basis of the estimated aggregate annual cost to industry of complying with the rule.<sup>14</sup> The rule mandated a large number of changes in the features of mortgage servicing, including new disclosures for force-placed insurance, an expanded error resolution regime, and new servicing procedures and requirements that apply to all servicing of delinquent loans, including mandated timelines and procedural rights in loss mitigation. These changes in turn required multiple changes in business operations, including adjustments in technology, training and compliance. The Bureau noted in the preamble to the 2013 RESPA Servicing Final Rule that these changes would require servicers to make changes to systems and procedures and that the new requirements could require servicers to increase staffing time devoted to certain activities and to hire more staff.<sup>15</sup> Taking all of these factors into consideration, the Bureau has concluded that the 2013 RESPA Servicing Rule is “significant” for purposes of Dodd-Frank Act section

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<sup>14</sup> In the Paperwork Reduction Act (PRA) Analysis published with the 2013 RESPA Servicing Final Rule, the Bureau estimated an additional 1,100,000 in ongoing burden hours (as well as an additional 29,000 in one-time burden hours) from the 2013 RESPA Servicing Final Rule. 78 FR 10695, 10873 (Feb. 14, 2013). In the Supporting Statement submitted to OMB, the Bureau valued the ongoing burden hours at \$19.00 per hour. Thus, there was approximately \$20.9 million in additional ongoing PRA burden from the 2013 RESPA Servicing Final Rule. In addition, the Bureau estimated that the 2013 RESPA Servicing Final Rule would increase the cost of servicing distressed loans subject to the new requirements in ways not included in the PRA burden, and estimated that these additional costs would total at least \$90 million. See U.S. Gov’t Accountability Off., GAO-14-67, *Dodd-Frank Regulations: Agencies Conducted Regulatory Analyses and Coordinated but Could Benefit from Additional Guidance on Major Rules*, at 18-19 (Dec. 11, 2013), available at <http://www.gao.gov/products/GAO-14-67>.

<sup>15</sup> See 78 FR 10695, 10847-60 (Feb. 14, 2013).

1022(d).

The 2013 TILA Servicing Final Rule became effective at the same time as the 2013 RESPA Servicing Rule. The Bureau has determined that the 2013 TILA Servicing Final Rule is not a significant rule (either individually or collectively with any amendments to the 2013 TILA Servicing Final Rule that took effect on January 10, 2014) for purposes of Dodd-Frank Act section 1022(d). The rule implemented the periodic statement requirement created by Dodd-Frank Act section 1420, and exempted small servicers from this requirement. The rule also required a new initial adjustable-rate mortgage notice and revised certain existing disclosures and other servicing provisions under the Truth in Lending Act. The estimated cost to servicers of complying with the rule is small, as set forth in the Bureau's analysis of benefits and costs that accompanied the rule.<sup>16</sup> In this respect, the 2013 TILA Servicing Final Rule generally modified important disclosures that consumers were already receiving, meaning that additional ongoing costs and operational changes to distribute the disclosures are small.<sup>17</sup> The rule did require one-time changes to provide additional important information in the disclosures;<sup>18</sup> however, Bureau outreach generally found that vendors would make these changes so the one-time costs would be

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<sup>16</sup> In the PRA Analysis published with the 2013 TILA Servicing Final Rule, the Bureau estimated an additional 56,000 in ongoing burden hours (as well as an additional 5,000 in one-time burden hours) from the 2013 TILA Servicing Final Rule as well as ongoing vendor costs of \$5.7 million. 78 FR 10901, 11004 (Feb. 14, 2013). In the Supporting Statement submitted to OMB, the Bureau valued the ongoing burden hours at \$19.00 per hour. Thus, there was approximately \$6.7 million in additional ongoing PRA burden from the 2013 TILA Servicing Final Rule. The Bureau's section 1022 (b)(2) analysis considered that covered persons might receive less revenue through fees and charges as consumers responded to superior disclosures, but did not identify these costs as substantial. 78 FR 10901, 10989.

<sup>17</sup> Consumers were already receiving the ARM adjustment notice, and the Bureau estimated that the new periodic statement, where required, would for the most part replace billing statements that consumers were already receiving. Regarding the new initial interest rate adjustment disclosure, the Bureau estimated that annual production and distribution costs would be \$140,000 (50 cents per disclosure). 78 FR 10901, 10988 (Feb. 14, 2013).

<sup>18</sup> The Bureau noted that the additional information provided by the revised ARM adjustment notice and new periodic statement might require servicers (more specifically, their vendors) to access databases that were not regularly accessed by systems that produced the existing disclosures. 78 FR 10901, 10984-85, 10992 (Feb. 14, 2013).

spread over many entities.<sup>19</sup> The rule’s new disclosure requirements were intended to help certain groups of consumers make better decisions and were not expected to affect competition, innovation, or pricing in the mortgage market. These factors lead the Bureau to conclude that the 2013 TILA Servicing Final Rule is not “significant” for purposes of section 1022(d).

#### **IV. The Assessment Plan**

Because the Bureau has determined that the 2013 RESPA Servicing Rule is a significant rule for purposes of Dodd-Frank Act section 1022(d), section 1022(d) requires the Bureau to assess the rule’s effectiveness in meeting the purposes and objectives of title X of the Dodd-Frank Act and the specific goals stated by the Bureau. Section 1021 of the Dodd-Frank Act states that the Bureau’s purpose is to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive. Section 1021 also sets forth the Bureau’s objectives, which are to ensure that, with respect to consumer financial products and services:

- Consumers are provided with timely and understandable information to make responsible decisions about financial transactions;
- Consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;
- Outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

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<sup>19</sup> 78 FR 10901, 10985 (Feb. 14, 2013).

- Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and
- Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

In the 2013 RESPA Servicing Rule, the Bureau stated that, considered as a whole, RESPA, as amended by the Dodd-Frank Act, reflects at least two significant consumer protection purposes: (1) to establish requirements that ensure that servicers have a reasonable basis for undertaking actions that may harm borrowers; and (2) to establish servicers' duties to borrowers with respect to the servicing of federally related mortgage loans.<sup>20</sup> The Bureau further stated that, specifically with respect to mortgage servicing, the consumer protection purposes of RESPA include: (1) responding to borrower requests and complaints in a timely manner; (2) maintaining and providing accurate information; (3) helping borrowers avoid unwarranted or unnecessary costs and fees; and (4) facilitating review for foreclosure avoidance options.<sup>21</sup> The Bureau further stated that each of the provisions adopted in the 2013 RESPA Servicing Rule was intended to achieve some or all of these purposes.<sup>22</sup> The Bureau intends to focus the assessment on how well the rule has met these four purposes, which it believes are corollaries to certain of the Bureau's five objectives set forth in section 1021.

To assess the effectiveness of the 2013 RESPA Servicing Rule, the Bureau plans to analyze a variety of metrics and data to the extent feasible. Feasibility will depend on the availability of data and the cost to obtain any new data. The Bureau will seek to gather

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<sup>20</sup> 78 FR 10695, 10709 (Feb. 14, 2013).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

information about activities and outcomes including the ones listed below and seek to understand how these activities and outcomes relate to each other:

- (1) Servicer activities undertaken to comply with the 2013 RESPA Servicing Rule, such as responding to loss mitigation applications or responding to borrower notices of error, including the timing of these actions;
- (2) Consumer activities, including (a) utilization of the rights provided by the 2013 RESPA Servicing Rule, such as assertion of errors, submission of loss mitigation applications, submission of complete applications, and use of appeals; and (b) consumer actions that may be prompted or enabled by the 2013 RESPA Servicing Rule, such as additional payments or other consumer responses after early intervention by the servicer or consumer verification of hazard insurance in response to the 45 day notice sent by the servicer; and
- (3) Consumer outcomes that the 2013 RESPA Servicing Rule sought to affect, including, for example, fees and charges assessed and paid, incidence and severity of delinquency, how delinquency is resolved, and time to resolution of delinquency. **The Bureau will seek data that can help distinguish negative outcomes that are plausibly avoidable by consumers from those that are not.**

The Bureau will seek to understand how these metrics relate to one another. In particular, to the extent possible given available data, the Bureau will seek to understand how the consumer outcomes described in category 3 are affected by the measures of servicer and consumer activities described in categories 1 and 2.

The Bureau intends to place emphasis in the assessment on provisions of the 2013 RESPA Servicing Rule that have particular relevance to delinquent borrowers. These include

provisions governing servicers' communication with delinquent borrowers and loss mitigation procedures, as well as provisions providing rights that could be particularly important to consumers facing payment difficulties, including error resolution requirements and requirements applicable to force-placed insurance. In conducting the assessment the Bureau plans to focus its resources, particularly with respect to efforts to collect new data, on these provisions. The Bureau anticipates addressing other provisions of the 2013 RESPA Servicing Rule to the extent that data are already available to the Bureau, provided by commenters in response to this notice, or identified by commenters and reasonably available.

In conducting the assessment, the Bureau will seek to compare servicer and consumer activities and outcomes to a baseline that would exist if the 2013 RESPA Servicing Rule's requirements were not in effect. Doing so is challenging because the Bureau cannot observe the activities and outcomes of an unregulated "control" group, *i.e.*, of a representative group of servicers that are exempt from the 2013 RESPA Servicing Rule.<sup>23</sup> In some cases the Bureau may have access to data from before the effective date of the 2013 RESPA Servicing Rule that is informative about the outcomes absent the 2013 RESPA Servicing Rule. In other cases there may be institutional factors that indicate what one would expect to observe absent the 2013 RESPA Servicing Rule's requirements, for example, where servicer incentives absent the rule are very clear. Even if one can observe a clear association between activities that the rule requires and consumer outcomes, the Bureau recognizes that some of those activities might also

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<sup>23</sup> Exempt entities can serve as a limited type of control group. While small servicers are exempt from many provisions of the 2013 RESPA Servicing Rule, the Bureau understands that many small servicers follow a business model that differs in important respects from that of larger servicers, which may make small servicers an ineffective control group. The Bureau plans to explore whether small servicers that fall just below the 5,000-loan cutoff might serve as an effective control group to analyze the effectiveness of those provisions of the 2013 RESPA Servicing Rule from which small servicers are exempt.

be required by consent orders, State law, or private contracts. In these cases, the impacts one observes may reflect these other requirements in addition to those of the rule. The Bureau will draw conclusions as supported by the data, taking into account that factors other than the rule itself may affect observable outcomes.

The Bureau has data sources, currently available or in development, with which to undertake these analyses, and the Bureau is also planning to secure additional data. These data sources include the National Mortgage Database (NMDB) and the American Survey of Mortgage Borrowers (ASMB)<sup>24</sup>, data from consumer complaints submitted to the Bureau, servicing data from a private vendor, and applicable information obtained from Bureau supervision and enforcement activities. The Bureau is also exploring the availability and utility of other sources of administrative data for conducting the assessment.

The Bureau intends to seek input from housing counselors, legal aid attorneys, and mortgage servicers as it analyzes the data described above and interprets the findings. The Bureau is also seeking to obtain deidentified loan-level data from a small number of servicers. This would potentially allow the Bureau to correlate mandated servicer activity (*e.g.*, the early intervention requirements of the 2013 RESPA Servicing Rule) with consumer activity (*e.g.*, additional consumer payments or additional loss mitigation applications occurring shortly after early intervention communications). It would also potentially allow the Bureau to correlate

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<sup>24</sup> The NMDB and the ASMB are multi-year projects being jointly undertaken by the Federal Housing Finance Agency (FHFA) and the Bureau. *See* Fed. Hous. Fin. Agency, *National Mortgage Database*, <http://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/National-Mortgage-Database.aspx> (last visited Mar. 22, 2017); Fed. Hous. Fin. Agency, *American Survey of Mortgage Borrowers*, <http://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/American-Survey-of-Mortgage-Borrowers.aspx> (last visited Mar. 22, 2017); Bureau of Consumer Fin. Prot., *Technical Reports: National Survey of Mortgage Originations and National Mortgage Database*, <http://www.consumerfinance.gov/data-research/research-reports/technical-reports-national-survey-of-mortgage-borrowers-and-national-mortgage-database/> (last visited Mar. 22, 2017).

consumer and servicer activity with the measures of immediate consumer outcomes discussed earlier (fees and charges, delinquency resolution, time to resolution).

## **V. Request for Comment**

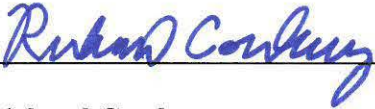
To inform the assessment, the Bureau hereby invites members of the public to submit information and other comments relevant to the issues identified below, as well as any information relevant to assessing the effectiveness of the 2013 RESPA Servicing Rule in meeting the purposes and objectives of title X of the Dodd-Frank Act (section 1021) and the specific goals of the Bureau (enumerated above). In particular, the Bureau invites the public, including consumers and their advocates, housing counselors, mortgage loan servicers and other industry representatives, industry analysts, and other interested persons to submit the following:

- (1) Comments on the feasibility and effectiveness of the assessment plan, the objectives of the 2013 RESPA Servicing Rule that the Bureau intends to emphasize in the assessment, and the outcomes, metrics, baselines, and analytical methods for assessing the effectiveness of the rule as described in part IV above;
- (2) Data and other factual information that may be useful for executing the Bureau's assessment plan, as described in part IV above;
- (3) Recommendations to improve the assessment plan, as well as data, other factual information, and sources of data that would be useful and available to execute any recommended improvements to the assessment plan;
- (4) Data and other factual information about the benefits and costs of the rule for consumers, servicers, and others in the mortgage industry; and about the effects of the rule on transparency, efficiency, access, and innovation in the mortgage market;



- (5) Data and other factual information about the rule's effectiveness in meeting the purposes and objectives of title X of the Dodd-Frank Act (section 1021), which are listed in part IV above; and
- (6) Recommendations for modifying, expanding or eliminating the 2013 RESPA Servicing Rule.

Dated: April 29, 2017.



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**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*