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New Mortgage Servicing Requirements Under Part 419

June 23, 2020

New mortgage servicing requirements in New York State took effect on June 15, 2020, and the New York State Department of Financial Services ("DFS") has issued guidance with respect to several of the key provisions.

The new requirements, set forth in new Part 419 of the Superintendent of Financial Services Regulations ("Part 419" or the "new regulation"), contain expansive mortgage servicing requirements that exceed corresponding federal rules and the temporary New York state regulation in effect prior to December 18, 2019 ("old rule"). DFS originally allowed a 90-day transition period from the December 18, 2019 effective date to implement these requirements, and that transition period was further extended to June 15, 2020.

On June 12, 2020, the DFS issued a last-minute order granting a 60-day extension on the requirement in Part 419 to provide periodic statements if a mortgage servicer (1) is unable to provide statements in compliance with Part 419 due to the outbreak of COVID-19, and (2) posts a notice on its website advising consumers that they will be able to receive periodic statements under Part 419 on or shortly after August 14th. [1]

Part 419 sets forth rules of conduct for persons who engage in servicing mortgage loans[2] in New York, whether or not they are registered or are required to be registered in the State. Accordingly, Part 419 potentially applies to exempt organizations[3] such as federally-chartered financial institutions.[4] Originators and/or note holders that also hold mortgage servicing rights or have been delegated servicing functions for covered mortgage loans, either directly or indirectly are subject to the new regulation. Additionally, the term "borrower" is broadly defined to include a successor in interest or authorized representative[5].

On June 12, 2020 DFS issued Frequently Asked Questions ("FAQs") providing guidance with respect to certain provisions of Part 419. Among other things, the FAQs state that except for the periodic statement requirements (which appears to apply to all home equity lines of credit ("HELOCs")), the mortgage servicing requirements generally apply to HELOCs in a first-lien position. The FAQs also confirm that, unlike the federal mortgage servicing rules, Part 419 does not provide exemptions for small servicers, or reverse mortgage loans.

Below is a list of some notable changes in the new regulation:

- Addition of periodic statement requirements and certain detailed information to annual statements and payment history;

- Escrow account analysis, written explanation and wait period requirements upon advancing funds in paying a disbursement not as a result of default payment;
- Expanded restrictions on servicing fees such as late fees and property valuation fees;
- Detailed complaints and inquiries intake and response process;
- Expanded protections available to delinquent borrowers and borrowers seeking loss mitigation assistance;
- Restrictions on foreclosure process and duty of fair dealing;
- Detailed requirements on oversight of third-party vendors such as maintenance of policies and procedures addressing required topics; and
- Addition of requirements for affiliated business arrangements including written notice and restrictions on compensation.

Below is a section-by-section description and brief analysis of some of the key provisions of the new Part 419.

Section 419.2 Escrow Accounts

The old rule only required servicers to make payments of the taxes or insurance premiums due, and handle shortages, surpluses or deficiencies, in accordance with the requirements of the Real Estate Settlement Procedures Act ("RESPA"). Consistent with the old rule and federal requirements,[6] servicers must continue to conduct an escrow account analysis upon establishing an escrow account, at completion of the escrow account computation year, and upon advancing funds in paying a disbursement which is not the result of a borrower's payment default and provide the borrower with written explanation pursuant to the new regulation. In addition, the new Section 419.2 requires the servicer to wait 30 calendar days before seeking payment of the funds necessary to correct the deficiency.

Pursuant to the FAQs, to the extent that a borrower has been granted a forbearance under DFS Emergency Regulation Part 119, any New York State statute that may grant borrowers extended forbearance (which will include the recently-enacted Banking Law Section 9-x), or the CARES Act, the servicer may delay the escrow account analysis and borrower notice and explanation required under Part 419 until such time as the servicer is considering what repayment or loan modification options to offer to the borrower to pay off the amount of the forbearance, inclusive of any extended forbearance.

Section 419.3 Crediting of Payments

Late Payments

Further clarification regarding crediting late payments has been added to Part 419. Prior to collecting a late fee, servicers are now required to credit late payments "to interest, principal, taxes, insurance and other fees."

Written Policies and Procedures

The new regulation expands the previous requirement to establish written policies and procedures for payment overages and shortages. The policies and procedures must address the following aspects:

- how to address payment overages and shortages, including unapplied funds and payments held in suspense accounts; and
- if a servicer retains but does not apply a partial payment, the servicer must, on accumulation of sufficient funds in a suspense or unapplied funds account to cover a periodic payment: (1) treat the accumulated funds as a periodic payment, and (2) credit that payment to the borrower's loan.

The new regulation also permits the required notice to be provided electronically, in accordance with Article III of the New York Technology Law, if the borrower has agreed to accept paperless billing.

Section 419.4 Statement of Account

Under the new regulation, a servicer must now issue periodic statements for each billing cycle. The old rule required servicers to provide each borrower with an annual statement and, when requested by the borrower, payment histories, but did not require periodic statements.

Annual Statements and Payment History

The new regulation preserves the requirement for a servicer to provide annual statements within 30 days of the end of the escrow account computation year in a manner that complies with RESPA and its implementing Regulation X. In addition, the new Section 419.4 requires annual statements and payment history to reflect "the application of all payments during such period."

Periodic Statements

The old rule did not contain specific requirements on periodic statements. Detailed requirements regarding periodic statements have now been added by the new regulation. These requirements for periodic statements mirror the federal requirements for the most part, but contain certain variations. Consistent with federal servicing rules, Section 419.4 does not apply to a borrower who has filed for Chapter 11 bankruptcy.

The FAQs sate that until further notice, a servicer that furnishes a periodic statement to a HELOC borrower that complies with the requirements of federal Regulation Z is not required to furnish a periodic statement to that borrower pursuant to Part 419.4(c). Unlike the federal requirements under Regulation Z [7], Section 419.4 does not provide express exemption for reverse mortgages, certain fixed-rate loans that use coupon books, small servicers, or charged-off loans.

Additionally, the federal rule does not require a servicer to provide to a confirmed successor in interest any written disclosure unless and until the confirmed successor in interest either assumes the mortgage loan obligation under state law or has provided the servicer an executed acknowledgment[8]. Section 419.4 does not contain similar conditions and thus requires a periodic statement to be provided for a larger number of loan types and parties in interest, as may be applicable.

Under the new Section 419.4, for each billing cycle, servicers must provide borrowers with a periodic statement containing required information such as the amount due, past payment itemization, a list of any transaction activity that causes a credit or debit to the amount currently due, disclosure in connection with a partial

payment, account information, escrow statement and additional information for loans that are 45 days or more delinquent. An "escrow statement" includes the amounts deposited into escrow and disbursed from escrow during the applicable period. Regulation Z does not require an escrow statement in periodic statements.

Periodic statements for loans that are 45 days or more delinquent must contain certain additional information:

- The date on which the borrower became delinquent instead of the "length of the consumer's delinquency" as required under the federal regulation[9];
- A "breakdown of the total payment amount needed to bring the account current, including a detailed breakdown of the actual fees and charges claimed, as well as, a date upon which the payment amount specific will expire and no longer be sufficient to bring the account current" instead of a disclosure of "the total payment amount needed to bring the account current" as required under federal regulation[10];
- An account history;
- A notification of possible risk that may be incurred if the delinquency is not cured;
- A notice indicating any loss mitigation program to which the borrower has agreed, if applicable; and
- A notice indicating whether it has fulfilled the pre-foreclosure notice requirements of New York Real Property Actions and Proceedings Law section 1304 or Uniform Commercial Code section 9-611(f), if applicable.

The FAQs explain that the practice of "bill and receipt" (creating a periodic statement for the next payment due once the payment for the current month is received) is permissible under Part 419. Additionally, the term "computation year" in Part 419.4(a) refers to the "escrow account computation year" that conforms to the definition under federal Regulation X, or a 12-month period that a servicer establishes for the escrow account beginning with the borrower's initial payment date. A servicer may send the billing statements, notices and disclosures required under Part 419 electronically if certain conditions are met, including compliance with the New York State and federal electronic notice requirements and the borrower consents to receiving Part 419 notices electronically.

Section 419.5 Fees

Fee Schedule

The fee schedule requirements are updated to require servicers to publish, keep current, and make available upon request, a schedule of servicing fees. Additionally, the schedule must identify each fee, provide a "plain language" explanation of when and why the fee will be charged and state the amount of the fee or range of amounts or, if there is no standard fee, how the fee is calculated or determined.

Authorized Fees

As to the types of fees that a servicer may charge, the new regulation requires a fee to be "reasonably related to the cost of rendering service" in addition to meeting one of these conditions:

- expressly authorized and clearly and conspicuously disclosed by the loan instruments and not prohibited by law;
- expressly permitted by law and not prohibited by the loan instruments; or

- not prohibited by law or the loan instruments and is for a specific service requested by the borrower that is assessed only after disclosure of the fee is provided.

Attorneys' Fees

There are three main changes with respect to attorneys' fees:

- The new regulation adds reference to the New York Civil Practice Law and Rules section 3408(h), which prohibits a party to a foreclosure action from requiring payment from the other party for any costs, including attorneys' fees for appearance at or participation in the settlement conference.
- The restriction on attorneys' fees charged in connection with a foreclosure action is removed.
- The fee and a breakdown of the tasks performed must be "reasonable and customary" and disclosed to the borrower prior to entering into the agreement governing the loss mitigation option, reinstatement or loan satisfaction.

Late and Delinquency Fees

The new regulation adds certain restrictions on assessment of late fees and prohibits charging late fees for borrowers who make timely trial modification payments. The 2% limitation on late fees does not apply to "loans or forbearances insured by the federal housing commissioner or for which a commitment to insure has been made by the federal housing commissioner or to any loan or forbearance insured or guaranteed pursuant to the provisions of an act of congress entitled 'Servicemen's Readjustment Act of 1944.'"

Property Valuation Fee

The old rule did not contain specific requirements on property valuation fees. The new regulation adds detailed restrictions on a servicer's ability to impose a property valuation fee. Servicers are now prohibited from charging a property valuation fee more than once during a 12-month period. However, a servicer may charge a reasonable fee for a property valuation to facilitate a borrower's loss mitigation application, provided that the servicer has already provided, without charge, one property valuation within the preceding 12-month period. The FAQs further explain that a servicer may charge for another property valuation in a 12-month period if the borrower: (1) requested the property valuation; (2) was given prior written notice of the fee associated with the procurement of the valuation; and (3) consents to pay the fee.

Section 419.6 Borrower Complaints and Inquiries

The old rule required servicers to comply with requirements relating to "Qualified Written Requests" pursuant to Regulation X. The new regulation deletes that reference and prescribes very detailed procedures about handling borrower complaints and inquiries which are similar to those under federal Regulation X. However, since the new Part 419 does not define "complaint" and "inquiry," it is unclear whether the coverage of this section is broader than what is considered a "Qualified Written Request" asserting errors relating to the servicing of mortgage loans under Regulation X[11].

Required Information on Statement of Account

In addition to requirements regarding maintaining policies and procedures for handling complaints and proper staffing, consistent with the old rule, Section 419.6 continues to require certain information, such as the DFS Consumer Assistance Unit's contact information, to appear on every welcome packet, periodic statement, annual statement, and websites maintained by the servicer.

Acknowledgment Notice

Section 419.6 establishes a 5-business day period by which a servicer must acknowledge receipt of a complaint, inform the borrower of any additional information required and the single point of contact for escalation status of the complaint, as applicable.

Reasonable Investigation and Response

Upon receiving a borrower complaint, a servicer must conduct a reasonable investigation and either:

- Correct any error or other servicing-related issue identified and provide the borrower with a written notification containing required information[12]; or
- If no error occurred or no action is warranted to correct a servicing-related issue, provide the borrower with a written notice containing required information.[13]

If a complaint is deemed privileged or confidential, the servicer must include in its response a reasonable description of the contents of each withheld document and the basis for withholding the document if it determines that a document requested by the borrower is privileged or confidential. The federal rule does not contain such requirement.

Timing

Generally, servicers have 30 business days to provide a response to a borrower complaint. For a complaint relating to the accuracy of a payoff balance amount, the servicer must respond within seven business days. Please note that for complaints in connection with residential foreclosure, a servicer must provide a response by the earlier of: (1) prior to the foreclosure sale; or (2) 15 business days after receipt of the complaint (Regulation X provides a 30-business day period[14]). Instead of the 15-business day extension permitted under Regulation X [15], a servicer is only allowed to extend the 30-business day response time by seven business days under Section 419.6.

Escalation Process

A servicer must have a process that enables borrowers to escalate complaints or pending loss mitigation matters for a supervisory level review. The old rule and federal rules do not contain such requirement.

No Express Exemption for Duplicative, Overbroad or Untimely Complaint

Unlike Regulation X, which expressly states that servicers need not respond to duplicative, overbroad or untimely notices of error[16], Section 419.6 does not contain an express exemption for responding to these types of

complaints.

Section 419.7 Residential Mortgage Loan Delinquencies and Loss Mitigation Efforts

The rules in new Part 419 for loan delinquencies and loss mitigation generally conform to the corresponding federal requirements. However, the new regulation adopts more stringent requirements in certain aspects as compared to the old rule and the federal requirements.

Single Point of Contact

Unlike the federal rule[17] where personnel must be assigned prior to the 45th day of delinquency, new Section 419.7 requires a single point of contact ("SPOC") to be assigned to borrowers who are at least 30 days delinquent or have requested a loss mitigation application (or earlier at a servicer's option). An assigned SPOC must have direct and immediate access to personnel with the authority to stop foreclosure proceedings and an obligation to communicate immediately to such personnel any information received by the SPOC indicating that it may be necessary or appropriate to stop a foreclosure proceeding in compliance with Sections 419.10(a)(4) and (5). The old rule only required a servicer to maintain and make available to borrowers the current contact information of designated loss mitigation staff.

Late Payment Notice and Early Intervention Notice

Servicers must provide a late payment notice no later than 17 days after the payment becomes due and remains unpaid, and an early intervention notice no later than the 45^{th} day of a borrower's delinquency. These notices must contain certain information, such as the nature and extent of the delinquency, loss mitigation options, the servicer's loss mitigation protocols, and the DFS Consumer Assistance Unit's contact information.

Acknowledgment Notice

If a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, the servicer must send an acknowledgment notice within five business days of receipt containing certain required information, such as completeness status of the application and key elements of the loss mitigation process. For an incomplete application, the notice must identify any required documents to complete the application, state the effect of failure to submit all required documents and actions that will be taken by the servicer.

Evaluation for Complete and Incomplete Loss Mitigation Applications

If a servicer receives a complete application more than 37 days before a foreclosure sale, the servicer must evaluate the borrower for all loss mitigation options and review any initial determination to deny a loss mitigation option within 30 days of receiving the complete loss mitigation application. Generally, servicers must only evaluate complete applications. However, under the new regulation servicers can evaluate incomplete applications if they remain incomplete for 30 days without borrower progress, despite the servicer's reasonable diligence. The old rule did not address evaluation based on incomplete loss mitigation applications. The federal servicing rules allow a "reasonable time" for the purpose of evaluating a borrower for loss mitigation based on an

incomplete application.[18]

The FAQs state that a loss mitigation application is deemed facially complete at the time that the borrower submits all the documents and information identified by the servicer in the 45-day delinquency notice or the 5-day loss mitigation acknowledgment required under Part 419. If the servicer reasonably determines that additional information or correction is required to complete the application, the borrower must be given a reasonable amount of time to provide such additional information or correction. If the borrower provides the additional information or correction within the time specified by the servicer, the application must be considered complete as of the time the information is received.

Notice of Loss Mitigation Application Determination

The old rule stated that a notice granting a loss mitigation application must contain information about the "material terms, costs and risks." The new regulation requires more detailed disclosures in a notice granting a loss mitigation application, which include but are not limited to, changes to the terms of the mortgage loan known to the servicer after due diligence; a breakdown of the loan balance and an itemization of any fees or charges assessed; and any amounts capitalized and applied to the balance of the mortgage loan.

As to the loss mitigation denial, Regulation X only requires a statement of the reason(s) for a denied loan modification.[19] Consistent with the old rule, Part 419.7 requires the loss mitigation denial notice to specify the reasons for the declination of each loss mitigation option, instructions on appeal, other loss mitigation options and the DFS contact information for filing a complaint.

In circumstances where a complete loss mitigation application is received 90 days or more before a foreclosure sale, Part 419.7 provides 30 days for borrowers to respond to the available loss mitigation options. This 30-day borrower response time frame is more than the 14-day period required by Regulation X[20] .

If an initial loss mitigation is denied, an escalation process must be available where a supervisory review will be performed.

Section 419.8 Volume of Servicing Report

The new regulation continues to require each servicer to compile and submit to the Superintendent a quarterly report of its servicing activity in the State within 30 days of the end of each calendar quarter in a format required by the Superintendent.

Section 419.9 Books and Records and Annual Reports

In addition to the existing three-year record retention requirements, and the requirement that servicers must keep books and records in a manner that will allow the Superintendent to determine compliance with applicable laws and regulations, the new regulation requires specific records to be kept, such as all communications between the servicer and the borrower in connection with a complaint, including related documentation. The records must include information such as the date the servicer received the complaint, the name(s) of the

servicer personnel assigned to investigate the complaint, the nature of the complaint, the status of the complaint, and the action the servicer has taken on the complaint.

Additionally, servicers are required under the new regulation to provide more extensive reporting and analysis on delinquency and foreclosure activity, including loss mitigation activity, and to compare data about its own operations to reports published by industry, investors, and others.

Section 419.10 Servicing Prohibition and the Duty of Fair Dealing

Restrictions on Commencing Residential Foreclosure

The old rule provided that "a servicer should avoid initiating a foreclosure action if the borrower has requested and is being considered for a loss mitigation option or if the borrower is in a trial or permanent modification and is not more than 30 days in default under the modification agreement." The new regulation prohibits a servicer from commencing a residential foreclosure action against a borrower if the borrower submits a complete loss mitigation application, unless (1) the servicer has determined and notified the borrower about his/her ineligibility of loss mitigation, and the appeal process has been exhausted; (2) the borrower rejects all loss mitigation options offered; (3) the borrower is more than 30 days in default under a trial or permanent modification agreement; or (4) the foreclosure is based on a violation of a due on sale clause. Moreover, if the borrower submits an incomplete loss mitigation application, the servicer cannot initiate a foreclosure action unless the borrower fails to provide the documents necessary for a complete loss mitigation application within 15 days (excluding legal public holidays, Saturdays and Sundays) after the servicer sends the incomplete loss mitigation application acknowledgment notice.

Restrictions on Moving for Judgement of Residential Foreclosure or Conducting Foreclosure Sale

Under the new regulation a servicer cannot move for a judgment of foreclosure and sale or conduct a foreclosure sale when (1) a borrower is in compliance with a trial modification, forbearance, or repayment plan; (2) all related parties such as first lien investor or junior lien holder have agreed to a short sale or deed in lieu, and proof of funds or financing has been supplied to the servicer; or (3) a borrower has submitted a complete loss mitigation application more than 37 days before a foreclosure sale, unless: (i) the servicer has determined and provided notice that no loss mitigation options are available and the appeal process has been exhausted; (ii) the borrower has rejected all loss mitigation options offered; or (iii) the borrower is more than 30 days delinquent under a trial or permanent modification.

Good Faith and Fair Dealing

Among other good faith and fair dealing requirements, Part 419.10 sets forth circumstances where servicers should consider alternatives to foreclosure. This section also imposes obligations on servicers to structure loan modifications that result in payments that are reasonably affordable and sustainable for the borrower at the time the modification is made.

Section 419.11 Oversight of Third-Party Providers[21]

A "third-party provider," for whom a servicer must have policies and procedures to oversee and manage, includes any person or entity retained by or on behalf of the servicer, such as foreclosure firms, law firms, foreclosure trustees, and other agents, independent contractors, subsidiaries and affiliates, that provides insurance, foreclosure, bankruptcy, mortgage servicing, including loss mitigation, or other products or services, in connection with the servicing of a mortgage loan. The new regulation expands the old rule's requirements on vendor management. It requires servicers to adopt and maintain third-party oversight policies and procedures that cover certain issues such as due diligence, compliance with applicable laws, responsibility for acts or omissions of a third party, disclosures, periodic reviews and monitoring measures.

Specifically, the policies and procedures must address the following:

- A servicer must perform appropriate due diligence of the third-party provider's qualifications, expertise, capacity, reputation, complaints, information systems, document custody practices, quality assurance plans, financial viability, and compliance with applicable laws and regulations;
- A servicer must require third-party providers' compliance with the servicer's applicable policies and procedures and applicable New York and federal laws;
- A servicer must remain responsible for all actions taken by the third-party provider;
- A servicer must clearly and conspicuously disclose to borrowers if it uses a third-party provider and that the servicer remains responsible for all actions taken by the provider;
- Periodic reviews on the third-party provider must be conducted no less than annually, and such reviews must contain required information and must be conducted by servicer employees who are separate and independent of employees who prepare foreclosure or bankruptcy documents;
- All third-party providers must have appropriate and reliable contact information for relevant servicer employees; and
- A servicer must take appropriate remedial steps if the servicer identifies any problems through the periodic reviews or otherwise, including terminating the relationship with the third party.

Additionally, policies and procedures detailing how the servicer will oversee and communicate with counsel and those with authority to fully dispose of the case concerning foreclosure proceedings must, at a minimum:

- Detail how notice of a borrower's status for consideration for loss mitigation will be provided to foreclosure attorneys and trustees, and whether the borrower is being evaluated for or is currently in a trial or permanent modification;
- Ensure that foreclosure and bankruptcy counsel comply with the mandatory settlement conferences requirements in residential foreclosure actions pursuant to the New York Civil Practice Law and Rules section 3408; and
- Require foreclosure attorneys to comply with all applicable legal requirements, including all relevant Administrative Orders of the Chief Administrative Judge of the Courts of New York.

Section 419.12 Mortgage Servicing Transfer

Pursuant to the new regulation, the first monthly statement provided to a borrower by a transferee servicer following the transfer of the servicing rights must be accompanied by a copy of the transferee servicer's welcome packet and a payment history for the preceding 36 months of the borrower's account showing the date, amount,

and application of all payments credited to the account, and the unpaid balance for each 12-month period covered by the preceding 36 months payment history (or such lesser period if the transferred loan has a payment history of less than 36 months).

Trial Modification Plans in Effect During the Servicing Transfer

If, as of the effective date of the servicing transfer, a borrower is complying with the terms of a trial loan modification, the transferee servicer must allow the borrower to continue to make those payments for the remainder of the trial modification period. Additionally, the transferee servicer must allow a borrower who has successfully completed a trial modification prior to the effective date of the servicing transfer but who has not yet received permanent modification documents to continue to make trial modification payments until the transferee servicer can provide a permanent modification to the borrower.

Evaluation of Loss Mitigation Application

A transferee servicer cannot refuse to consider a borrower for a loss mitigation option solely because of the denial of such a request by the transferor servicer.

Section 419.13 Affiliated Relationships[22]

The old rule did not address affiliated relationships. The new regulation adopts requirements that generally mirror the federal affiliated business arrangement and compensation requirements.

Written Notice to Affected Borrowers

Within 10 days of entering into an affiliated relationship (the federal rule generally requires disclosure no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application), a servicer must provide each borrower whose mortgage loan is subject to such affiliated business arrangement with a written notice disclosing the nature of the affiliated relationship and an estimated charge or range of charges generally made by such affiliate.

Compensation

All affiliated relationships must be negotiated at market rate. A servicer cannot give or accept any fee, kickback or other thing of value pursuant to such affiliated relationship other than a return of ownership interest, bona fide dividends and capital and equity distributions related to the ownership interest or franchise relationship, and bona fide business loans, advances, capital or equity contributions that are not fees for the referral of settlement service business or unearned fees.

Further Information

The new Part 419 is available here. If you have any questions regarding Part 419 or mortgage servicing questions in general, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenllp.com , Elizabeth A. Murphy at (516) 296-9154, or via email at emurphy@cullenllp.com, or Mandy Xu at (516) 357-3850 or

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Please note that this is a general overview of the issues addressed and does not constitute legal advice.

Footnotes

[1] The order states that servicers are still required to provide any periodic statements required by federal Regulation Z, and to provide mortgagors with an accurate accounting of their mortgage during the extension period as applicable.

[2] Under Banking Law §590.1(a) and New York Codes, Rules and Regulations (NYCRR) Part 418.3, a "mortgage loan" is defined as a loan to a natural person made primarily for personal, family or household use, secured by a mortgage or other consensual security interest on residential real property or certificates of stock or other evidence of ownership interests in, and a proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of residential real property and, if determined by regulation, shall include such a loan secured by a security interest on a manufactured home. "Residential real property" means real property located in this state improved by a one-to-four family dwelling used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to unimproved real property upon which such dwellings are to be constructed.

[3] Pursuant to §590(e) of the Banking law, "exempt organization" means any insurance company, banking organization, foreign banking corporation licensed by the superintendent or the comptroller of the currency to transact business in this state, national bank, federal savings bank, federal savings and loan association, federal credit union, or any bank, trust company, savings bank, savings and loan association, or credit union organized under the laws of any other state, or any instrumentality created by the United States or any state with the power to make mortgage loans.

[4] Part 419 contains certain requirements that are comparable to the federal mortgage servicing requirements, but also has other requirements that exceed the federal requirements. Although there may be a potential argument for federal preemption of certain aspects of Part 419, it is uncertain whether such preemption argument would prevail.

[5] Part 419.1(b) provides that "authorized representative" means a person, including an attorney, employee or agent of a government agency, not-for-profit housing counseling organization, or legal services organization, designated by a borrower, to share information and communicate with a servicer on behalf of the borrower.

[6] 12 CFR §1024.17.

[8] 12 CFR §1026.41(g); § 1024.32(c)(1)(iv).

[9] 12 CFR §1026.41(d)(8)(i).

[10] 12 CFR §1026.41(d)(8)(vi).

[11] 12 CFR §1024.35.

[12] Required information includes a description of correction, the effective date of the correction, and contact information, including a telephone number, for further assistance.

[13] Required information includes results of the servicer's investigation, reasons for this determination, the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance.

[14] 12 CFR §1024.35(e)(3)(i).

[15] 12 CFR §1024.35(e)(3)(ii).

[16] 12 CFR §1024.35(g).

[17] 12 CFR §1024.40.

[18] 12 CFR §1024.41(c)(2)(ii).

[19] 12 CFR § 1024.41(d).

[20] 12 CFR § 1024.41(e).

[21] Part 419. 1 (p) defines the term "third party providers" as "any person or entity retained by or on behalf of the servicer, including, but not limited to, foreclosure firms, law firms, foreclosure trustees, and other agents, independent contractors, subsidiaries and affiliates, that provides insurance, foreclosure, bankruptcy, mortgage servicing, including loss mitigation, or other products or services, in connection with the servicing of a mortgage loan."

[22] Part 419.1(a) defines the term "affiliated relationship" as "a relationship between two or more entities where one such entity, directly, or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with another such entity."

Practices

- Regulatory and Compliance

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