A New World for Mortgage Banking - What You Need to Know About the CFPB's Final Mortgage Servicing Rules

January 31, 2013 | Timothy R. McTaggart, Daniel G. Murray, Audrey D. Wisotsky

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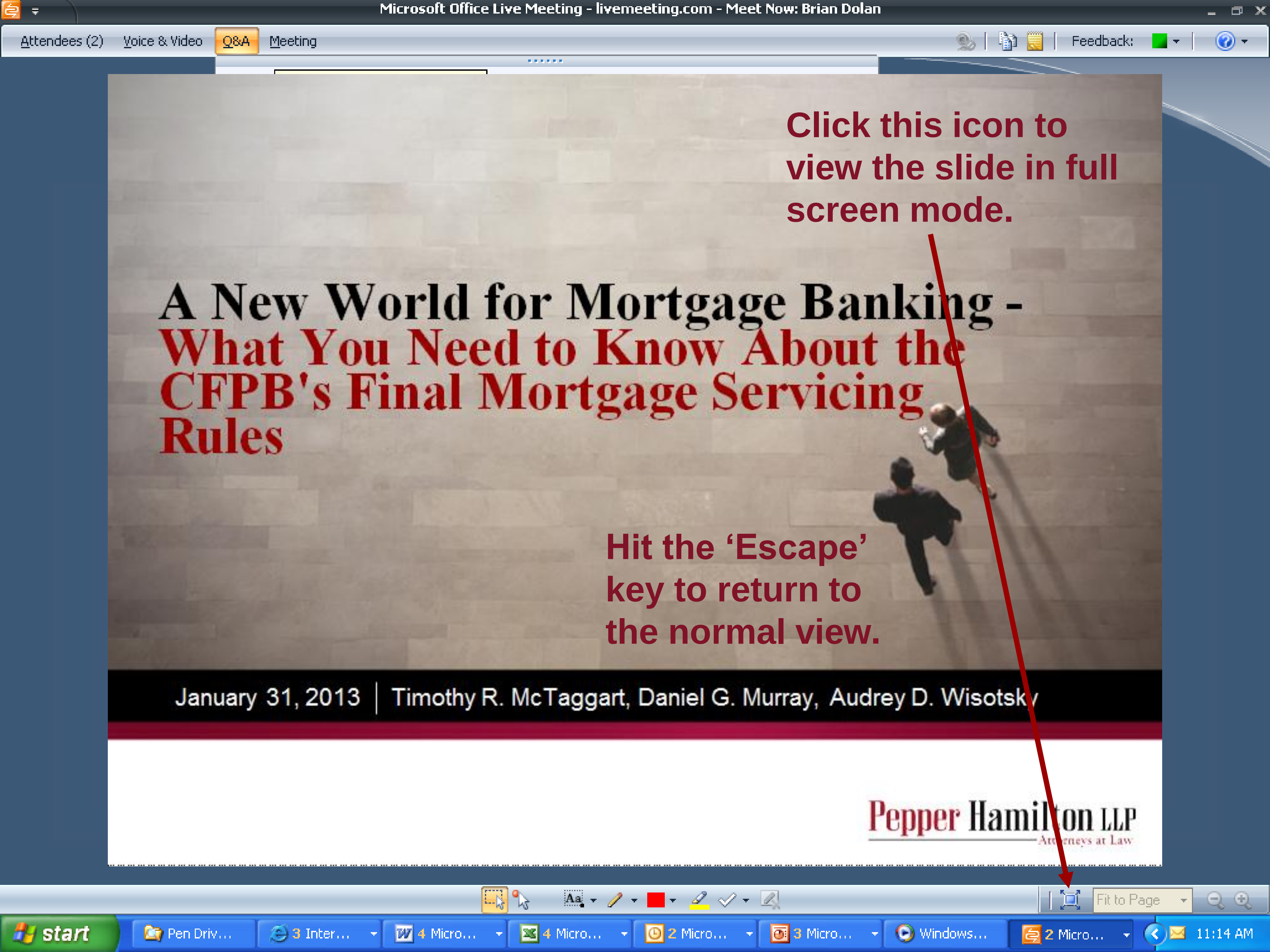
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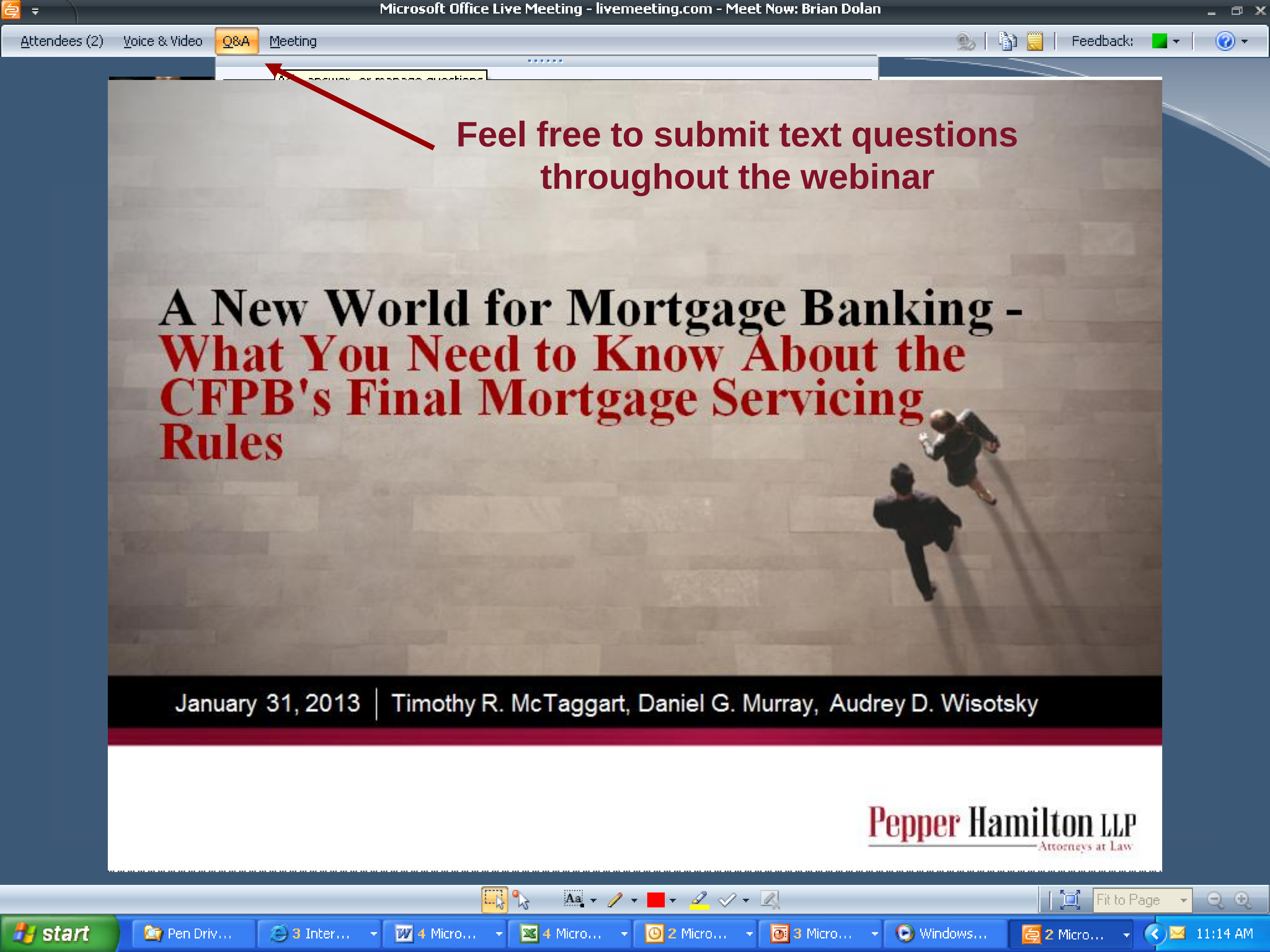
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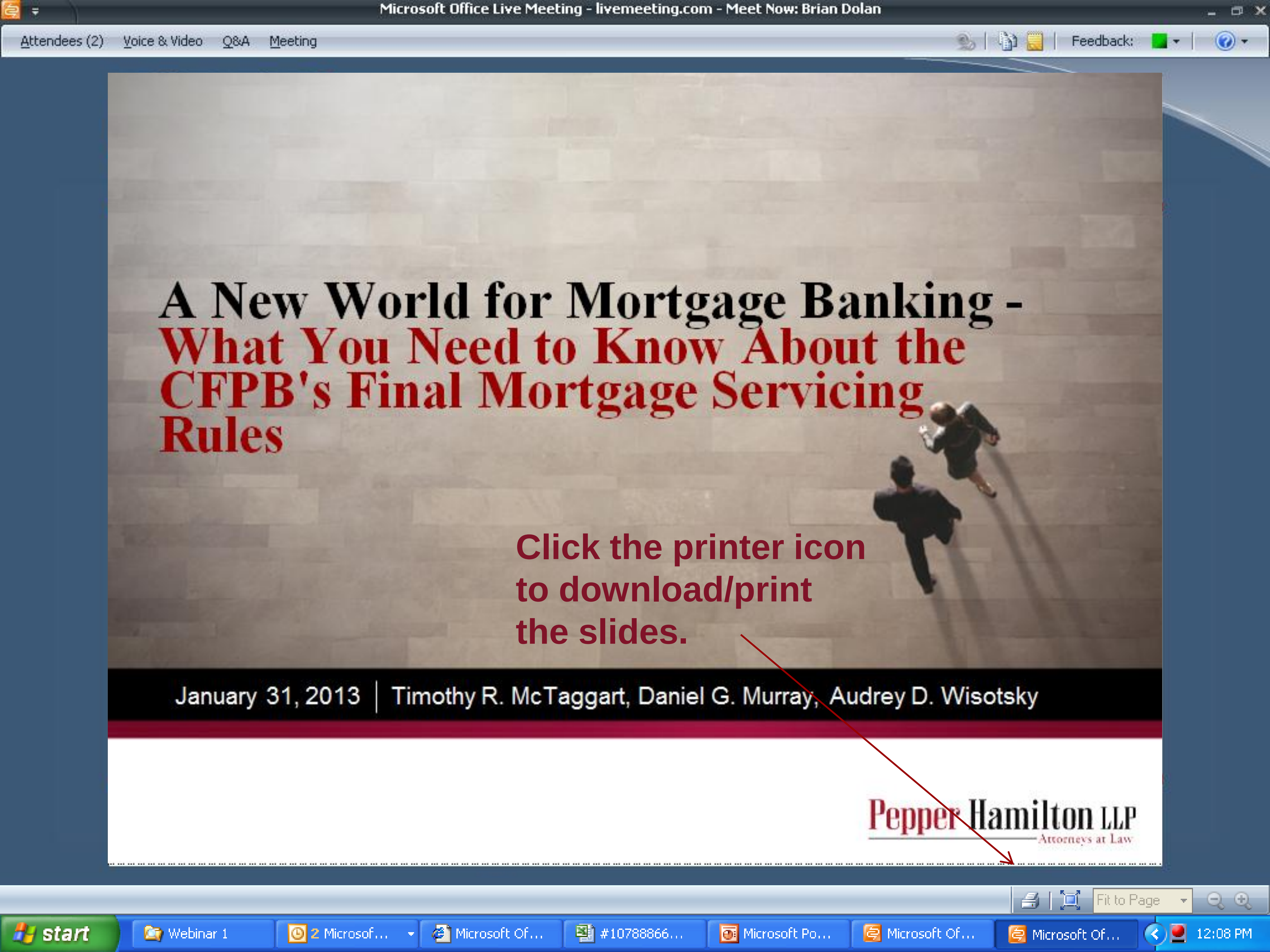
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- Partner in the Washington office of Pepper Hamilton LLP
- Focuses his practice on bank and financial services regulatory matters. He also assists financial services clients on transactional and enforcement issues.
- Has represented clients before the Consumer Financial Protection Bureau and the federal bank regulatory agencies, including the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System, as well as various state banking departments across the country
- Served as the Delaware State Bank Commissioner (1994-1999), in this role had responsibility for regulating and supervising non-depository institutions, including mortgage companies.

Speaker: Daniel G. Murray

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Speaker: Audrey D. Wisotsky

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- Concentrates her practice on regulatory issues and transactions related to mortgage banking, consumer finance and the secondary mortgage market. Her representation of financial services clients includes regulatory, compliance and licensing issues; secondary mortgage market transactions, including the sale and purchase of mortgage loan portfolios, servicing agreements and various aspects of the securitization of mortgage loans; master servicing and sub-servicing agreements; and loan documentation, including state and federal disclosures.

Title XIV - Mortgage Reform

- Title XIV of the Dodd-Frank Act is known as the Mortgage Reform and Predatory Lending Act.
- It makes significant changes to all aspects of mortgage lending rules and practices from origination to servicing.
- The Bureau is given broad authority to adopt regulations under Title XIV.
- Regulations were required to be issued by January 21, 2013.

Background

- The Truth in Lending Act (TILA), and its implementing Regulation Z, and the Real Estate Settlement Procedures Act (RESPA), and its implementing Regulation X, currently impose certain requirements on mortgage servicers.
- According to the CFPB, this limited regulatory scheme proved insufficient to prevent deficient servicing practices, consumer confusion, or consumer harm.
- The CFPB indicates that the Dodd-Frank Act empowers it to address mortgage servicing issues by:
  - Requiring servicers to provide new consumer disclosures, including with respect to periodic statements, interest rate adjustments and force-placed insurance,
  - Requiring prompt crediting of consumer payments and provision of payoff statements,
  - Expanding consumer rights to dispute errors and obtain information from servicers, and
  - Authorizing the CFPB to enact other regulatory requirements appropriate for consumer protection purposes.

CFPB Servicing Final Rules

- The CFPB issued two final mortgage servicing rules:
  - An amendment to Regulation X under RESPA (2013 RESPA Servicing Final Rule).
    - CFPB issued commentary which sets forth the CFPB's official interpretation of the 2013 RESPA Servicing Final Rule.
  - An amendment to Regulation Z under TILA (2013 TILA Servicing Final Rule).
    - CFPB issued commentary which sets forth the CFPB's official interpretation of the 2013 TILA Servicing Final Rule.
  - Effective date of the Servicing Final Rules: January 10, 2014.

CFPB Servicing Final Rules

- The Servicing Final Rules address all of the statutory provisions in the Dodd-Frank Act, including:
  - Shorten existing time frames for responding to “qualified written requests” and prohibit charging fees for such requests;
  - Limit imposition of force-placed insurance;
  - Provide for periodic billing statements for each billing cycle disclosing specified information;
  - Require certain disclosures for Adjustable Rate Mortgages (ARMs);
  - Require prompt crediting of mortgage loan payments;
  - Require establishment of escrow accounts for the payment of taxes and certain insurance premiums; and
  - Require payoff statement to be delivered at the written request of the borrower.

CFPB Servicing Final Rules

Nine Major Topics Covered by the Servicing Final Rules:

1. Periodic Billing Statements – TILA (Regulation Z)
2. ARM Notices – TILA (Regulation Z)
3. Prompt Payment Crediting and Payoff Statements – TILA (Regulation Z)
4. Force-placed Insurance – RESPA (Regulation X)
5. Servicing Policies and Procedures/Information Management – RESPA (Regulation X)
6. Error Resolution & Information Requests – RESPA (Regulation X)
7. Early Intervention – RESPA (Regulation X)
8. Continuity of Contact with Delinquent Borrowers – RESPA (Regulation X)
9. Loss Mitigation Procedures – RESPA (Regulation X)

Available remedies for consumers depend on whether a violation is of RESPA or TILA.

CFPB Servicing Final Rules

Servicing Final Rules provide certain exemptions for Small Servicers

- Small servicers are defined as servicers that service 5,000 mortgage loans or less and only service mortgage loans that the servicer or an affiliate owns or originated.
- A “Small Servicer” also includes Housing Finance Agencies without regard to the number of mortgage loans serviced.

CFPB Servicing Final Rules

- The Servicing Final Rules do not, generally, preempt state laws that have broader consumer protections related to mortgage servicing.
- Note that while the CFPB did not include requirements to provide disclosures in foreign languages, the CFPB is still considering such requirements.

Periodic Billing Statements

- The 2013 TILA Servicing Final Rule requires that periodic statements be provided by creditors, assignees and servicers for each billing cycle.
- Applies to closed-end consumer credit transactions secured by a dwelling.
- Exemptions: Reverse Mortgage transactions and transactions secured by consumer’s interest in timeshare plans.
- Small servicers are exempt from the periodic billing statement requirements.
- Periodic statements must meet the timing, form and content requirements provided in the TILA Servicing Final Rule.
- Must be delivered or placed in the mail within a reasonably prompt time after the payment due date or the end of any courtesy period provided for the previous billing cycle.
- The servicer must make the disclosures clearly and conspicuously in writing, or electronically if the borrower agrees, and in a form that the borrower may keep.
- Sample forms for periodic statements are provided in Appendix H-30. Proper use of these forms complies with the requirements as to form and layout.

Periodic Billing Statements

- Content and layout of the periodic statement must include:
  - Amount due: Grouped together in close proximity to each other and located at the top of the first page of the statement:
    - Payment due date;
    - Amount of any late payment fee, and the date on which that fee will be imposed if payment has not been received; and
    - Amount due, shown more prominently than other disclosures on the page and, if the transaction has multiple payment options, the amount due under each of the payment options.

Periodic Billing Statements

- Explanation of amount due: The following items, grouped together in close proximity to each other and located on the first page of the statement:
  - Monthly payment amount, including a breakdown showing how much, if any, will be applied to principal, interest, and escrow and, if a mortgage loan has multiple payment options, a breakdown of each of the payment options along with information on whether the principal balance will increase, decrease, or stay the same for each option listed;
  - Total sum of any fees or charges imposed since the last statement; and
  - Any payment amount past due.

Periodic Billing Statements

- Past Payment Breakdown: The following items, grouped together in close proximity to each other and located on the first page of the statement:
  - Total of all payments received since the last statement, including a breakdown showing the amount, if any, that was applied to principal, interest, escrow, fees and charges, and the amount, if any, sent to any suspense or unapplied funds account; and
  - Total of all payments received since the beginning of the current calendar year, including a breakdown of that total showing the amount, if any, that was applied to principal, interest, escrow, fees and charges, and the amount, if any, currently held in any suspense or unapplied funds account.

Periodic Billing Statements

- Transaction activity:
  - A list of all the transaction activity that occurred since the last statement.
    - Transaction activity means any activity that causes a credit or debit to the amount currently due.
      - List must include the date of the transaction, a brief description of the transaction, and the amount of the transaction for each activity on the list.
- Partial payment information:
  - If a statement reflects a partial payment that was placed in a suspense or unapplied funds account, information explaining what must be done for the funds to be applied. The information must be on the front page of the statement or alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter.

Periodic Billing Statements

- Servicer contact information:
  - A toll-free telephone number and, if applicable, an electronic mailing address that may be used by the borrower to obtain information about the borrower's account, located on the front page of the statement.
- Account information:
  - Amount of the outstanding principal balance;
  - Current interest rate in effect for the mortgage loan;
  - Date after which the interest rate may next change;
  - Existence of any prepayment penalty that may be charged; and
  - Website to access either the CFPB list or the HUD list of homeownership counselors and counseling organizations and the HUD toll-free telephone number to access contact information for homeownership counselors or counseling organizations.

Periodic Billing Statements

- Delinquency information: If the borrower is more than 45 days delinquent, the following items, grouped together in close proximity to each other and located on the first page of the statement or, alternatively, on a separate page enclosed with the periodic statement or in a separate letter:
  - Date on which the borrower became delinquent;
  - Notification of possible risks, such as foreclosure, and expenses, that may be incurred if the delinquency is not cured;
  - Account history showing, for the previous six months or the period since the last time the account was current, whichever is shorter, the amount remaining past due from each billing cycle or, if any payment was fully paid, the date on which it was credited as fully paid;

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Periodic Billing Statements

- Notice indicating any loss mitigation program to which the borrower has agreed, if applicable;
- Notice of whether the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, if applicable;
- Total payment amount needed to bring the account current; and
- Reference to the homeownership counselor information.

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Periodic Billing Statements

- Sample forms are included in Appendix H 30(A)-(D).
- Fixed-rate loans are excluded from the periodic statement requirement if the servicer provides a coupon book that contains the following:
  - Information to be included on each coupon:
    - Payment due date;
    - Amount of any late payment fee, the date on which the fee will be imposed if payment has not been received;
    - Amount due.

Periodic Billing Statements

- Information to be included anywhere in the coupon book:
  - Account information:
    - Amount of the outstanding principal balance;
    - Interest rate;
    - Existence of any prepayment penalty that may be charged;
    - Website to access either the CFPB list or the HUD list of homeownership counselors and counseling organizations and the HUD toll-free telephone number to access contact information for homeownership counselors or counseling organizations.
    - Servicer contact information required to be included in the Periodic Statements.

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Periodic Billing Statements

  - Information as to how the borrower can obtain (by telephone, in writing, in person or electronically) (1) explanation of the amount due; (2) breakdown of prior payments made; (3) a list of all transaction activity, (credit or debit to the amount due) that occurred since the last statement; and (4) partial payment information.
- Servicer must also make available upon the borrower's request the information set forth above.
- Servicer must provide the delinquency information required for periodic statements, in writing, for any billing cycle during which the borrower is more than 45 days delinquent.

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ARM Notices

The 2013 TILA Servicing Final Rule addresses when the creditor, assignee or servicer of an adjustable rate mortgage loan (ARM) must provide notice of an adjustment in the interest rate.

- An ARM for this purpose is a closed-end consumer credit transaction secured by the borrower's principal dwelling if the annual percentage rate may increase after closing.
- Notice of interest rate adjustments with a corresponding change in payment:
  - Note: This provision is not applicable to:
    - ARM mortgage loans with a term of one year or less; or
    - The first interest rate adjustment if the ARM mortgage loans first payment at the adjusted level is due within 210 days after closing and the new interest rate disclosed at closing was not an estimate.
- Generally, notice must be provided between 60 and 120 days before payment at a new level is due when a rate adjustment causes the payment to change.
- For ARMs with uniformly scheduled interest rate adjustments that occur every 60 days or more frequently, and for ARM mortgage loans originated prior to January 10, 2015, if the loan contract requires the adjusted interest rate and payment to be calculated based on the index figure available as of a date that is less than 45 days prior to the adjustment date, the disclosures must be provided between 25 and 120 days before the first payment at the adjusted level is due.

ARM Notices

- If the first adjustment occurs within 60 days of closing and the new interest rate disclosed at closing was an estimate, then notice must be provided as soon as "practicable" but not less than 25 days before payment at the adjusted level is due.
- Servicers will no longer be required to provide the annual notice when the interest rate, but not the payment, has changed over the course of the year.
- Disclosures must include:
  - A statement providing:
    - An explanation that under the terms of the ARM, the specific time period in which the current interest rate has been in effect is ending and the interest rate and mortgage payment will change;
    - The effective date of the interest rate adjustment and when additional future interest rate adjustments are scheduled to occur; and
    - Any other changes to loan terms, features, or options taking effect on the same date as the interest rate adjustment, such as the expiration of interest-only or payment-option features.

ARM Notices

- A table containing the following information:
  - Current and new interest rates;
  - Current and new payments and the date the first new payment is due; and
  - For interest-only or negatively-amortizing payments, the amount of the current and new payment allocated to principal and interest, and taxes and insurance in escrow, as applicable. The current payment allocation disclosed must be the payment allocation for the last payment prior to the date of the disclosure. The new payment allocation disclosed must be the expected payment allocation for the first payment for which the new interest rate will apply.
- An explanation of how the interest rate is determined, including:
  - Specific index or formula used in making interest rate adjustment and a source of information about the index or formula;
  - Type and amount of any adjustments to the index, including any margin and an explanation that the margin is the addition of a certain number of percentage points to the index, and any application of previously foregone interest rate increases from past interest rate adjustments; and
  - Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan, as applicable, including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate an the earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits.

ARM Notices

- An explanation of how the new payment is determined, including:
  - Index or formula used;
  - Any adjustment to the index or formula, such as the addition of a margin or the application of any previously foregone interest rate increases from past interest rate adjustments;
  - Loan balance expected on the date of the interest rate adjustment; and
  - Length of the remaining loan term expected on the date of the interest rate adjustment and any change in the term of the loan caused by the adjustment.
- If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and will pay only part of the loan interest, thereby adding to the balance of the loan. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement must set forth the payment required to fully amortize the remaining balance at the new interest rate over the remainder of the loan term.

ARM Notices

- Circumstances under which any prepayment penalty may be imposed (e.g., paying the loan in full, or selling or refinancing the principal dwelling); the time period during which such penalty may be imposed; and a statement that the borrower may contact the servicer for additional information, including the maximum amount of the penalty.
- Disclosures must be in the form of a table in the same order, and with headings and format substantially similar to the forms attached as Appendix H to the 2013 TILA Servicing Final Rule.

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Initial ARM Notices

Initial Interest Rate Adjustment Disclosures:

- Required for closed-end consumer credit transactions secured by the borrower's principal dwelling.
- Requirements of this provision do not apply to ARMs with terms of one year or less.
- Disclosures must be provided as a separate document.
- Borrowers who have ARMs must be provided with a notice between 210 and 240 days prior to the first payment due after the rate first adjusts.
  - Notice may contain an estimate of the new rate and new payment, but the disclosure must indicate that it is an estimate.
  - If the first payment at the adjusted level is due within 210 days after closing, the disclosure must be provided at closing.

Initial ARM Notices

- The disclosures must include the following:
  - The date of the disclosure.
  - A statement providing:
    - An explanation that under the terms of the borrower's ARM, the specific time period in which the current interest rate has been in effect is ending and that any change in the interest rate may result in a change in the mortgage payment;
    - Effective date of the interest rate adjustment and when additional future interest rate adjustments are scheduled to occur; and
    - Any other changes to loan terms, features, or options taking effect on the same date as the interest rate adjustment, such as the expiration of interest-only or payment-option features.

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Initial ARM Notices

- A table containing the following information:
  - The current and new interest rates;
  - The current and new payments and the date the first new payment is due; and
  - For interest-only or negatively-amortizing payments, the amount of the current and new payment allocated to principal, interest, and taxes and insurance escrowed, as applicable.
    - Current payment allocation disclosed must be the payment allocated for the last payment prior to the date of the disclosure.
    - New payment allocation disclosed must be the expected payment allocation for the first payment for which the new interest rate will apply.

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Initial ARM Notices

- Explanation of how the interest rate is determined, including:
  - Specific index or formula used in making interest rate adjustments and a source of information about the index or formula; and
  - Type and amount of any adjustment to the index, including any margin and an explanation that the margin is the addition of a certain number of percentage points to the index.
- Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan, as applicable, including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits.

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Initial ARM Notices

- An explanation of how the new payment is determined, including:
  - Index or formula used;
  - Any adjustment to the index or formula, such as the addition of a margin;
  - Loan balance expected on the date of the interest rate adjustment;
  - Length of the remaining loan term expected on the date of the interest rate adjustment and any change in the term of the loan caused by the adjustment; and
  - If the new interest rate or new payment provided is an estimate, a statement that another disclosure containing the actual new interest rate and new payment will be provided to the borrower between two and four months before the first payment at the adjusted level is due for interest rate adjustments that result in a corresponding payment change.

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Initial ARM Notices

- If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and will pay only part of the loan interest, thereby adding to the balance of the loan. If the new payment will result in negative amortization as a result of the interest rate over the remainder of the loan term.

Initial ARM Notices

- Circumstances under which any prepayment penalty may be imposed, (e.g. when paying the loan in full or selling or refinancing the principal dwelling); the time period during which such a penalty may be imposed; and a statement that the borrower may contact the servicer for additional information, including the maximum amount of the penalty.
- Telephone number of the creditor, assignee, or servicer for borrowers to call if they anticipate not being able to make their new payments.

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Initial ARM Notices

- The following alternatives to paying at the new rate that consumers may be able to pursue and a brief explanation of each alternative, expressed in simple and clear terms:
  - Refinancing the loan with the current or another creditor or assignee;
  - Selling the property and using the proceeds to pay the loan in full;
  - Modifying the terms of the loan with the creditor, assignee, or servicer; and
  - Arranging payment forbearance with the creditor, assignee or servicer.
- Website to access either the CFPB list or the HUD list of homeownership counselors and counseling organizations, the HUD toll-free telephone number to access the HUD list of homeownership counselors and counseling organizations, and the CFPB website to access contact information for state housing finance authorities.

Initial ARM Notices

- The disclosures (except for the date) must be provided in the form of a table and in the same order as, and with headings and format substantially similar to the model forms H-4(D)(3) and (4) included in Appendix H.

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Prompt Payment Crediting and Payoff Statements

- The 2013 TILA Servicing Final Rule establishes certain practices that are prohibited with respect to certain consumer credit transactions.
- Crediting of Periodic Payments:
  - Subject to limited exceptions, servicers must promptly credit periodic payments from borrowers as of the day the servicer receives a payment;
  - Periodic payments include principal, interest, and escrow payments (if applicable);
  - If the payment is less than the amount due for a periodic payment, the payment may be held in a suspense or unapplied funds account if the servicer discloses to the borrower the total amount of funds held in the suspense or unapplied funds account on the periodic statement, if a periodic statement is required; and
  - Requirement for crediting of payments applies to open-end and closed end mortgage loans secured by a borrower’s principal dwelling.

Prompt Payment Crediting and Payoff Statements

- Once the amount in the suspense or unapplied funds account covers a periodic payment the servicer must apply the funds to the borrower's account.
- If the servicer specifies in writing requirements that the borrower must follow when making payments, but accepts a payment that does not conform to those requirements, the servicer must credit the payment as of five days after receipt.

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Prompt Payment Crediting and Payoff Statements

- Payoff Statement:
  - Creditors, assignees and servicers must provide accurate statements of the total outstanding balance required to pay the loan in full as of a specified date no later than 7 business days after receipt of a borrower's (or borrower's representative) written request.
  - If a creditor, assignee or servicer is not able to provide a payoff statement within the 7 business day period because the borrower is 1) in bankruptcy or foreclosure; 2) the loan is a reverse or shared appreciation mortgage loan; or 3) due to a natural disaster or similar circumstances, the payoff statement must be provided within a reasonable time.
  - The Payoff Statement requirements apply to open-end and closed-end mortgage loans.

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Force-Placed Insurance

- The 2013 RESPA Servicing Final Rule prohibits a servicer from charging a borrower for force-placed insurance unless it has a reasonable basis to believe the borrower has failed to maintain hazard insurance and has provided the required notices.
- **Initial Notices** – must be sent to the borrower at least 45 days before charging the borrower for forced-placed insurance coverage.
- **Second Notice** – Must be sent no earlier than 30 days after the first notice and at least 15 days before charging the borrower for force-placed insurance coverage.
- **Replacement/Renewal Notice** – After force-placed insurance is in place, servicers must send an annual notice to borrowers 45 days before charging for renewing or replacing such insurance.
- RESPA Servicing Final Rule contains model forms for the notices (MS – 3(A)-(D)).

Force-Placed Insurance

- If borrower provides proof of hazard insurance coverage, the servicer must within 15 days cancel the force-placed insurance coverage and refund any premiums paid for periods in which the borrower's coverage was in place.
- Charges for force-placed insurance coverage must be for a service that was actually performed and must bear a reasonable relationship to the servicer's cost of providing the forced-placed insurance.
  - Note: Charges that are subject to state regulation of the business of insurance or by federal law for flood insurance, are not subject to the foregoing requirements.

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Force-Placed Insurance

- If an escrow account is maintained for hazard insurance premiums:
  - Servicer may not obtain force-placed insurance if the servicer can continue the borrower’s homeowners insurance even if it has to advance funds to do so.
  - Small servicers are exempt from this requirement if any force-placed insurance purchased is less expensive to the borrower than the amount of the disbursement to maintain the borrower’s hazard insurance.

Force-Placed Insurance

CFPB's commentary provides examples of a servicer's reasonable basis to believe that a borrower's hazard insurance policy has been canceled or not renewed for reasons other than non-payment of the premium.

- Borrower notifies a servicer that the borrower has canceled the hazard insurance coverage, and the servicer has not received notice of other hazard insurance coverage;
- Servicer receives a notice of cancellation or non-renewal from the borrower's insurance company before payment is due; and

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Force-Placed Insurance

- Servicer does not receive a payment notice by the expiration date of the borrower’s hazard insurance policy.
- The commentary also provides that a servicer may advance premium payments on a month-to-month basis, if permitted by state or other applicable law and accepted by the borrower’s hazard insurance company.

Servicing Policies, Procedures and Requirements

- The 2013 RESPA Servicing Final Rule requires that servicers establish and maintain policies and procedures reasonably designed to achieve objectives specified in the rule.
- The reasonableness of a servicer’s policies and procedures will depend upon the servicer’s size, scope and the nature of its operations.

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Servicing Policies, Procedures and Requirements

- Specified Objectives Include:
  - **Accessing and providing accurate and timely information to borrowers, investors and courts:**
    - Provide accurate and timely disclosures to a borrower as required by Regulation Z or other applicable law;
    - Investigate, respond to, and, as appropriate, make corrections in response to complaints asserted by a borrower;
    - Provide a borrower with accurate and timely information and documents in response to the borrower's request for information with respect to the borrower's mortgage loan;
    - Provide owners or assignees of mortgage loans with accurate and current information and documents about all mortgage loans they own;
    - Submit documents or filings required for a foreclosure process, including documents or filings required by a court of competent jurisdiction, that reflect accurate and current information and that comply with applicable law; and
    - Upon notification of the death of a borrower, promptly identify and facilitate communication with the successor in interest of the deceased borrower with respect to the property secured by the deceased borrower's mortgage loan.

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Servicing Policies, Procedures and Requirements

- **Properly evaluating loss mitigation applications:**
  - Provide accurate information regarding loss mitigation options available to a borrower from the owner or assignee of the borrower's mortgage loan;
  - Identify with specificity all loss mitigation options for which borrowers may be eligible pursuant to any requirements established by an owner or assignee of the borrower's mortgage loan;
  - Provide prompt access to all documents and information submitted by a borrower in connection with a loss mitigation option to servicer personnel that are assigned to assist the borrower;
  - Identify documents and information that a borrower is required to submit to complete a loss mitigation application and facilitate compliance with the notice required pursuant to the rule after receipt of a loss mitigation application; and
  - Properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan and, where applicable, in accordance with the loss mitigation requirements of the rule.

Servicing Policies, Procedures and Requirements

- **Facilitating oversight of, and compliance by, service providers:**
  - Provide appropriate servicer personnel with access to accurate and current documents and information reflecting actions performed by service providers;
  - Facilitate periodic reviews of service providers, including by providing appropriate servicer personnel with documents and information necessary to audit compliance by service providers with the servicer's contractual obligations and applicable law; and
  - Facilitate the sharing of accurate and current information regarding the status of any evaluation of a borrower's loss mitigation application and the status of any foreclosure proceeding among appropriate servicer personnel, including any personnel assigned to a borrower's mortgage loan account as described in the rule regarding continuity of contact and appropriate service provider personnel, including those responsible for handling foreclosure proceedings.

Servicing Policies, Procedures and Requirements

- **Facilitating transfer of information during servicing transfers:**
  - As a transferor service, timely transfer all information and documents in the possession or control of the servicer relating to a transferred mortgage loan to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred and that enables a transferee servicer to comply with the terms of the transferee servicer's obligations to the owner or assignee of the mortgage loan and applicable law; and
  - As a transferee servicer identify necessary documents or information that may not have been transferred by a transferor servicer and obtain such documents from the transferor servicer.
  - Transferee servicer means a servicer, including a master servicer or a subservicer, that performs or will perform servicing of a mortgage loan and transferor servicer means a servicer, including a master servicer or a subservicer, that transfers or will transfer the servicing of a mortgage loan.
- **Informing borrowers of the availability of written error resolution and information request procedures:**
  - Ensure that the servicer informs borrowers of the procedures for submitting written notices of error and written information requests.

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Servicing Policies, Procedures and Requirements

- The 2013 RESPA Servicing Final Rule creates requirements for the servicer's maintenance of documents and information:
  - Record Retention: Servicers must retain records that document actions taken with respect to a borrower's mortgage loan for one year after the mortgage is discharged or servicing is transferred.
  - Servicing File:
    - Servicers must maintain the following documents and data in a manner that enables the servicer to compile documents and data into a servicing file within 5 days:

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Servicing Policies, Procedures and Requirements

- A schedule of all transactions credited or debited to the mortgage loan account, including any escrow account and any suspense account;
- A copy of the security instrument that establishes the lien securing the mortgage loan;
- Any notes created by servicer personnel reflecting communications with the borrower about the mortgage loan account;
- To the extent applicable, a report of the data fields relating to the borrower’s mortgage loan account created by the servicer’s electronic systems in connection with the servicing practices; and
- Copies of any information or documents provided by the borrower to the servicer in accordance with the error resolution and loss mitigation procedures set forth in the rule.

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Servicing Policies, Procedures and Requirements

- Small servicers are exempt from the foregoing requirements.
- Requirements are inapplicable to servicers of reverse mortgage transactions or servicers of mortgage loans for which the servicers are also qualified lenders under the Farm Credit Act of 1971.
- CFPB and the prudential regulators will supervise servicers within their jurisdiction to assure compliance.
- No private right of action.

Error Resolution and Information Requests

- Servicers must meet certain procedural requirements for responding to written information requests or complaints of errors.
- The error resolution procedures are for errors listed in the rule and any other error relating to the servicing of a mortgage loan.
- Servicers may, by written notice provided to a borrower, designate a specific address for the borrower to use for complaints and written requests for information. The notice shall include a statement that the borrower must use the established address to assert an error or request information.
- Servicers must acknowledge the request for information or notice of error within 5 days of receipt. Servicers can correct the error within 5 days and avoid sending the acknowledgement.

Error Resolution and Information Requests

- Within 7 days for payoff errors to 30 days for other errors (which can be extended for up to 15 days for errors other than payoffs and foreclosure procedures) after receipt of the complaint of errors, the servicer must:
  - Correct the error and provide written notification of the correction to the borrower with contact information for further assistance; or
  - Conduct a reasonable investigation and provide written notification that servicer determined no error occurred and the reason or reasons for the determination.
- Servicers are not required to comply with assertions of errors that are duplicative, overbroad, or untimely but most notify the borrower of its determination.
- Within 10 days for name of owner or assignee of a mortgage loan requests to 30 days for other information requests (which can be extended for up to 15 days) servicers must provide information requested by a borrower or explain why the information is not available.
- Servicers are not required to comply with information requests that are duplicative; relate to confidential, proprietary or privileged information; relate to irrelevant information; are overly broad or unduly burdensome; or are untimely but must notify the borrower of its determination.

Early Intervention With Delinquent Borrowers

- Servicers must establish or make good faith efforts to establish live contact with delinquent borrowers by the 36th day of their delinquency and promptly inform them, if appropriate, that loss mitigation options may be available.
- Servicers must provide a delinquent borrower written notice with information about loss mitigation options by the 45th day of a borrower's delinquency.
- Rule contains model language which servicers may use for the written notice.

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Continuity of Contact With Delinquent Borrowers

- Servicers must maintain reasonable policies and procedures for providing delinquent borrowers with access to personnel to assist them with loss mitigation options where applicable.
- They must be reasonably designed to ensure that the servicer assigns personnel to a delinquent borrower by the time the servicer provides the borrower with the notice required by the early intervention requirements, but **no later than the 45th day of a borrower's delinquency.**

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Continuity of Contact With Delinquent Borrowers

- Personnel must be accessible to the delinquent borrower by phone to assist the borrower with available loss mitigation options including:
  - Advising the borrower on the status of a loss mitigation application; and
  - Applicable timelines/deadlines.
- Personnel must be able to access borrower's payment history and all written information provided by the borrower to the servicer in connection with a loss mitigation application.
- Personnel must be able to provide the information to other persons responsible for evaluating the borrower's loss mitigation options.

Loss Mitigation Procedures

- Specified procedures must be followed for mortgage loans secured by a borrower’s principal residence.
- If a borrower submits an application for a loss mitigation option 45 days or more before a foreclosure sale, the servicer:
  - Must acknowledge receipt, in writing, within 5 days; and
  - Notify the borrower either than the application is complete or, if not complete the information that is needed to complete the application.

Note: Servicer must exercise reasonable diligence to obtain documents and information to complete the application.

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Loss Mitigation Procedures

- If a Complete Loss Mitigation Application is received more than 37 days before a foreclosure sale:
  - Within 30 days, servicer must evaluate the borrower for all loss mitigation options for which the borrower may be eligible and provide borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer on behalf of the investor.
- Options may include:
  - Those that enable the borrower to retain the home (e.g. loan modification);
  - Non-retention options (e.g. short sale).
- Servicers are permitted to follow investor "waterfalls" to determine eligibility for loss mitigation options.

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Loss Mitigation Procedures

- An explanation of the reasons for denying any loss mitigation options offered by an owner or assignee must be provided.
  - If inputs were used to make a net present value calculation and those inputs were the basis of a denial, the borrower must be notified of the inputs used.
- Appeals:
  - Borrower may appeal a denial of a loan modification program <u>if</u> the borrower's complete loss mitigation application was received (1) during the pre-foreclosure review period or (2) 90 days or more before a scheduled foreclosure sale.
  - An appeal shall be reviewed by different personnel than those responsible for evaluating the borrower's complete loss mitigation application.

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Loss Mitigation Procedures

- Dual Tracking is restricted.
  - Dual tracking is the process whereby a servicer is simultaneously evaluating a borrower for a loan modification or other alternatives while, at the same time, preparing to foreclose on the property.
  - A servicer is prohibited from making the first notice or filing required for a foreclosure process until a mortgage loan is 120 days delinquent.

Loss Mitigation Procedures

- If a borrower is more than 120 days delinquent but submits a complete loss mitigation application before a servicer has made the first notice or filing required for a foreclosure process, the servicer may not start the foreclosure process unless:
  - The servicer has sent the borrower a notice that the borrower is not eligible for any loss mitigation options (and any appeal has been exhausted);
  - The borrower rejects all loss mitigation offers; or
  - The borrower fails to comply with the terms of a loss mitigation option (e.g. trial modifications).

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Loss Mitigation Procedures

- If a borrower submits a complete loss mitigation application after the foreclosure process has commenced but more than 37 days before a foreclosure sale, the servicer:
  - May not move for a foreclosure judgment or order or sale, or
  - Conduct a foreclosure sale until one of the 3 conditions (listed above) have been satisfied.

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Loss Mitigation Procedures

- Small servicer exemption subject to the following:
  - Small servicers may not make the first notice or filing required for the foreclosure process unless a borrower is more than 120 days delinquent;
  - Small servicer may not proceed to foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a loss mitigation agreement.
- All of the loss mitigation provisions can be enforced by borrowers; and
- CFPB and prudential regulators can supervise servicers within their jurisdiction to assure compliance with the loss mitigation requirements.

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Miscellaneous Provisions Not Otherwise Covered

- Mortgage Servicing Transfers – 2013 RESPA Servicing Final Rule
  - Includes a modified form which transferor and transferee servicers must use in order to give the borrower notice of a transfer in mortgage servicing.
  - The modified form is a shortened, simplified version of the prior "Notice of Assignment, Sale, or Transfer of Servicing Rights" form and does not impose any new informational disclosure on servicers.
    - Eliminates inclusion of information about complaint resolution.
- No pyramiding of late fees – 2013 TILA Servicing Final Rule
  - Servicers may not charge an additional late fee solely because the borrower failed to pay an earlier late fee or delinquency charge.

Questions & Answers

Thank You!

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