Real Estate Settlement Procedures Act (RESPA)

Introduction

The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2601 *et seq.*) (the Act) became effective on June 20, 1975. The Act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. The Act also prohibits specific practices, such as kickbacks, and places limitations upon the use of escrow accounts. The Department of Housing and Urban Development (HUD) originally promulgated Regulation X which implements RESPA.

Congress has amended RESPA significantly since its enactment. The National Affordable Housing Act of 1990 amended RESPA to require detailed disclosures concerning the transfer, sale, or assignment of mortgage servicing. It also requires disclosures for mortgage escrow accounts at closing and annually thereafter, itemizing the charges to be paid by the borrower and what is paid out of the account by the servicer.

In October 1992, Congress amended RESPA to cover subordinate lien loans.

Congress, when it enacted the Economic Growth and Regulatory Paperwork Reduction Act of 1996,[1] further amended RESPA to clarify certain definitions including "controlled business arrangement," which was changed to "affiliated business arrangement." The changes also reduced the disclosures under the mortgage servicing provisions of RESPA.

In 2008, HUD issued a RESPA Reform Rule (73 Fed. Reg. 68204, Nov. 17, 2008) that included substantive and technical changes to the existing RESPA regulations and different implementation dates for various provisions. Substantive changes included a standard Good Faith Estimate form and a revised HUD-1 Settlement Statement that were required as of January 1, 2010. Technical changes, including streamlined mortgage servicing disclosure language, elimination of outdated escrow account provisions, and a provision permitting an "average charge" to be listed on the Good Faith Estimate and HUD-1 Settlement Statement, took effect on January 16, 2009. In addition, HUD clarified that all disclosures required by RESPA are permitted to be provided electronically, in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign).[2]

The Dodd-Frank Act granted rule-making authority under RESPA to the Consumer Financial Protection Bureau (CFPB) and, with respect to entities under its jurisdiction, generally granted authority to the CFPB to supervise for and enforce compliance with RESPA and its implementing regulations.[3] In December 2011, the CFPB restated HUD's implementing regulation at 12 CFR Part 1024 (76 Fed. Reg. 78978) (December 20, 2011).

On January 17, 2013, the CFPB issued a final rule to amend Regulation X (78 Fed. Reg. 10695) (February 14, 2013). The final rule included substantive and technical changes to the existing regulations. Substantive changes included modifying the servicing transfer notice requirements and implementing new procedures and notice requirements related to borrowers' error resolution requests and information requests. The amendments also included new provisions related to escrow payments, force-placed insurance, general servicing policies, procedures, and requirements, early intervention, continuity of contact, and loss mitigation. The amendments are effective as of January 10, 2014.

On July 10, 2013 and September 13, 2013, the CFPB issued final rules to further amend Regulation X (78 Fed. Reg. 44685) (July 24, 2013), (78 Fed. Reg. 60381) (Oct. 1, 2013). The final rules included substantive and technical changes to the existing regulations, including revisions to provisions on the relation to State law of Regulation X's servicing provisions, to the loss mitigation procedure requirements, and to the requirements relating to notices of error and information requests. On October 15, 2013, the CFPB issued an interim final rule to further amend Regulation X (78 Fed. Reg. 62993) (Oct. 23, 2013) to exempt servicers from the early intervention requirements in certain circumstances. The Regulation X amendments are effective as of January 10, 2014.

The amendments issued on January 17, 2013; July 10, 2013; September 13, 2013; and October 15, 2013 are collectively referred to in this document as the "2013 Amendments."

Subpart A – General Provisions

Coverage – 12 CFR 1024.5(a)

RESPA is applicable to all "federally related mortgage loans," except as provided under 1024.5(b), discussed below. "Federally related mortgage loans" are defined as:

Loans (other than temporary loans), including refinancings, that satisfy the following two criteria:

- ***First***, the loan is secured by a first or subordinate lien on residential real property, located within a State, upon which either:

[1] Pub. L. 104-208, Div. A., Title II § 2103 (c), Sept. 30, 1996.

[2] 15 U.S.C. 7001 *et seq*.

[3] Dodd-Frank Act Secs. 1002(12)(M), 1024(b)-(c), and 1025(b)-(c); 1053; 12 U.S.C. 5481(12)(M), 5514(b)-(c), and 5515 (b)-(c).

- A one-to-four family structure is located or is to be constructed using proceeds of the loan (including individual units of condominiums and cooperatives); or
- A manufactured home is located or is to be constructed using proceeds of the loan.

- ***Second***, the loan falls within one of the following categories:
  - Loans made by a lender,[4] creditor,[5] dealer;[6]
  - Loans made or insured by an agency of the federal government;
  - Loans made in connection with a housing or urban development program administered by an agency of the federal government;
  - Loans made and intended to be sold by the originating lender or creditor to FNMA, GNMA, or FHLMC (or its successor);[7] or
  - Loans that are the subject of a home equity conversion mortgage or reverse mortgage issued by a lender or creditor subject to the regulation.

"Federally related mortgage loans" are also defined to include installment sales contracts, land contracts, or contracts for deeds on otherwise qualifying residential property if the contract is funded in whole or in part by proceeds of a loan made by a lender, specified federal agency, dealer or creditor subject to the regulation.

Exemptions – 12 CFR 1024.5(b)

The following transactions are exempt from coverage:

A loan on property of 25 acres or more (whether or not a dwelling is located on the property).

- A loan primarily for business, commercial or agricultural purposes (definition identical to Regulation Z, 12 CFR 1026.3(a)(1)).
- A temporary loan, such as a construction loan. (The exemption does not apply if the loan is used as, or may be converted to, permanent financing by the same financial institution or is used to finance transfer of title to the first user of the property.) If the lender issues a commitment for permanent financing, it is covered by the regulation.
- Any construction loan with a term of two years or more is covered by the regulation, unless it is made to a bona fide contractor. "Bridge" or "swing" loans are not covered by the regulation.
- A loan secured by vacant or unimproved property where no proceeds of the loan will be used to construct a one-to-four family residential structure. If the proceeds will be used to locate a manufactured home or construct a structure within two years from the date of settlement, the loan is covered.
- An assumption, unless the mortgage instruments require lender approval for the assumption and the lender approves the assumption.
- A conversion of a loan to different terms which are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.[8]

A bona fide transfer of a loan obligation in the secondary market. (However, the mortgage servicing requirements of Subpart C, 12 CFR 1024.30-41, still apply.) Mortgage broker transactions that are table funded (the loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds) are not secondary market transactions and therefore are covered by RESPA. Similarly, neither the creation of a dealer loan or consumer credit contract, nor the first assignment of such loan or

Subpart B – Mortgage Settlement and Escrow Accounts

Special Information Booklet – 12 CFR 1024.6

A loan originator[9] is required to provide the borrower with a copy of the Special Information Booklet at the time a written application is submitted or no later than three business days after the application is received. If the application is denied before the end of the three-business-day period, the loan originator is not required to provide the booklet. If the borrower uses a mortgage broker, the broker rather than the lender, must provide the booklet.

[4] A lender includes financial institutions either regulated by, or whose deposits or accounts are insured by any agency of the federal government.

[5] A creditor is defined in Sec. 103(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)). RESPA covers any creditor that makes or invests in residential real estate loans aggregating more than $1,000,000 per year.

[6] Dealer is defined in Regulation X to mean a seller, contractor, or supplier of goods or services. Dealer loans are covered by RESPA if the obligations are to be assigned before the first payment is due to any lender or creditor otherwise subject to the regulation.

[7] FNMA – Federal National Mortgage Association; GNMA - Government National Mortgage Association; FHLMC - Federal Home Loan Mortgage Corporation.

[8] 12 CFR 1024.5(b)(6).

[9] A "loan originator" is defined as a lender or mortgage broker. 12 CFR 1024.2(b).

The booklet does not need to be provided for refinancing transactions, closed-end subordinate lien mortgage loans and reverse mortgage transactions, or for any other federally related mortgage loan not intended for the purchase of a one-to-four family residential property.

A loan originator that complies with Regulation Z (12 CFR 1026.40) for open-end home equity plans is deemed to have complied with this section.

Good Faith Estimate (GFE) of Settlement Costs – 12 CFR 1024.7 Standard GFE Required

As of January 1, 2010, a loan originator is required to provide a consumer with the standard GFE form that is designed to allow borrowers to shop for a mortgage loan by comparing settlement costs and loan terms. (See GFE form at Appendix C to 12 CFR Part 1024.)

Overview of the Standard GFE

The first page of the GFE includes a summary of loan terms and a summary of estimated settlement charges. It also includes information about key dates such as when the interest rate for the loan quoted in the GFE expires and when the estimate for the settlement charges expires. The second page discloses settlement charges as subtotals for 11 categories of costs. The third page provides a table explaining which charges can change at settlement, a trade-off table showing the relationship between the interest rate and settlement charges, and a shopping chart to compare the costs and terms of loans offered by different originators.

GFE Application Requirements

- The loan originator must provide the standard GFE to the borrower within three business days of receipt of an application for a mortgage loan. A loan originator is not required to provide a GFE if before the end of the three-business-day period, the application is denied or the borrower withdraws the application.
- An application can be in writing or electronically submitted, including a written record of an oral application.
- A loan originator determines what information it needs to collect from a borrower and which of the collected information it will use in order to issue a GFE. Under the regulations, an "application" includes at least the following six pieces of information:

  1. the borrower's name;
  2. the borrower's gross monthly income;
  3. the borrower's Social Security number (e.g., to enable the loan originator to obtain a credit report);
  4. the property address;
  5. an estimate of the value of the property; and
  6. the mortgage loan amount sought. In addition, a loan originator may require the submission of any other information it deems necessary.

A loan originator will be presumed to have relied on such information prior to issuing a GFE and cannot base a revision of a GFE on that information unless it changes or is later found to be inaccurate.

While the loan originator may require the borrower to submit additional information beyond the six pieces of information listed above in order to issue a GFE, it cannot require, as a condition of providing the GFE, the submission of supplemental documentation to verify the information provided by the borrower on the application. However, a loan originator is not prohibited from using its own sources to verify the information provided by the borrower prior to issuing the GFE. The loan originator can require borrowers to provide verification information after the GFE has been issued in order to complete final underwriting.

For dealer loans, the loan originator is responsible for providing the GFE directly or ensuring that the dealer provides the GFE.

For mortgage brokered loans, either the lender or the mortgage broker must provide a GFE within three business days after a mortgage broker receives either an application or information sufficient to complete an application. The lender is responsible for ascertaining whether the GFE has been provided. If the mortgage broker has provided the GFE to the applicant, the lender is not required to provide an additional GFE.

A loan originator is prohibited from charging a borrower any fee in order to obtain a GFE unless the fee is limited to the cost of a credit report.

GFE Not Required for Open End Lines of Credit – 12 CFR 1024.7(h)

A loan originator that complies with Regulation Z (12 CFR 1026.40) for open-end home equity plans is deemed to have complied with Section 1024.7.

Availability of GFE Terms – 12 CFR 1024.7(c)

Regulation X does not establish a minimum period of availability for which the interest rate must be honored. The loan originator must determine the expiration date for the interest rate of the loan stated on the GFE. In contrast,

Regulation X requires that the estimated settlement charges and loan terms listed on the GFE be honored by the loan originator for at least 10 business days from the date the GFE is provided. The period of availability for the estimated settlement charges and loan terms as well as the period of availability for the interest rate of the loan stated on the GFE must be listed on the GFE in the "important dates" section of the form.

After the expiration date for the interest rate of the loan stated on the GFE, the interest rate and the other rate related charges, including the charge or credit for the interest rate chosen, the adjusted origination charges and the per diem interest can change until the interest rate is locked.

Key GFE Form Contents – 12 CFR 1024.7(d)

The loan originator must ensure that the required GFE form is completed in accordance with the Instructions set forth in Appendix C of 12 CFR Part 1024.

First Page of GFE

The first page of the GFE discloses identifying information such as the name and address of the "loan originator" which includes the lender or the mortgage broker originating the loan. The "purpose" section indicates what the GFE is about and directs the borrower to the Truth in Lending disclosures and HUD's website for more information. The borrower is informed that only the borrower can shop for the best loan and that the borrower should compare loan offers using the shopping chart on the third page of the GFE.

The "important dates" section requires the loan originator to state the expiration date for the interest rate for the loan provided in the GFE as well as the expiration date for the estimate of other settlement charges and the loan terms not dependent upon the interest rate.

While the interest rate stated on the GFE is not required to be honored for any specific period of time, the estimate for the other settlement charges and other loan terms must be honored for at least 10 business days from when the GFE is provided.

In addition, the form must state how many calendar days within which the borrower must go to settlement once the interest rate is locked (rate lock period). The form also requires disclosure of how many days prior to settlement the interest rate would have to be locked, if applicable.

The "summary of your loan" section requires disclosure of the loan amount; loan term; initial interest rate; initial monthly payment for principal, interest and any mortgage insurance; whether the interest rate can rise, and if so, the maximum rate to which it can rise over the life of the loan, and the period of time after which the interest rate can first change; whether the loan balance can rise if the payments are made on time and if so, the maximum amount to which it can rise over the life of the loan; whether the monthly amount owed for principal, interest and any mortgage insurance can rise even if payments are made on time, and if so, the maximum amount to which the monthly amount owed can ever rise over the life of the loan; whether the loan has a prepayment penalty, and if so, the maximum amount it could be; and whether the loan has a balloon payment, and if so, the amount of such payment and in how many years it will be due.

The "escrow account information" section requires the loan originator to indicate whether the loan does or does not have an escrow account to pay property taxes or other property related charges. In addition, this section also requires the disclosure of the monthly amount owed for principal, interest and any mortgage insurance.

The bottom of the first page includes subtotals for the adjusted origination charges and charges for all other settlement charges listed on page two, along with the total estimated settlement charges.

Second Page of GFE

The second page of the GFE requires disclosure of all settlement charges. It provides for the estimate of total settlement costs in eleven categories discussed below. The adjusted origination charges are disclosed in "Block A" and all other settlement charges are disclosed in "Block B." The amounts in the blocks are to be added to arrive at the "total estimated settlement charges" which is required to be listed at the bottom of the page.

Disclosure of Adjusted Origination Charge (Block A)

Block A addresses disclosure of origination charges, which include all lender and mortgage broker charges. The "adjusted origination charge" results from the subtraction of a "credit" from the "origination charge" or the addition of a "charge" to the origination charge.

- Block 1 – the origination charges, which include lender processing and underwriting fees and any fees paid to a mortgage broker.

Origination Charge Note: This block requires the disclosure of all charges that all loan originators involved in the transaction will receive for originating the loan (excluding any charges for points). A loan originator may not separately charge any additional fees for getting the loan such as application, processing or underwriting fees. The amount in Block 1 is subject to zero tolerance, i.e., the amount cannot change at settlement.

- Block 2 – a "credit" or "charge" for the interest rate chosen.

Credit or Charge for the Interest Rate Chosen Note:

Transaction Involving a Mortgage Broker. For a transaction involving a mortgage broker,[10] Block 2 requires disclosure of a "credit" or charge (points) for the specific interest rate chosen. The credit or charge for the specific interest rate chosen is the net payment to the mortgage broker (i.e., the sum of all payments to the mortgage broker from the lender, including payments based on the loan amount, a flat rate or any other compensation, and in a table funded transaction, the loan amount less the price paid for the loan by the lender.)

When the net payment to the mortgage broker from the lender is positive, there is a "credit" to the borrower and it is entered as a negative amount. For example, if the lender pays a yield spread premium to a mortgage broker for the loan set forth in the GFE, the payment must be disclosed as a "credit" to the borrower for the particular interest rate listed on the GFE (reflected on the GFE at Block 2, checkbox 2). The term "yield spread premium" is not featured on the GFE or the HUD-1 Settlement Statement.

Points paid by the borrower for the interest rate chosen must be disclosed as a "charge" (reflected on the GFE at Block 2, third checkbox). A loan cannot include both a charge (points) and a credit (yield spread premium).

Transaction Not Involving a Mortgage Broker. For a transaction without a mortgage broker, a lender may choose not to separately disclose any credit or charge for the interest rate chosen for the loan in the GFE. If the lender does not include any credit or charge in Block 2, it must check the first checkbox in Block 2 indicating that "The credit or charge for the interest rate you have chosen is included in 'our origination charge' above." Only one of the boxes in Block 2 may be checked, as a credit and charge cannot occur together in the same transaction.

Disclosure of Charges for All Other Settlement Services (Block B)

Block B is the sum of charges for all settlement services other than the origination charges.

- Block 3 – required services by providers selected by the lender such as appraisal and flood certification fees;
- Block 4 – title service fees and the cost of lender's title insurance;
- Block 5 – owner's title insurance;
- Block 6 – other required services for which the consumer may shop;
- Block 7 – government recording charges;
- Block 8 – transfer tax charges;
- Block 9 – initial deposit for escrow account;
- Block 10 – daily interest charges;
- Block 11 – homeowner's insurance charges.

Third Page of GFE

The third page of the GFE includes the following information:

- A tolerance chart identifying the charges that can change at settlement (see discussion on tolerances below);
- A trade-off table that requires the loan originator to provide information on the loan described in the GFE and at the loan originator's option, information about alternative loans (one with lower settlement charges but a higher interest rate and one with a lower interest rate but higher settlement charges);
- A shopping chart that allows the consumer to fill in loan terms and settlement charges from other lenders or brokers to use to compare loans; and
- Language indicating that some lenders may sell the loan after settlement but that any fees the lender receives in the future cannot change the borrower's loan or the settlement charges.

Tolerances on Settlement Costs – 12 CFR 1024.7(e) and (i)

The RESPA Reform Rule established "tolerances" or limits on the amount actual settlement charges can vary at closing from the amounts stated on the GFE. The rule established three categories of settlement charges and each category has different tolerances. If, at settlement, the charges exceed the charges listed on the GFE by more than the permitted tolerances, the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded, at settlement or within 30 calendar days after settlement.

[10] The RESPA Reform Rule changed the definition of "mortgage broker" to mean a person or entity (not an employee of a lender) that renders origination services and serves as an intermediary between a lender and a borrower in a transaction involving a federally related mortgage loan, including such person or entity that closes the loan in its own name and table funds the transaction. The definition will also apply to a loan correspondent approved under 24 CFR 202.8 for Federal Housing Administration (FHA programs). The definition would also include an "exclusive agent" who is not an employee of the lender.

Tolerance Categories

- ***Zero tolerance category.*** This category of fees is subject to a zero tolerance standard. The fees estimated on the GFE may not be exceeded at closing. These fees include:
  - The loan originator's own origination charge, including processing and underwriting fees;
  - The credit or charge for the interest rate chosen (i.e., yield spread premium or discount points) while the interest rate is locked;
  - The adjusted origination charge while the interest rate is locked; and
  - State/local property transfer taxes.
- ***Ten percent tolerance category.*** For this category of fees, while each individual fee may increase or decrease, the sum of the charges at settlement may not be greater than10 percent above the sum of the amounts included on the GFE. This category includes fees for:
  - Loan originator required settlement services, where the loan originator selects the third-party settlement service provider;
  - Loan originator required services, title services, required title insurance and owner's title insurance when the borrower selects a third-party provider identified by the loan originator; and
  - Government recording charges.
- ***No tolerance category***. The final category of fees is not subject to any tolerance restriction. The amounts charged for the following settlement services included on the GFE can change at settlement and the amount of the change is not limited:
  - Loan originator required services where the borrower selects his or her own third-party provider;
  - Title services, lender's title insurance, and owner's title insurance when the borrower selects his or her own provider;
  - Initial escrow deposit;
  - Daily interest charges; and homeowner's insurance.

Identification of Third-Party Settlement Service Providers

When the loan originator permits a borrower to shop for one or more required third-party settlement services and select the settlement service provider for such required services, the loan originator must list in the relevant block on page two of the GFE the settlement service and the estimated charge to be paid to the provider of each required service. In addition, the loan originator must provide the borrower with a written list of settlement service providers for those required services on a separate sheet of paper at the time the GFE is provided.

Binding GFE – 12 CFR 1024.7(f)

The loan originator is bound, within the tolerances provided, to the settlement charges and terms listed on the GFE provided to the borrower, unless a new GFE is provided prior to settlement (see discussion below on changed circumstances). This also means that if a lender accepts a GFE issued by a mortgage broker, the lender is subject to the loan terms and settlement charges listed in the GFE, unless a new GFE is issued prior to settlement.

Changed Circumstances – 12 CFR 1024.2(b), 1024.7(f)(1) and (f)(2)

Changed circumstances are defined as:

- Acts of God, war, disaster, or other emergency;
- Information particular to the borrower or transaction that was relied on in providing the GFE that changes or is found to be inaccurate after the GFE has been provided;
- New information particular to the borrower or transaction that was not relied on in providing the GFE; or
- Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

Changed circumstances do not include the borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided. In addition, market price fluctuations by themselves do not constitute changed circumstances.

Changed circumstances affecting ***settlement costs*** are those circumstances that result in increased costs for settlement services such that the charges at settlement would exceed the tolerances or limits on those charges established by the regulations.

Changed circumstances affecting the ***loan*** are those circumstances that affect the borrower's eligibility for the loan. For example, if underwriting and verification indicate that the borrower is ineligible for the loan provided in the

GFE, the loan originator would no longer be bound by the original GFE. In such cases, if a new GFE is to be provided, the loan originator must do so within three business days of receiving information sufficient to establish changed circumstances. The loan originator must document the reason that a new GFE was provided and must retain documentation of any reasons for providing a new GFE for no less than three years after settlement.

None of the information collected by the loan originator prior to issuing the GFE may later become the basis for a "changed circumstance" upon which it may offer a revised GFE, unless: 1) it can demonstrate that there was a change in the particular information; or 2) that the information was inaccurate; or 3) that it did not rely on that particular information in issuing the GFE. A loan originator has the burden of demonstrating nonreliance on the collected information, but may do so through various means including through a documented record in the underwriting file or an established policy of relying on a more limited set of information in providing GFEs.

If a loan originator issues a revised GFE based on information previously collected in issuing the original GFE and "changed circumstances," it must document the reasons for issuing the revised GFE, such as its nonreliance on such information or the inaccuracy of such information.

Borrower Requested Changes – 12 CFR 1024.7(f)(3)

If a borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan, the loan originator may provide a revised GFE to the borrower. If a revised GFE is provided, the loan originator must do so within three business days of the borrower's request.

Expiration of Original GFE – 12 CFR 1024.7(f)(4)

If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or such longer time provided by the loan originator, the loan originator is no longer bound by the GFE.

Interest Rate Dependent Charges and Terms – 12 CFR 1024.7(f)(5)

If the interest rate has not been locked by the borrower, or a locked interest rate has expired, all interest rate-dependent charges on the GFE are subject to change. The charges that may change include the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate. However, the loan originator's origination charge (listed in Block 1 of page 2 of the GFE) is not subject to change, even if the interest rate floats, unless there is another changed circumstance or borrower-requested change.

If the borrower later locks the interest rate, a new GFE must be provided showing the revised interest rate dependent charges and terms. All other charges and terms must remain the same as on the original GFE, unless changed circumstances or borrower-requested changes result in increased costs for settlement services or affect the borrower's eligibility for the specific loan terms identified in the original GFE.

New Home Purchases – 12 CFR 1024.7(f)(6)

In transactions involving new home purchases, where settlement is expected to occur more than 60 calendar days from the time a GFE is provided, the loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the loan originator may issue a revised GFE. If the loan originator does not provide such a disclosure, it cannot issue a revised GFE except as otherwise provided in Regulation X.

Volume-Based Discounts

The RESPA Reform Rule did not formally address the legality of volume-based discounts. However, HUD indicated in the preamble to the rule that discounts negotiated between loan originators and other settlement service providers, where the discount is ultimately passed on to the borrower in full, is not, depending on the circumstances of a particular transaction, a violation of Section 8 of RESPA.[11]

Uniform Settlement Statement (HUD-1 OR HUD-1A) – 12 CFR 1024.8

Section 4 of RESPA requires the person conducting the settlement (settlement agent) to provide the borrower with a HUD-1 Settlement Statement at or before settlement that clearly itemizes all charges imposed on the buyer and the seller in connection with the settlement. The RESPA Reform rule included a revised HUD-1/1A Settlement Statement form that is required as of January 1, 2010. The HUD-1 is used for transactions in which there is a borrower and seller. For transactions in which there is a borrower and no seller (refinancings and subordinate lien loans), the HUD-1 may be completed by using the borrower's side of the settlement statement. Alternatively, the HUD-1A may be used.

However, no settlement statement is required for home equity plans subject to the Truth in Lending Act and Regulation Z. Appendix A to 12 CFR Part 1024 contains the instructions for completing the forms.

[11] 73 Fed. Reg. 68204, 68232 (November 17, 2008).

Key RESPA Reform Enhancements to the HUD-1/1A Settlement Statement

While the RESPA Reform Rule did not include any substantive changes to the first page of the HUD-1/1A form, there were changes to the second page of the form to facilitate comparison between the HUD-1/1A and the GFE. Each designated line on the second page of the revised HUD-1/1A includes a reference to the relevant line from the GFE.

With respect to disclosure of "no cost" loans where "no cost" refers only to the loan originator's fees (see Section L, subsection 800 of the HUD-1 form), the amounts shown for the "origination charge" and the "credit or charge for the interest rate chosen" should offset, so that the "adjusted origination charge" is zero.

In the case of a "no cost" loan where "no cost" encompasses loan originator and third-party fees, all third-party fees must be itemized and listed in the borrower's column on the HUD-1/1A. These itemized charges must be offset with a negative adjusted origination charge (Line 803) and recorded in the columns.

To further facilitate comparability between the forms, the revised HUD-1 includes a new third page (second page of the HUD-1A) that allows borrowers to compare the loan terms and settlement charges listed on the GFE with the terms and charges listed on the closing statement. The first half of the third page includes a comparison chart that sets forth the settlement charges from the GFE and the settlement charges from the HUD-1 to allow the borrower to easily determine whether the settlement charges exceed the charges stated on the GFE. If any charges at settlement exceed the charges listed on the GFE by more than the permitted tolerances, the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded. A borrower will be deemed to have received timely reimbursement if the financial institution delivers or places the payment in the mail within 30 calendar days after settlement.

Inadvertent or technical errors on the settlement statement are not deemed to be a violation of Section 4 of RESPA if a revised HUD-1/1A is provided to the borrower within 30 calendar days after settlement.

The second half of the third page sets forth the loan terms for the loan received at settlement in a format that reflects the summary of loan terms on the first page of the GFE, but with additional loan related information that would be available at closing. The note at the bottom of the page indicates that the borrower should contact the lender if the borrower has questions about the settlement charges or loan terms listed on the form.

Section 1024.8(b) and the instructions for completing the HUD-1/1A Settlement Statement provide that the loan originator shall transmit sufficient information to the settlement agent to allow the settlement agent to complete the "loan terms" section. The loan originator must provide the information in a format that permits the settlement agent to enter the information in the appropriate spaces on the HUD-1/1A, without having to refer to the loan documents.

Average Charge Permitted

As of January 16, 2009, an average charge may be stated on the HUD-1/1A if such average charge is computed in accordance with 12 CFR 1024.8(b)(2). All settlement service providers, including loan originators, are permitted to list the average charge for a settlement service on the HUD-1/1A Settlement Statement (and on the GFE) rather than the exact cost for that service.

The method of determining the average charge is left up to the settlement service provider. The average charge may be used as the charge for any third-party vendor charge, not for the provider's own internal charges. The average charge also cannot be used where the charge is based on the loan amount or the value of the property.

The average charge may be used for any third-party settlement service, provided that the total amounts received from borrowers for that service for a particular class of transactions do not exceed the total amounts paid to providers of that service for that class of transactions. A class of transactions may be defined based on the period of time, type of loan and geographic area. If an average charge is used in any class of transactions defined by the loan originator, then the loan originator must use the same average charge for every transaction within that class. The average charge must be recalculated at least every six months.

A settlement service provider that uses an average charge for a particular service must maintain all documents that were used to calculate the average charge for at least three years after any settlement in which the average charge was used.

Printing and Duplication of the Settlement Statement – 12 CFR 1024.9

Financial institutions have numerous options for layout and format in reproducing the HUD-1 and HUD-1A that do not require prior CFPB approval such as size of pages; tint or color of pages; size and style of type or print; spacing; printing on separate pages, front and back of a single page or on one continuous page; use of multi-copy tear-out sets; printing on rolls for computer purposes; addition of signature lines; and translation into any language. Other changes may be made only with the approval of the CFPB.

One-Day Advance Inspection of the Settlement Statement – 12 CFR 1024.10

Upon request by the borrower, the HUD-1 or HUD-1A must be completed and made available for inspection during the business day immediately preceding the day of settlement, setting forth those items known at that time by the person conducting the closing.

Delivery – 12 CFR 1024.10(a) and (b)

The completed HUD-1 or HUD-1A must be mailed or delivered to the borrower, the seller (if there is one), the lender (if the lender is not the settlement agent), and/or their agents at or before settlement. However, the borrower may waive the right of delivery by executing a written waiver at or before settlement. The HUD-1 or HUD-1A shall be mailed or delivered as soon as practicable after settlement if the borrower or borrower's agent does not attend the settlement.

Retention – 12 CFR 1024.10(e)

A lender must retain each completed HUD-1 or HUD-1A and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. If the loan is transferred, the lender shall provide a copy of the HUD-1 or HUD-1A to the owner or servicer of the mortgage as part of the transfer. The owner or servicer shall retain the HUD-1 or HUD-1A for the remainder of the five-year period.

Prohibition of Fees for Preparing Federal Disclosures – 12 CFR 1024.12

For loans subject to RESPA, no fee may be charged for preparing the Settlement Statement or the Escrow Account statement or any disclosures required by the Truth in Lending Act.

Prohibition Against Kickbacks and Unearned Fees – 12 CFR 1024.14

Any person who gives or accepts a fee, kickback, or thing of value (payments, commissions, gifts, tangible item or special privileges) for the referral of settlement business is in violation of Section 8(a) of RESPA. Any person who gives or accepts any portion, split, or percentage of a charge for real estate settlement services, other than for services actually performed, is in violation of Section 8(b) of RESPA. Appendix B of Regulation X provides guidance on the meaning and coverage of the prohibition against kickbacks and unearned fees.

RESPA Section 8(b) is not violated when a single party charges and retains a settlement service fee, and that fee is unearned or excessive.

Penalties and Liabilities

Civil and criminal liability is provided for violating the prohibition against kickbacks and unearned fees including:

Civil liability to the parties affected, equal to three times the amount of any charge paid for such settlement service.

The possibility that the costs associated with any court proceeding together with reasonable attorney's fees could be recovered.

A fine of not more than $10,000 or imprisonment for not more than one year or both.

Affiliated Business Arrangements – 12 CFR 1024.15

If a loan originator (or an associate)[12] has either an affiliate relationship or a direct or beneficial ownership interest of more than one percent in a provider of settlement services and the loan originator directly or indirectly refers business to the provider it is an affiliated business arrangement. An affiliated business arrangement is not a violation of Section 8 of RESPA and of 12 CFR 1024.14 of Regulation X if the following conditions are satisfied.

Prior to the referral, the person making each referral has provided to each person whose business is referred an Affiliated Business Arrangement Disclosure Statement (Appendix D of Regulation X). This disclosure shall specify the following:

- The nature of the relationship (explaining the ownership and financial interest) between the provider and the loan originator; and
- The estimated charge or range of charges generally made by such provider.

This disclosure must be provided on a separate piece of paper either at the time of loan application, or with the GFE, or at the time of the referral.

The loan originator may not require the use of such a provider, with the following exceptions: the institution may require a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the institution to represent its interest. The loan originator may only receive a return on ownership or franchise interest or payment otherwise permitted by RESPA.

[12] An associate includes a corporation or business entity that controls, is controlled by, or is under common control with the institution; an employer, officer, director, partner, franchisor, or franchisee of the institution; or anyone with an arrangement with the institution that enables the person to refer settlement business and benefit financially from the referrals. 12 U.S.C. 2602(8).

Title Companies – 12 CFR 1024.16

Sellers that hold legal title to the property being sold are prohibited from requiring borrowers, either directly or indirectly, as a condition to selling the property, to use a particular title company.

Escrow Accounts – 12 CFR 1024.17

On October 26, 1994, HUD issued its final rule changing the accounting method for escrow accounts, which was originally effective April 24, 1995. The rule establishes a national standard accounting method, known as aggregate accounting. The final rule also established formats and procedures for initial and annual escrow account statements.

The amount of escrow funds that can be collected at settlement or upon creation of an escrow account is restricted to an amount sufficient to pay charges, such as taxes and insurance, that are attributable to the period from the date such payments were last paid until the initial payment date. Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to 1/12 of the total annual escrow payments that the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than 1/6 of the estimated total annual payments from the account.

Escrow Account Analysis – 12 CFR 1024.17(c)(2) and (3) and 12 CFR 1024.17(k)

Before establishing an escrow account, a servicer must conduct an analysis to determine the periodic payments and the amount to be deposited. The servicer shall use an escrow disbursement date that is on or before the deadline to avoid a penalty and may make annual lump sum payments to take advantage of a discount.

Transfer of Servicing – 12 CFR 1024.17(e)

If the new servicer changes either the monthly payment amount or the accounting method used by the old servicer, then it must provide the borrower with an initial escrow account statement within 60 days of the date of transfer. When the new servicer provides an initial escrow account statement, it shall use the effective date of the transfer of servicing to establish the new escrow account computation year. In addition, if the new servicer retains the monthly payments and accounting method used by the old servicer, then the new servicer may continue to use the same computation year established by the old servicer or it may choose a different one, using a short year statement.

Shortages, Surpluses, and Deficiency Requirements – 12 CFR 1024.17(f)

The servicer shall conduct an annual escrow account analysis to determine whether a surplus, shortage, or deficiency exists as defined under 12 CFR 1024.17(b).

If the escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to $50. If the surplus is less than $50, the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments. These provisions apply as long as the borrower's mortgage payment is current at the time of the escrow account analysis.

If the escrow account analysis discloses a shortage of less than one month's escrow payments, then the servicer has three possible courses of action:

- The servicer may allow the shortage to exist and do nothing to change it;
- The servicer may require the borrower to repay the shortage amount within 30 days; or
- The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

If the shortage is more than or equal to one month's escrow payment, then the servicer has two possible courses of action:

- The servicer may allow the shortage to exist and do nothing to change it; or
- The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

If the escrow account analysis discloses a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

If the deficiency is less than one month's escrow account payment, then the servicer:

- May allow the deficiency to exist and do nothing to change it;
- May require the borrower to repay the deficiency within 30 days; or
- May require the borrower to repay the deficiency in two or more equal monthly payments.

If the deficiency is greater than or equal to one month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it, or require the borrower to repay the deficiency in two or more equal monthly payments.

These provisions apply as long as the borrower's mortgage payment is current at the time of the escrow account analysis.

A servicer must notify the borrower at least once during the escrow account computation year if a shortage or deficiency exists in the account.

Initial Escrow Account Statement – 12 CFR 1024.17(g)

After analyzing each escrow account, the servicer must submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.

The initial escrow account statement must include the monthly mortgage payment; the portion going to escrow; itemize estimated taxes, insurance premiums, and other charges; the anticipated disbursement dates of those charges; the amount of the cushion; and a trial running balance.

Annual Escrow Account Statement – 12 CFR 1024.17(i)

A servicer shall submit to the borrower an annual statement for each escrow account within 30 days of the completion of the computation year. The servicer must conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.

The annual escrow account statements must contain the account history; projections for the next year; current mortgage payment and portion going to escrow; amount of past year's monthly mortgage payment and portion that went into the escrow account; total amount paid into the escrow account during the past year; amount paid from the account for taxes, insurance premiums, and other charges; balance at the end of the period; explanation of how the surplus, shortage, or deficiency is being handled; and, if applicable, the reasons why the estimated low monthly balance was not reached.

Short-Year Statements – 12 CFR 1024.17(i)(4)

Short-year statements can be issued to end the escrow account computation year and establish the beginning date of the new computation year. Short-year statements may be provided upon the transfer of servicing and are required upon loan payoff. The statement is due to the borrower within 60 days after receiving the pay-off funds.

Timely Payments – 12 CFR 1024.17(k)

The servicer must pay escrow disbursements by the disbursement date. In calculating the disbursement date, the servicer must use a date on or before the deadline to avoid a penalty and may make annual lump sum payments to take advantage of a discount. The 2013 Amendments include a requirement that a servicer may not purchase force-placed insurance unless it is unable to disburse funds from the borrower's escrow account to maintain the borrower's hazard insurance. A servicer is unable to disburse funds only if the servicer has a reasonable basis to believe that either the borrower's property is vacant or the borrower's hazard insurance has terminated for reasons other than non-payment. A servicer is not unable to disburse funds from the borrower's escrow account solely because the account is deficient. If a servicer advances funds to an escrow account to ensure that the borrower's hazard insurance premium charges are paid in a timely manner, a servicer may seek repayment from the borrower for the funds the servicer advanced, unless otherwise prohibited by applicable law.

The 2013 Amendments include a limited exemption from the restriction on force-placed insurance purchases for small servicers. Subject to the requirements of Section 1024.37, small servicers may purchase force-placed insurance and charge the borrower for the cost of that insurance if the cost to the borrower is less than the amount the small servicer would need to disburse from the borrower's escrow account to ensure timely payment of the borrower's hazard insurance premium charges.

An institution qualifies as a small servicer if either:

- The institution services, together with any affiliates, 5,000 or fewer mortgage loans, as that term is used in 12 CFR 1026.41(a)(1), for all of which the institution (or an affiliate) is the creditor or assignee; or
- The institution is a Housing Finance Agency, as defined in 24 CFR 266.5 (12 CFR 1026.41(e)(4)(ii)).

The determination as to whether a servicer qualifies as a small servicer is made based on the mortgage loans, as that term is used in 12 CFR 1026.41(a)(1), serviced by the servicer and any affiliates as of January 1 for the remainder of that calendar year. A servicer that ceases to qualify as a small servicer will have six months from the time it ceases to qualify or until the next January 1, whichever is later, to comply with any requirements for which a servicer is no longer exempt. The following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation; (b) reverse mortgage transactions; and (c) mortgage loans secured by

consumers' interests in timeshare plans (12 CFR 1026.41(e)(4)(iii)).

List of Homeownership Counseling Organizations – 12 CFR 1024.20

For any application for a federally related mortgage loan, as that term is defined in Section 1024.2 subject to the exemptions in Section 1024.5(b) (except for applications for reverse mortgages or timeshare loans), the lender must provide a loan applicant with a clear and conspicuous written list of homeownership counseling services in the loan applicant's location, no later than three business days after a lender, mortgage broker, or dealer receives an application or information sufficient to complete an application. The list is available on a website maintained by the CFPB, or from data made available by the CFPB or HUD. Lenders must make sure that the list of homeownership counseling services was obtained no earlier than 30 days before they provide it to the applicant. This list may be combined with other disclosures (unless otherwise prohibited by Regulation X or Regulation Z). A mortgage broker or dealer that receives a loan application, or for whom it prepares an application, may provide the list, in which case the lender is not required to provide an additional list, though in all cases the lender remains responsible for ensuring that the list is provided to the applicant. The list may be provided in person, by mail or other means. The list may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of E-Sign.

If, before the three-day period ends, the lender denies the application or the applicant withdraws it, the lender does not have to provide the list. If the transaction involves more than one lender, the lenders should agree on which of them will provide the list. If there is more than one applicant, the list can go to any one of them that has primary liability on the loan.

Subpart C – Mortgage Servicing

Scope – 12 CFR 1024.30

Except as otherwise noted below, the provisions of Subpart C – Mortgage Servicing, 12 CFR 1024.30-41, apply to any mortgage loan, as that term is defined in 12 CFR 1024.31.

Definitions – 12 CFR 1024.31

The 2013 Amendments added several definitions that are applicable to Subpart C – Mortgage Servicing, 12 CFR 1024.30-41. Among other definitions, amended Regulation X provides that "mortgage loan" means "any federally related mortgage loan, as that term is defined in Section 1024.2 subject to the exemptions in Section 1024.5(b), but does not include open-end lines of credit (home equity plans)." Thus, the term "mortgage loan" includes (but is not limited to) refinancing transactions, whether secured by a senior or subordinate lien.

General Disclosure Requirements – 12 CFR 1024.32

Disclosure Requirements – 12 CFR 1024.32(a)

Disclosures required under 12 CFR 1024.30-.41 must be clear and conspicuous, in writing, and in a form that a recipient may keep. The disclosures may be provided in electronic form, subject to consumer consent and the provisions of E-Sign,[13] and a servicer may use commonly accepted or readily understandable abbreviations. Disclosures may be made in a language other than English, provided that they are made in English upon a recipient's request.

Additional Information, Disclosures Required by Other Laws – 12 CFR 1024.32(b)

Servicers may include additional information in disclosures required under 12 CFR 1024.30-41 or combine these disclosures with any disclosure required by other law unless doing so is expressly prohibited by 12 CFR 1024.30-41, by other applicable law (such as the Truth in Lending Act or Truth in Savings Act), or by the terms of an agreement with a Federal or State regulatory agency.

Mortgage Servicing Transfer Disclosures – 12 CFR 1024.33

The disclosures related to the transfer of mortgage servicing generally are required for any mortgage loan, as that term is defined in 12 CFR 1024.31, except that the servicing disclosure statement required under 12 CFR 1024.33(a) is required only for loans that are secured by a first lien.

Servicing Disclosure Statement – 12 CFR 1024.33(a)

A financial institution that receives an application for a first-lien mortgage loan is required to provide the servicing disclosure statement to the borrower within three days (excluding legal public holidays, Saturdays, and Sundays) after receipt of the application. The disclosure statement must advise whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time. A model disclosure statement is set forth in Appendix MS-1.

If the institution denies the borrower's application within the three-day period, it is not required to provide the disclosure statement.

[13] 15 U.S.C. 7001 *et seq.*

As noted above, this disclosure statement is required only for loans that are secured by a first lien.

Notices of Transfer of Loan Servicing – 12 CFR 1024.33(b)

When any mortgage loan, as that term is defined in 12 CFR 1024.31, is assigned, sold or transferred, the transferor (former servicer) generally must provide a disclosure at least 15 days before the effective date of the transfer. Generally, a transfer of servicing notice from the transferee (new servicer) must be provided not more than 15 days after the effective date of the transfer. Generally, both notices may be combined into one notice if delivered to the borrower at least 15 days before the effective date of the transfer. Notices provided at the time of settlement satisfy the timing requirements.

The disclosure must include:

- The effective date of the transfer.
- The name, address, and toll-free or collect-call telephone number for an employee or department of the transferee servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries.
- The name, address, and toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries.
- The date on which the transferor servicer will cease accepting payments relating to the loan, and the date on which the transferee servicer will begin to accept such payments. The dates must be either the same or consecutive dates.
- Whether the transfer will affect the terms or the availability of optional insurance and any action the borrower must take to maintain such coverage.
- A statement that the transfer does not affect the terms or conditions of the mortgage (except as directly related to servicing).

The 2013 Amendments modified the disclosure in Appendix MS-2 that servicers may use to comply with the mortgage servicing transfer disclosure.

The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of this requirement if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

- Transfers between affiliates;
- Transfers resulting from mergers or acquisitions of servicers or subservicers; and
- Transfers between master servicers, when the subservicer remains the same.

Additionally, the Federal Housing Administration (FHA) is not required to provide a notice of transfer to the borrower where a mortgage insured under the National Housing Act is assigned to FHA.

Borrower Payments During Transfer of Servicing – 12 CFR 1024.33(c)

During the 60-day period beginning on the date of transfer, no late fee or other penalty can be imposed on a borrower who has made a timely payment to the transferor servicer (former servicer). Additionally, if the transferor servicer (former servicer) receives any incorrect payments on or after the effective date of the transfer, the transferor servicer must either transfer the payment to the transferee servicer (new servicer) or return the payment and inform the payor of the proper recipient of the payment.

Timely Escrow Payments and Treatment of Escrow Account Balances – 12 CFR 1024.34

Servicers must comply with requirements concerning the treatment of escrow funds, which apply to any mortgage loan, as that term is defined in 12 CFR 1024.31.

If the terms of a mortgage loan require the borrower to make payments to the servicer for deposit into an escrow account to pay taxes, insurance premiums, and other charges, the servicer shall make payments from the escrow account in a timely manner. A payment is made in a timely manner if it is made on or before the deadline to avoid a penalty.

Generally, the servicer must return any amounts remaining in escrow within the servicer's control within 20 days (excluding legal public holidays, Saturdays, and Sundays) after the borrower pays the mortgage loan in full, unless the borrower and servicer agree to credit the remaining funds towards an escrow account for certain new mortgage loans. The rule does not prohibit servicers from netting any funds remaining in an escrow account against the outstanding balance of the borrower's mortgage loan.

Error Resolution Procedures – 12 CFR 1024.35

Servicers must comply with error resolution procedures that are triggered when a borrower submits an error notice to the servicer. The requirements set forth in 12 CFR 1024.35 apply to any mortgage loan, as that term is defined in 12 CFR 1024.31.

The CFPB has issued an advisory opinion clarifying that, because borrowers initiate the error resolution process, a servicer's communications with a borrower regarding an error notice are not subject to the "cease communication" provision of the Fair Debt Collection Practices Act (FDCPA) unless the borrower specifically withdraws the request for action regarding the error.[14]

Notice of Error – 12 CFR 1024.35(a)

An error notice must be in writing and identify the borrower's name, information that allows the servicer to identify the borrower's account, and the alleged error. A qualified written request that asserts an error relating to the servicing of a mortgage loan is an error notice, and the servicer must comply with all of the error notice requirements with respect to such qualified written request.

The commentary clarifies that a servicer should not rely solely on the borrower's description of a submission to determine whether it is an error notice, an information request, or both. For example, a borrower may submit a letter titled "Notice of Error" that indicates that the borrower wants to receive the information set forth in an annual escrow account statement and asserts an error for the servicer's failure to provide that statement. Such a letter could be both an error notice and an information request, and the servicer must evaluate whether the letter fulfills the substantive requirements of an error notice, information request, or both.

Scope of Error Resolution – 12 CFR 1024.35(b)

The error resolution procedures apply to the following alleged errors:

- Failure to accept a payment that complies with the servicer's written requirements.
- Failure to apply an accepted payment to principal, interest, escrow, or other charges as required by the mortgage loan and applicable law.
- Failure to credit a payment to the borrower's account as of the date the servicer received it, as required by 12 CFR 1026.36(c)(1).
- Failure to pay taxes, insurance premiums, or other charges by the due date, as required by 12 CFR 1024.34(a).
- Failure to refund an escrow account balance within 20 days (excluding legal public holidays, Saturdays, and Sundays) after the borrower pays the mortgage loan in full, as required by 12 CFR 1024.34(b).
- Imposition of a fee or charge without a reasonable basis to do so.
- Failure to provide an accurate payoff balance amount upon the borrower's request, as required by 12 CFR 1026.36(c)(3).
- Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure, as required by 12 CFR 1024.39.
- Failure to transfer accurate and timely information relating to servicing to a transferee servicer.
- Making the first notice or filing for a judicial or non-judicial foreclosure process before the time periods allowed by 12 CFR 1024.41(f) and (j).
- Moving for foreclosure judgment or order of sale or conducting a foreclosure sale in violation of 12 CFR 1024.41(g) or (j).
- Any other error relating to the servicing of a borrower's mortgage loan.

The commentary gives examples of errors not covered by 12 CFR 1024.35(b), such as errors relating to: (i) the origination of a mortgage loan; (ii) the underwriting of a mortgage loan; (iii) a subsequent sale or securitization of a mortgage loan; and (iv) a determination to sell, assign, or transfer the servicing of a mortgage loan (unless it concerns the failure to transfer accurate and timely information relating to the servicing of the borrower's mortgage loan account to a transferee servicer).

Contact Information – 12 CFR 1024.35(c)

If the servicer establishes an address to which borrowers must send error notices, the servicer must provide written notice of the address to the borrower with specified content. The commentary states that the servicer must also include this address on the following communications: (i) any periodic statement or coupon book required under 12 CFR 1026.41; (ii) any website the servicer maintains in connection with the servicing of the loan; and (iii) any notice required pursuant to Section 1024.39 (early intervention) or Section 1024.41 (loss mitigation) that includes contact information for assistance. The servicer must use the same address for receiving information requests under 12 CFR 1024.36(b), and provide written notice to the borrower before changing the address to which the borrower must send error notices.

[14] CFPB Bulletin 2013-12.

Acknowledgement of Receipt – 12 CFR 1024.35(d)

The servicer generally must provide a written acknowledgment to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the error notice.

Response to an Error Notice – 12 CFR 1024.35(e)

A servicer generally has 30 days (excluding legal public holidays, Saturdays, and Sundays) from receipt of the error notice to investigate and respond to the notice, except that a servicer may extend this period by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, prior to the expiration of the original 30-day period, it notifies the borrower in writing of the extension and the reasons for it.

A servicer must respond within seven days (excluding legal public holidays, Saturdays, and Sundays) if the alleged error is a failure to provide an accurate payoff balance amount, and a servicer must respond by the earlier of 30 days (excluding legal public holidays, Saturdays, and Sundays) or the date of a foreclosure sale if the error involves either (i) making the first notice or filing for a judicial or non-judicial foreclosure process before the time periods allowed by 12 CFR 1024.41(f) or (j), or (ii) moving for foreclosure judgment or order of sale or conducting a foreclosure sale in violation of 12 CFR 1024.41(g) or (j).

In response to the notice of error, the servicer must either correct the error or conduct a reasonable investigation and determine that no error occurred. The servicer must also send a written response to the borrower that accomplishes one of the following:

- ***If the servicer corrects the alleged error.*** The servicer must advise the borrower of the correction and when the correction took effect, and provide contact information, including phone number, for further assistance;

- ***If the servicer determines that it committed an error or errors different than or in addition to those identified by the borrower.*** The servicer must correct the error and advise the borrower of the correction and when the correction took effect, and provide contact information, including phone number, for further assistance; or

- ***If the servicer determines after a reasonable investigation that no error occurred.*** The servicer must state that it determined that no error occurred, the reasons for its determination, and the borrower's right to request documents relied upon by the servicer in reaching its determination and how the borrower can make such a request, and provide contact information, including phone number, for further assistance. If the borrower requests those documents, the servicer generally must provide them within 15 days (excluding legal public holidays, Saturdays, and Sundays) at no cost to the borrower. The servicer need not provide documents that constitute confidential, proprietary, or privileged information.

As a part of its investigation of the asserted error, the servicer may request supporting documentation from the borrower, but the servicer must conduct a reasonable investigation even if the borrower does not provide supporting documentation.

Early Correction or Error Asserted Before Foreclosure Sale – 12 CFR 1024.35(f)

A servicer is not required to provide the five-day acknowledgement notice (12 CFR 1024.35(d)) or the response notice (12 CFR 1024.35(e)) if either:

- The servicer corrects the asserted errors and notifies the borrower of the correction within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the error notice; or

- The servicer receives the error notice seven or fewer days before a foreclosure sale and the asserted error concerns the timing of the foreclosure process under Section 1024.35(b)(9) or (10). In this instance, the servicer must make a good faith attempt to respond to the borrower, either orally or in writing, and either correct the error or state the reason the servicer has determined that no error occurred.

Requirements Not Applicable – 12 CFR 1024.35(g)

A servicer does not need to provide the five-day acknowledgement notice (12 CFR 1024.35(d)), provide the response notice (12 CFR 1024.35(e)), or refrain from providing adverse information to credit reporting agencies for 60 days (12 CFR 1024.35(i)), if the servicer reasonably determines any of the following apply:

- ***Duplicative notice of error.*** The asserted error is substantially the same as a previously-asserted error for which the servicer complied with the obligation to respond, unless the borrower provides new and material information to support the asserted error. New and material information is information that is reasonably likely to change the servicer's prior determination about the error;

- ***Overbroad notice of error.*** The error notice is overbroad if the servicer cannot reasonably determine the specific alleged error. The commentary provides examples of overbroad notices, including those that assert errors regarding substantially all aspects of the mortgage loan (including origination, servicing, and foreclosure), notices that resemble legal pleadings and demand a response to

each numbered paragraph, or notices that are not reasonably understandable or contain voluminous tangential information such that a servicer cannot reasonably identify from the notice any error that requires a response. Note that if a servicer concludes an error notice as submitted is overbroad, the servicer must still provide a five-day acknowledgment notice and a subsequent response to the extent the servicer can identify an appropriate error notice within the submission; or

- ***Untimely notice of error.*** The error notice is sent more than one year after either the mortgage loan was discharged or the servicer receiving the notice of error transferred the mortgage loan to another servicer. For purposes of this provision, a mortgage loan is discharged when both the debt and all corresponding liens have been extinguished or released, as applicable.

If a servicer determines that any of these three exceptions apply, it must provide written notice to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after making that determination, including the basis relied upon.

Payment Requirements Prohibited – 12 CFR 1024.35(h)

A servicer may not charge a fee or require a borrower to make any payments as a condition to responding to an error notice.

Effect on Servicer Remedies – 12 CFR 1024.35(i)

In the 60-day period after receiving an error notice, a servicer may not furnish adverse information to any consumer reporting agency regarding any payment that is the subject of the error notice.

Requests for Information – 12 CFR 1024.36

Servicers must follow certain procedures in response to a borrower's written request for information with respect to the borrower's mortgage loan. The request must include the borrower's name, information that allows the servicer to identify the borrower's account, and the requested information related to the borrower's mortgage loan. The request can be from the borrower or the borrower's agent; a servicer may undertake reasonable procedures to determine if an alleged agent has authority from the borrower to act as the borrower's agent. A qualified written request that requests information relating to the servicing of a mortgage loan is an information request, and the servicer must comply with all of the information request requirements with respect to such a qualified written request.

The requirements set forth in 12 CFR 1024.36 apply to any mortgage loan, as that term is defined in 12 CFR 1024.31.

The CFPB has issued an advisory opinion clarifying that, because borrowers initiate requests for information, a servicer's communications with a borrower regarding such a request for information are not subject to the FDCPA's "cease communication" provision, unless the borrower specifically withdraws the information request.[15]

Contact Information – 12 CFR 1024.36(b)

If the servicer establishes an address to which borrowers must send information requests, the servicer must provide written notice of the address to the borrower with specified information. The commentary states that the servicer must also include this address on the following communications: (i) any periodic statement or coupon book required under 12 CFR 1026.41; (ii) any website the servicer maintains in connection with the servicing of the loan; and (iii) any notice required pursuant to Section 1024.39 (early intervention) or Section 1024.41 (loss mitigation) that includes contact information for assistance. The servicer must use the same address for receiving error notices under 12 CFR 1024.35(b), and provide written notice to the borrower before changing the address to which the borrower must send information requests.

Acknowledgement of Receipt – 12 CFR 1024.36(c)

The servicer generally must provide a written acknowledgment to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the information request.

Response to Information Request – 12 CFR 1024.36(d)

A servicer generally must respond in writing to an information request within 30 days (excluding legal public holidays, Saturdays, and Sundays) of receipt, except that a servicer may extend this period by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, prior to the expiration of the original 30-day period, it notifies the borrower in writing of the extension and the reasons for it. A servicer must respond within 10 days (excluding legal public holidays, Saturdays, and Sundays) after receiving the request, if the borrower requested the identity or contact information for the owner or assignee of a mortgage loan.

The servicer must respond in writing by either:

- Providing the requested information and contact information, including phone number, for further assistance; or
- Conducting a reasonable search for the information and advising the borrower that the servicer has determined

[15] CFPB Bulletin 2013-12.

that the requested information is not available to it, the basis for the servicer's determination, and contact information, including phone number, for further assistance.

Information is not available if it is not in the servicer's control or possession, or the servicer cannot retrieve it in the ordinary course of business through reasonable efforts. The commentary gives examples of when information is or is not available.

Early Response – 12 CFR 1024.36(e)

The five-day receipt acknowledgement (12 CFR 1024.36(c)) and the response (12 CFR 1024.36(d)) requirements do not apply if the servicer provides the requested information and contact information, including phone number, for further assistance within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the information request.

Requirement Not Applicable – 12 CFR 1024.36(f)

The five-day receipt acknowledgement (12 CFR 1024.36(c)) and the response notice (12 CFR 1024.36(d)) requirements also do not apply if the servicer reasonably determines any of the following exceptions apply:

- The information requested is substantially the same information that the borrower previously requested.
- The information requested is confidential, proprietary, or privileged.
- The information requested is not directly related to the borrower's mortgage loan account. The commentary provides examples of irrelevant information, including information related to the servicing of mortgage loans other than the borrower's loan and investor instructions or requirements for servicers regarding the negotiation or approval of loss mitigation options.
- The information request is overbroad or unduly burdensome. A request is overbroad if the borrower requests that the servicer provide an unreasonable volume of documents or information. A request is unduly burdensome if a diligent servicer could not respond within the time periods set forth in 12 CFR 1024.36(d)(2) or would incur costs (or have to dedicate resources) that would be unreasonable in light of the circumstances. The commentary provides examples of overbroad or unduly burdensome requests, such as requests that seek documents relating to substantially all aspects of mortgage origination, mortgage servicing, mortgage sale or securitization, and foreclosure, as well as requests that require servicers to provide information in a specific format or seek information that is not reasonably likely to assist the borrower. If an information request as submitted is overbroad or unduly burdensome, the servicer must still provide the five-day acknowledgment of receipt and subsequent response if the servicer can reasonably identify an appropriate information request within the submission.
- The information request is sent more than one year after either the mortgage loan was discharged or the servicer receiving the information request transferred the mortgage loan to another servicer. For purposes of this provision, a mortgage loan is discharged when both the debt and all corresponding liens have been extinguished or released, as applicable.

If a servicer determines that any of these five exceptions apply, it must provide written notice to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after making that determination, including the basis relied on.

Payment Requirement Limitations – 12 CFR 1024.36(g)

A servicer generally may not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to an information request. A servicer may charge for providing a beneficiary notice under applicable state law, if such a fee is not otherwise prohibited by applicable law.

Force-Placed Insurance – 12 CFR 1024.37

Servicers must comply with restrictions on obtaining and assessing charges and fees for force-placed insurance, defined as hazard insurance that a servicer obtains on behalf of the owner or assignee to insure the property securing the mortgage loan (but does not include (i) flood insurance required by the Flood Disaster Protection Act of 1973, (ii) hazard insurance obtained by a borrower but renewed by the borrower's servicer in accordance with 12 CFR 1024.17(k)(1), (2), or (5), or (iii) hazard insurance obtained by a borrower but renewed by the borrower's servicer with the borrower's agreement). The requirements set forth in 12 CFR 1024.37 apply to any mortgage loan, as that term is defined in 12 CFR 1024.31.

The CFPB has issued an advisory opinion clarifying that, because the Dodd-Frank Act specifically mandates certain disclosures regarding force-placed insurance without any mention of the FDCPA's "cease communication" provisions, a servicer acting as a debt collector does not violate the FDCPA's "cease communication" provision by providing the notices required under Section 1024.37.[16]

[16] CFPB Bulletin 2013-12.

Requirements Before Charging For Force-placed Insurance – 12 CFR 1024.37(b), (c), (d)

Servicers may not assess charges or fees for force-placed insurance unless the servicer satisfies four requirements.

First, the servicer must have a reasonable basis to believe that the borrower has failed to maintain required hazard insurance. The commentary states that information about a borrower's hazard insurance received by the servicer from the borrower, the borrower's insurance provider, or the borrower's insurance agent, may provide a servicer with a reasonable basis. If a servicer receives no such information, the servicer may satisfy the reasonable basis standard if the servicer acts with reasonable diligence to ascertain the borrower's hazard insurance status and does not receive evidence of hazard insurance.

Second, the servicer must mail or deliver an initial written notice to the borrower at least 45 days before assessing a charge or fee related to force-placed insurance. The servicer's notice must identify the following:

- The date of the notice;
- The servicer's name and mailing address;
- The borrower's name and mailing address;
- A statement requesting that the borrower provide hazard insurance information for the borrower's property and identifying the property by its physical address;
- A statement that the borrower's hazard insurance has expired or is expiring, that the servicer lacks evidence that the borrower has hazard insurance coverage past the expiration date, and if applicable, identifies the type of hazard insurance lacking;
- A statement that hazard insurance is required on the borrower's property and that the servicer has purchased or will purchase insurance at the borrower's expense;
- A request that the borrower promptly provide the servicer with insurance information;
- A description of the requested insurance information and how the borrower may provide such information, and if applicable, that the requested information must be in writing;
- A statement that the insurance coverage the servicer has purchased or will purchase may cost significantly more than, and provide less coverage than, hazard insurance purchased by the borrower;
- The servicer's phone number for borrower inquiries; and
- A statement advising that the borrower review additional information provided in the same transmittal (if applicable).

Other than the specific statements listed above, the servicer cannot provide any information on the initial notice, though the servicer can provide additional information on separate pages of paper contained in the same mailing. Certain information must be provided in bold text. Appendix MS-3(A) contains a form notice that servicers may use.

Third, the servicer must send a reminder notice at least 30 days after the initial notice is mailed or delivered and at least 15 days before the servicer assesses charges or fees. If the servicer has previously received no hazard insurance information in response to the initial notice, the reminder notice must contain the date of the reminder notice and all of the other information provided in the initial notice, as well as (i) advise that it is a second and final notice, and (ii identify the annual cost of force-placed insurance, or if unknown, a reasonable estimate of that cost.

If the servicer has received hazard insurance information but not evidence that the coverage has been in place continuously, the reminder notice must identify the following:

- The date of the notice;
- The servicer's name and mailing address;
- The borrower's name and mailing address;
- A statement requesting that the borrower provide hazard insurance information for the borrower's property and that identifies the property by its physical address;
- The servicer's phone number for borrower inquiries;
- A statement advising that the borrower review additional information provided in the same transmittal (if applicable);
- A statement that it is the second and final notice;
- The annual cost of force-placed insurance, or if unknown, a reasonable estimate of that cost;
- A statement that the servicer has received the hazard insurance information that the borrower provided;
- A request that the borrower provide the missing information; and

A statement that the borrower will be charged for insurance the servicer purchases during the time period in which the servicer cannot verify coverage.

Other than the specific statements listed above, the servicer cannot provide any additional information on the reminder notice, though the servicer can provide additional information on separate pages of paper contained in the same transmittal. Certain information must be provided in bold text. Appendix MS-3 contains sample reminder notices at forms MS-3(B) and MS-3(C). If a servicer receives new information about a borrower's hazard insurance after the required written notice has been put into production, the servicer is not required to update the notice if the written notice was put into production a reasonable time prior to the servicer delivering the notice to the borrower or placing the notice in the mail.

Fourth, by the end of the 15-day period after the servicer sends the reminder notice, the servicer must not have received evidence that the borrower has had required hazard insurance continuously in place. As evidence, the servicer may require a copy of the borrower's hazard insurance policy declaration page, the borrower's insurance certificate, the borrower's insurance policy, or other similar forms of written confirmation.

Renewing Force-Placed Insurance – 12 CFR 1024.37(e)

A servicer must comply with two requirements before assessing charges or fees on a borrower to renew or replace existing force-placed insurance.

First, the servicer must provide 45-day advance written notice. This renewal notice must provide the following information:

- The date of the renewal notice;
- The servicer's name and mailing address;
- The borrower's name and mailing address;
- A request that the borrower update the hazard insurance information and that identifies the property by its physical address;
- A statement that the servicer previously purchased force-placed insurance at the borrower's expense because the servicer did not have evidence that the borrower had hazard insurance coverage;
- A statement that the force-placed insurance is expiring or has expired and that the servicer intends to renew or replace it because hazard insurance is required on the property;
- A statement that the insurance coverage the servicer has purchased or will purchase may cost significantly more than, and provide less coverage than, hazard insurance purchased by the borrower, and identifying the annual cost (or if unknown, a reasonable estimate) of force-placed insurance;
- A statement that if the borrower purchases hazard insurance, the borrower should promptly advise the servicer;
- A description of the requested insurance information and how the borrower may provide such information, and if applicable, that the requested information must be in writing;
- The servicer's telephone number for borrower inquiries; and
- A statement advising the borrower to review additional information provided in the same transmittal (if applicable).

Other than the specific statements listed above, the servicer cannot provide any additional information on the renewal notice, though the servicer can provide additional information on separate pages of paper contained in the same transmittal. Certain information must be provided in bold text. Appendix MS-3(D) contains a form notice that servicers may use.

Second, by the end of the 45-day notice period, the servicer must not have received evidence demonstrating that the borrower has purchased required hazard insurance coverage.

Notwithstanding these two requirements, if not prohibited by State or other applicable law, if the servicer receives evidence that the borrower lacked insurance for some period of time after the existing force-placed insurance expired, the servicer may promptly assess a premium charge or fee related to renewing or replacing the existing force-placed insurance for that period of time.

The servicer must mail or deliver the renewal notice before each anniversary of purchasing force-placed insurance, though the servicer need not send the renewal notice more than once per year.

Mailing the Notices – 12 CFR 1024.37(f)

If the servicer mails the initial notice, the reminder notice, or the renewal notice, the servicer must use at least first-class mail.

Canceling Force-Placed Insurance – 12 CFR 1024.37(g)

If the servicer receives evidence that the borrower has had required hazard insurance coverage in place, then the servicer has 15 days to cancel the force-placed insurance, refund force-placed insurance premium charges and fees for the period of overlapping insurance coverage, and remove all force-placed charges and fees from the borrower's account for that period.

Limitations on Force-Placed Insurance – 12 CFR 1024.37(h)

All charges that a servicer assesses on a borrower related to force-placed insurance must be bona fide and reasonable, except for charges subject to State regulation and charges authorized by the Flood Disaster Protection Act of 1973. A bona fide and reasonable charge is one that is reasonably related to the servicer's cost of providing the service and is not otherwise prohibited by law.

General Servicing Policies, Procedures, and Requirements – 12 CFR 1024.38

Servicers must maintain policies and procedures reasonably designed to achieve certain servicing-related objectives, and are subject to requirements regarding record retention and the ability to create servicing files.

These requirements apply to any mortgage loan, as that term is defined in 12 CFR 1024.31, except that they do not apply to (i) small servicers, (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1024.31, or (iii) mortgage loans for which the servicer is a qualified lender. As noted above, an institution qualifies as a small servicer if it either (a) services, together with any affiliates, 5,000 or fewer mortgage loans, as that term is defined in 12 CFR 1026.41(a)(1), for all of which the institution (or an affiliate) is the creditor or assignee, or (b) is a Housing Finance Agency, as defined in 24 CFR 266.5.[17] Qualified lenders are those defined to be qualified lenders under the Farm Credit Act of 1971 and the Farm Credit Administration's accompanying regulations set forth at 12 CFR 617.7000 *et seq*.[18]

Reasonable Policies and Procedures – 12 CFR 1024.38(a)

Servicers must maintain policies and procedures reasonably designed to meet the objectives identified in 12 CFR 1024.38(b). Servicers may determine the specific policies and procedures they will adopt and the methods for implementing them in light of the size, nature, and scope of the servicers' operations, including, for example, the volume and aggregate unpaid principal balance of mortgage loans serviced, the credit quality (including the default risk) of the mortgage loans serviced, and the servicer's history of consumer complaints. "Procedures" refer to the servicer's actual practices for achieving the objective.

Objectives – 12 CFR 1024.38(b)

Servicers are required to maintain policies and procedures that are reasonably designed to achieve the following objectives.

I. Accessing and providing timely and accurate information. The servicer's policies and procedures must be reasonably designed to ensure that the servicer can:

A. Provide accurate and timely disclosures to the borrower.

B. Investigate, respond to, and make corrections in response to borrowers' complaints. These policies and procedures must be reasonably designed to ensure that the servicer can promptly obtain information from service providers to facilitate investigation and correction of errors resulting from actions of service providers.

C. 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.

D. Provide owners and assignees of mortgage loans with accurate information and documents about all the mortgage loans that they own. This includes information about a servicer's evaluations of borrowers for loss mitigation options and a servicer's loss mitigation agreements with borrowers, including loan modifications. Such information includes, for example: (a) a loan modification's date, terms, and features; (b) the components of any capitalized arrears; (c) the amount of any servicer advances; and (d) any assumptions regarding the value of property used in evaluating any loss mitigation options.

E. Submit documents or filings required for a foreclosure process, including documents or filings required by a court, that reflect accurate and current information and that comply with applicable law.

F. Upon notification of a borrower's death, promptly identify and facilitate communication with the borrower's successor in interest concerning the secured property.

II. Properly evaluating loss mitigation applications. The servicer's policies and procedures must be reasonably designed to ensure that the servicer can:

A. Provide accurate information regarding loss mitigation options available to the borrower from the owner or assignee of the borrower's loan.

[17] The definition of small servicer is set forth at 12 CFR 1026.41(e)(4)(ii).

[18] 12 CFR 617.7000 defines a qualified lender as (i) a system institution (except a bank for cooperatives) that extends credit to a farmer, rancher, or producer or harvester of aquatic products for any agricultural or aquatic purpose and other credit needs of the borrower, and (ii) other financing institutions with respect to loans discounted or pledged under section 1.7(b)(1)(B) of the Farm Credit Act.

B. Identify specifically all loss mitigation options available to a borrower from the owner or assignee of the borrower's mortgage loan. This includes identifying, with respect to each owner or assignee all of the loss mitigation options the servicer may consider when evaluating a borrower, as well as the criteria the servicer should apply for each option. The policies and procedures should be reasonably designed to address how the servicer will apply any specific thresholds for eligibility for particular loss mitigation options established by an owner or assignee of a mortgage loan (e.g., if the owner requires that a particular option be limited to a certain percentage of loans, then the policies and procedures must be reasonably designed to determine in advance how the servicer will apply that threshold). The policies and procedures must be reasonably designed to ensure that such information is readily accessible to the servicer's loss mitigation personnel.

C. Provide the loss mitigation personnel assigned to the borrower's mortgage loan with prompt access to all of the documents and information that the borrower submitted in connection with a loss mitigation option.

D. Identify the documents and information a borrower must submit to complete a loss mitigation application, and facilitate compliance with the notice required pursuant to 12 CFR 1024.41(b)(2)(i)(B).

E. In response to a complete loss mitigation application, properly evaluate the borrower for all eligible loss mitigation options pursuant to any requirements established by the owner or assignee of the mortgage loan, even if those requirements are otherwise beyond the requirements of 12 CFR 1024.41. For example, an owner or assignee may require that the servicer review a loss mitigation application submitted less than 37 days before a foreclosure sale or re-evaluate a borrower who has demonstrated a material change in financial circumstances.

III. Facilitating oversight of, and compliance by, service providers. The servicer's policies and procedures must be reasonably designed to ensure that the servicer can:

A. Provide appropriate personnel with access to accurate and current documents and information concerning service providers' actions.

B. Facilitate periodic reviews of service providers.

C. Facilitate the sharing of accurate and current information regarding the status of any evaluation of a borrower's loss mitigation application and any foreclosure proceeding among appropriate servicer personnel, including the loss mitigation personnel assigned the borrower's mortgage loan, and appropriate service provider personnel, including service provider personnel responsible for handling foreclosure proceedings.

IV. Facilitating transfer of information during servicing transfers.

A. ***Transferor Servicer.*** The servicer's policies and procedures must be reasonably designed to ensure that when it transfers a mortgage loan to another servicer, it (i) timely and accurately transfers all information and documents in its possession and control related to a transferred mortgage loan to the transferee servicer, and (ii) transfers the information and documents in a form and manner that ensures their accuracy and that allows the transferee to comply with the terms of the mortgage loan and applicable law. For example, where data is transferred electronically, a transferor servicer must have policies and procedures reasonably designed to ensure that data can be properly and promptly boarded by a transferee servicer's electronic systems. The information that must be transferred includes information reflecting the current status of discussions with the borrower concerning loss mitigation options, any loss mitigation agreements entered into with the borrower, and analysis the servicer performed with respect to potential recovery from a non-performing mortgage loan.

B. ***Transferee Servicer.*** The servicer's policies and procedures must be reasonably designed to ensure that when it receives a mortgage loan from another servicer, it can (i) identify necessary documents or information that may not have been transferred, and (ii) obtain such documentation or information from the transferor servicer. The servicer's policies and procedures must also be reasonably designed to address obtaining missing information regarding loss mitigation from the transferor servicer before attempting to obtain it from the borrower. For example, if a servicer receives information indicating that a borrower has made payments consistent with a trial or permanent loan modification but the servicer has not received information about the actual modification, the servicer must have policies and procedures reasonably designed to identify whether any such modification agreement exists and to obtain any such agreement from the transferor servicer.

V. Informing borrowers of the written error resolution and information request procedures.

A. The servicer must have policies and procedures reasonably designed to inform borrowers of the procedures for submitting written error notices under 12 CFR 1024.35 and written information requests under 12 CFR 1024.36. A servicer may comply with these requirements by informing borrowers of these procedures by notice (mailed or delivered electronically) or a website. For example, a servicer may comply with this provision by including a statement in the 12 CFR 1026.41 periodic statement advising borrowers that they have certain rights under Federal law related to resolving errors and requesting information, that they may learn more about their rights by contacting the servicer, and directing borrowers to a website.

B. A servicer's policies and procedures also must be reasonably designed to ensure that the servicer provides borrowers who are dissatisfied with the servicer's response to oral complaints or information requests with information about submitting a written error notice or written information request.

C. The commentary addresses the circumstance in which a borrower incorrectly submits an error notice to any address given to the borrower in connection with the submission of a loss mitigation application or continuity of contact. A servicer's policies and procedures must be reasonably designed to ensure that the servicer informs a borrower of the correct procedures for submitting written error notices under such circumstances, including the correct address. Alternatively, the servicer could redirect the error notice to the correct address.

Standard Requirements – 12 CFR 1024.38(c)

Servicers must also retain certain records and maintain particular documents in a manner that facilitates compiling such documents and data into a servicing file.

Record Retention – 12 CFR 1024.38(c)(1)

Servicers must retain records that document any actions the servicer took with respect to a borrower's mortgage loan account until one year after the loan is discharged or the servicer transfers servicing for the mortgage loan. Servicers may use any retention method that reproduces records accurately (such as computer programs) and that ensures that a servicer can access the records easily (such as a contractual right to access records another entity holds).

Servicing File – 12 CFR 1024.38(c)(2)

Servicers must maintain the following documents and data in a manner that facilitates compiling such documents and data into a servicing file within five days: a schedule of all credits and debits to the account (including escrow accounts and suspense accounts), a copy of the security instrument establishing the lien securing the mortgage, any notes created by servicer personnel concerning communications with the borrower, a report of the data fields created by the servicer's electronic systems relating to the borrower's account (if applicable), and copies of any information or documents provided by the borrower in connection with error notices or loss mitigation.

For purposes of this section, a report of data fields relating to a borrower's account means a report listing the relevant data fields by name, populated with any specific data relating to the borrower's account. Examples of such data fields include fields used to identify the terms of the borrower's mortgage loan, the occurrence of automated or manual collection calls, the evaluation of borrower for a loss mitigation option, the owner or assignee of a mortgage loan, and any credit reporting history.

These requirements apply only to information created on or after January 10, 2014.

Early Intervention Requirements for Certain Borrowers – 12 CFR 1024.39

Servicers must engage in certain efforts to contact delinquent borrowers. These requirements apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence. The requirements do not apply to (i) small servicers, (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1024.31, or (iii) mortgage loans for which the servicer is a qualified lender.

As noted above, an institution qualifies as a small servicer if it either (a) services, together with any affiliates, 5,000 or fewer mortgage loans, as that term is used in 12 CFR 1026.41(a)(1), for all of which the institution (or an affiliate) is the creditor or assignee, or (b) is a Housing Finance Agency, as defined in 24 CFR 266.5.[19] Qualified lenders are those defined to be qualified lenders under the Farm Credit Act of 1971 and the Farm Credit Administration's accompanying regulations set forth at 12 CFR 617.7000 *et seq*. For purposes of this section, a borrower who is performing under a loss mitigation agreement is not considered delinquent and is not covered by this section.

Live Contact – 12 CFR 1024.39(a)

Servicers must make good faith efforts to establish live contact with a borrower no later than the 36th day of delinquency.

[19] The definition of small servicer is set forth at 12 CFR 1026.41(e)(4)(ii).

Promptly after establishing live contact, the servicer must inform the borrower of any loss mitigation options, if appropriate. The commentary states that "[d]elinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid." Borrowers are not delinquent if they are performing according to the terms of a loss mitigation plan, but they become delinquent if and when they fail to make a payment required under such a plan.

The commentary also states that good faith efforts to establish live contact consist of "reasonable steps under the circumstances," and these efforts "may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer."

It is within the servicer's reasonable discretion to determine whether it is appropriate under the circumstances to inform a borrower of any loss mitigation options. Examples of a servicer making a reasonable determination include a servicer informing a borrower about loss mitigation options after the borrower notifies the servicer during live contact of a material adverse change in financial circumstances that is likely to cause a long-term delinquency for which loss mitigation options may be available, or a servicer not providing information about loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that the full late payment will be transmitted to the servicer by February 15.

Written Notice – 12 CFR 1024.39(b)

Servicers must send a borrower a written notice within 45 days after the borrower becomes delinquent. The written notice must encourage the borrower to contact the servicer, provide the servicer's telephone number and address to access assigned loss mitigation personnel, describe examples of loss mitigation options that may be available (if applicable), provide loss mitigation application instructions or advise how to obtain more information about loss mitigation options such as contacting the servicer (if applicable), and list either the CFPB's or HUD's website to access a list of homeownership counselors or counseling organization and HUD's toll-free number to access homeownership counselors or counseling organizations.

Appendix MS-4 contains model clauses at MS-4(A), MS-4(B), and MS-4(C).

A servicer is not required to provide the written notice under this section to a borrower more than once in any 180-day period. Accordingly, using the above example, a servicer who provided the written notice to the borrower within 45 days after the borrower became delinquent on January 1 would not be required to send another written notice if the borrower failed to make the February 1 payment.

Conflicts with Other Law – 12 CFR 1024.39(c)

Servicers are not required to comply with the live contact and written notice requirements if doing so would violate applicable law. Thus, for example, a servicer does not need to communicate with borrowers in a way that would be inconsistent with bankruptcy law.

Exemptions – 12 CFR 1024.39(d)

Section 1024.39(d) exempts servicers from the early intervention requirements in two situations.

1. ***Borrowers in bankruptcy.*** A servicer is exempt from the early intervention requirements for a mortgage loan while the borrower is a debtor under the Bankruptcy Code (11 U.S.C. 101 *et seq*.).

    a. ***Obligation to resume post-bankruptcy.*** With respect to any portion of the mortgage debt that is not discharged through bankruptcy, a servicer must resume compliance with the early intervention requirement after the first delinquency that follows the earliest of the following: (i) the borrower's bankruptcy case is dismissed; (ii) the borrower's bankruptcy case is closed; or (iii) the borrower receives a general discharge of debts under the Bankruptcy Code. However, a servicer is not required to communicate with a borrower in any way that would violate applicable bankruptcy law or a court order in a bankruptcy case, and a servicer may adapt the early intervention requirement in any manner believed necessary. A servicer also is not required to comply with the early intervention requirement for any portion of the mortgage debt that was discharged under the Bankruptcy Code or if a bankruptcy case is revived.

    b. ***Joint obligors.*** The bankruptcy exception applies if two or more borrowers are joint obligors with primary liability on a mortgage loan and any one of the borrowers is in bankruptcy. For example, if a husband and wife jointly own a home and the husband files for bankruptcy, the servicer is exempt from the early intervention requirements as to both the husband and wife.

2. ***FDCPA "cease communication" request.*** A servicer subject to the FDCPA with respect to the borrower is exempt from the early intervention requirements with respect to a mortgage loan for which the borrower has sent a "cease communication" notification pursuant to FDCPA section 805(c) (15 U.S.C. 1692c(c)).

Continuity of Contact – 12 CFR 1024.40

Servicers must maintain policies and procedures to facilitate continuity of contact between the borrower and the servicer.

These requirements apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence. The requirements do not apply to (i) small servicers, (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1024.31, or (iii) mortgage loans for which the servicer is a qualified lender.

As noted above, an institution qualifies as a small servicer if it either (a) services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the institution (or an affiliate) is the creditor or assignee, or (b) is a Housing Finance Agency, as defined in 24 CFR 266.5.[20] Qualified lenders are those defined to be qualified lenders under the Farm Credit Act of 1971 and the Farm Credit Administration's accompanying regulations set forth at 12 CFR 617.7000 *et seq*.

General Continuity of Contact Policies and Procedures – 12 CFR 1024.40(a)

Servicers must have policies and procedures that are reasonably designed to assign personnel (one or more persons) to a delinquent borrower at the time the servicer provides the borrower with the written notice required under 12 CFR 1024.39(b), and in any event, not later than the 45th day of the borrower's delinquency. The assigned personnel should be available by telephone to answer the borrower's questions and assist the borrower with available loss mitigation options until the borrower makes two consecutive timely payments under a permanent loss mitigation agreement. If the borrower contacts the assigned personnel and does not receive an immediate live response, the servicer must have policies and procedures reasonably designed to ensure the servicer can provide a live response in a timely manner.

Functions of Servicer Personnel – 12 CFR 1024.40(b)

The servicer must also maintain policies and procedures reasonably designed to ensure that the assigned personnel can perform certain functions, including: providing the borrower with accurate information about (1) loss mitigation options available to the borrower from the owner or assignee of the borrower's loan, (2) actions the borrower must take to be evaluated for such options, including the steps the borrower needs to take to submit a complete loss mitigation application and appeal a denial of a loan modification option (if applicable), (3) the status of any loss mitigation application the borrower has submitted, (4) the circumstances under which the servicer may refer the borrower's account to foreclosure, and (5) any loss mitigation deadlines.

The servicer must also have policies and procedures reasonably designed to ensure that assigned personnel are able to (1) timely retrieve a complete record of the borrower's payment history and all written information the borrower has provided to the servicer (or prior servicers) in connection with a loss mitigation application, (2) provide these documents to other people required to evaluate the borrower for loss mitigation options, if applicable, and (3) provide the borrower with information about submitting an error notice or information request under 12 CFR 1024.35 or 12 CFR 1024.36.

Loss Mitigation Procedures – 12 CFR 1024.41

Servicers must comply with certain loss mitigation procedures. The procedures differ depending on how far in advance of foreclosure a borrower submits a loss mitigation application. Regulation X does not impose a duty on a servicer to provide any borrower with any specific loss mitigation option.

The requirements set forth in 12 CFR 1024.41 apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence. Except as noted below in Section 1024.41(j), the requirements do not apply to (i) small servicers, (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1024.31, or (iii) mortgage loans for which the servicer is a qualified lender.

As noted above, an institution qualifies as a small servicer if it either (a) services, together with any affiliates, 5,000 or fewer mortgage loans, as that term is used in 12 CFR 1026.41(a)(1), for all of which the institution (or an affiliate) is the creditor or assignee, or (b) is a Housing Finance Agency, as defined in 24 CFR 266.5.[21] Qualified lenders are those defined to be qualified lenders under the Farm Credit Act of 1971 and the Farm Credit Administration's accompanying regulations set forth at 12 CFR 617.7000 *et seq*.

The CFPB has issued an advisory opinion clarifying that, because borrowers submit loss mitigation applications to servicers, a servicer's communications with a borrower regarding such a loss mitigation application are not subject to the FDCPA's "cease communication" provision unless the borrower specifically withdraws the request for action on the loss mitigation application.[22]

[20] The definition of small servicer is set forth at 12 CFR 1026.41(e)(4)(ii).

[21] The definition of small servicer is set forth at 12 CFR 1026.41(e)(4)(ii).

[22] CFPB Bulletin 2013-12.

Receipt of a Loss Mitigation Application – 12 CFR 1024.41(b)

A servicer that receives a loss mitigation application at least 45 days before a foreclosure sale must take two steps.

First, the servicer must promptly review the application to determine if it is complete. An application is complete when it contains all the information the servicer requires from the borrower in evaluating applications for loss mitigation options.

Second, the servicer must notify the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) that it has received the application and state whether it is complete or incomplete. If the application is incomplete, the notice must advise (i) what additional documents or information are needed, and (ii) a reasonable deadline by which the borrower must submit them. A reasonable deadline is generally one of the following that maximizes the borrower's loss mitigation protections, except when that deadline would make it impracticable to permit the borrower sufficient time to obtain and submit the needed information (such as requesting a borrower to submit documentation in less than seven days): (a) the date by which any document or information submitted by the borrower will be stale or invalid; (b) the 120th day of the borrower's delinquency; (c) 90 days before a foreclosure sale; or (d) 38 days before a foreclosure sale. Servicers must exercise reasonable diligence in obtaining documents and information to complete an incomplete loss mitigation application (e.g., promptly contacting the borrower to obtain missing information or determining whether information exists in the servicer's files already that may provide the information missing from the borrower's application).[23]

A loss mitigation application includes oral inquiries by the borrower where the borrower provides the information a servicer would evaluate in connection with a loss mitigation application. A loss mitigation application is considered expansively and includes any request by a borrower that the servicer determines whether the borrower is "prequalified" for a loss mitigation program by evaluating the borrower against preliminary criteria.

A loss mitigation application does not include oral inquiries about loss mitigation options where the borrower does not provide any information that the servicer would use to evaluate an application, including where the borrower requests information only about the application process but does not provide any information to the servicer.

If a servicer has informed a borrower that the application was complete (or identified particular information needed to complete the application), and the servicer subsequently determines that additional information or corrected documents are required, the servicer must promptly request such information or documents from the borrower and treat the application as complete under Sections 1024.41(f)(2) and (g) until the borrower is given a reasonable opportunity to complete the application.

Calculating Time Periods and Determining Protections – 12 CFR 1024.41(b)(3)

Section 1024.41 provides borrowers certain protections depending on whether the servicer received a complete loss mitigation application at least a specified number of days before a foreclosure sale. *See, e.g.*, 12 CFR 1024.41(c)(1) (37 days); 12 CFR 1024.41(e) & (h) (90 days). These time periods are calculated as of the date the servicer receives a complete loss mitigation application. Thus, scheduling or rescheduling a foreclosure sale after the servicer receives the complete loss mitigation application will not affect the borrower's protections.

If no foreclosure sale is scheduled as of the date the servicer receives a complete loss mitigation application, the application is considered received more than 90 days before a foreclosure sale.

Evaluation of a Loss Mitigation Application – 12 CFR 1024.41(c)

Evaluation of a Timely Complete Loss Mitigation Application – 12 CFR 1024.41(c)(1)

A servicer that receives a complete loss mitigation application more than 37 days before a foreclosure sale must take two steps within 30 days:

- ***First***, the servicer must evaluate the borrower for all loss mitigation options available to the borrower from the owner or investor of the borrower's mortgage loan. The criteria on which a servicer offers or does not offer a loss mitigation option need not meet any particular standard. Nonetheless, a servicer's failure to follow requirements imposed by an owner or investor may demonstrate the servicer's failure to comply with the 12 CFR 1024.38(b)(2)(v) requirement that the servicer must maintain policies and procedures that are reasonably

[23] When a borrower is complying with a payment forbearance program offered on the basis of an incomplete loss mitigation application, reasonable diligence would involve notifying the borrower that the borrower is being offered a payment forbearance program based on an evaluation of an incomplete loss mitigation application, and that the borrower has the option of completing the application to receive a full evaluation for all loss mitigation options available to the borrower. If a servicer provides such a notification, the borrower remains in compliance with the payment forbearance program, and the borrower does not request any further assistance, the servicer could suspend reasonable diligence efforts until near the end of the payment forbearance program. Near the end of the program, and prior to the end of the payment forbearance period, it may be necessary for the servicer to contact the borrower to determine if the borrower wishes to complete the application and proceed with a full loss mitigation evaluation.

designed to ensure that the servicer can properly evaluate a borrower for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the mortgage loan's owner or assignee; and

- ***Second***, the servicer must provide the borrower with a written notice stating which loss mitigation options, if any, the servicer will offer to the borrower. The notice must state the amount of time the borrower has to accept or reject an offered loss mitigation option pursuant to 12 CFR 1024.41(e), and, if applicable, that the borrower has the right to appeal a denial of a loan modification option as well as the time period and any requirements for making an appeal pursuant to 12 CFR 1024.41(h).

Evaluation of Incomplete Loss Mitigation Application – 12 CFR 1024.41(c)(2)(i)-(iii)

With two exceptions, a servicer may not offer a loss mitigation option based on an evaluation of an incomplete application.

1. ***Reasonable Time Exception.*** If the servicer has exercised reasonable diligence in obtaining documents and information to complete the application but the application still remains incomplete for a significant period of time without further progress by the borrower, the servicer may evaluate an incomplete application and offer the borrower a loss mitigation option. What qualifies as a significant period of time may depend on the timing of the foreclosure process. For example, 15 days may be a more significant period of time if the borrower is less than 50 days before a foreclosure sale than if the borrower is less than 120 days delinquent. The requirements in Section 1024.41 do not apply to this evaluation, and it is not considered an evaluation of a complete loss mitigation application for purposes of determining whether a request for a loss mitigation evaluation is duplicative under 12 CFR 1024.41(i).

2. ***Short-Term Forbearance Plan Exception.*** A short-term forbearance program allows a borrower to forgo making certain payments or portions of payments due over a period of no more than six months. A servicer may offer such a short-term payment forbearance program to a borrower based upon an evaluation of an incomplete loss mitigation application. If the borrower is performing pursuant to such a forbearance program, a servicer may not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and it may not move for foreclosure judgment or an order of sale or conduct a foreclosure sale. The servicer must also comply with the remaining loss mitigation procedures requirement in Section 1024.41 regarding incomplete applications, such as exercising reasonable diligence in obtaining documents and information to complete the application.[24] Additionally, if the borrower completes the loss mitigation application, the servicer must comply with all of the loss mitigation procedure requirements in Section 1024.41.

3. The commentary explains that a servicer may offer loss mitigation options to borrowers who have not submitted a loss mitigation application. Further, a servicer may offer loss mitigation options to borrowers who have submitted incomplete loss mitigation applications, so long as that offer is not based upon an evaluation of information contained in the incomplete application.

Facially Complete Applications – 12 CFR 1024.41(c)(2)(iv)

A loss mitigation application is facially complete if either (i) the servicer's initial notice under Section 1024.41(b) advised the borrower that the application was complete, or (ii) the servicer's initial notice under Section 1024.41(b) requested additional information from the borrower to complete the application and the borrower submitted such additional information.

If the servicer later discovers that additional information or corrections to a previously submitted document are required to complete the facially complete application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for purposes of Section 1024.41(f)(2) and (g) until the borrower is given a reasonable opportunity to complete the application. A reasonable opportunity depends on the particular facts and circumstances, but must provide the borrower sufficient time to gather the necessary information and documents.

If the borrower completes the application within this period, the application is considered complete as of the date it was actually complete for purposes of Section 1024.41(c), and the application is considered complete as of the date it was facially complete for purposes of Section 1024.41(d), (e), (f)(2), (g), and (h).

If the borrower does not complete the application within this period, the application is considered incomplete.

Denial of any Loss Mitigation Option – 12 CFR 1024.41(d)

If the servicer denies a loss mitigation application for any trial or permanent loan modification option, the notice provided to the borrower must also state the servicer's specific reason or reasons for denying each trial or permanent loan modification option, and, if applicable, that the borrower was not evaluated

[24] For an explanation of "reasonable diligence," see the above discussion in connection with the receipt of loss mitigation applications under 12 CFR 1024.41(b).

on other criteria. Certain disclosures are required when a servicer denies an application for the following reasons or using the following procedures:

- ***Investor criteria and use of a waterfall.***
  - If the servicer denies a loan modification option based upon investor criteria, the servicer must identify the owner or assignee of the mortgage loan and the specific criteria that the borrower failed to satisfy.
  - When an owner or assignee has established an evaluation criteria that sets an order ranking for evaluation of loan modification options (commonly known as a "waterfall") and a borrower has qualified for a particular loan modification option in the waterfall, it is sufficient for the servicer to inform the borrower, with respect to other loan modification options ranked below any such option offered to a borrower, that the investor's requirements include the use of such a waterfall and that an offer of a loan modification option necessarily results in a denial for any other loan modification options below the option for which the borrower is eligible in the ranking.
- ***Net present value calculation.*** If the denial was based upon a net present value calculation, the servicer must disclose the inputs used in the calculation.
- ***Reasons listed.*** The following applies if the servicer uses a hierarchy of eligibility criteria and, after reaching the first criterion that causes a denial, does not evaluate whether the borrower would have satisfied the remaining criteria. In this instance, the servicer need only (i) provide the specific reason or reasons why the borrower was actually rejected, and (ii) notify the borrower that the borrower was not evaluated on other criteria. A servicer is not required to determine or disclose whether a borrower would have been denied based on other criteria if the servicer did not actually evaluate these additional criteria.

Borrower Response – 12 CFR 1024.41(e)

A servicer offering a loss mitigation option must provide the borrower with a minimum period of time to accept or reject the option, depending on when the servicer receives a complete application. If the application was complete 90 days or more before a foreclosure sale, the servicer must give the borrower at least 14 days to decide. If it was complete fewer than 90 but more than 37 days before a foreclosure sale, the servicer must give the borrower at least seven days to decide.

A borrower's failure to respond on time can be treated as a rejection of the loss mitigation options, with two exceptions.

First, a borrower who is offered a trial loan modification plan and submits payments that would have been owed under that plan before the deadline for accepting must be given a reasonable time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan.

Second, a servicer must give a borrower who has a pending appeal until 14 days after the servicer provides notice of its determination regarding resolution of that appeal to decide whether to accept any offered loss mitigation option.

Prohibition on Foreclosure Referral – 12 CFR 1024.41(f)

A servicer cannot make the first foreclosure notice or filing for any judicial or non-judicial process until (i) the borrower is more than 120 days delinquent, (ii) the foreclosure is based on a borrower's violation of a due-on-sale clause, or (iii) the servicer is joining a subordinate lienholder's foreclosure action. The commentary states that whether a document qualifies as the first notice or filing depends on the foreclosure process at issue:

- ***Judicial foreclosure.*** Where foreclosure procedure requires a court action or proceeding, the first notice or filing is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding. Depending on the particular foreclosure process, examples of these documents could be a complaint, petition, order to docket, or notice of hearing;
- ***Non-judicial foreclosure – recording or publication requirement.*** Where foreclosure procedure does not require an action or court proceeding (such as under a power of sale), the first notice or filing is the earliest document required to be recorded or published to initiate the foreclosure process; or
- ***Non-judicial foreclosure – no recording or publication requirement.*** Where foreclosure procedure does not require an action or court proceeding, and also does not require any document to be recorded or published, the first notice or filing is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

The commentary further states that a document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the documents must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.

If a borrower submits a complete loss mitigation application before the 120th day of delinquency or before the servicer makes the first foreclosure notice or filing, then the servicer cannot make the first foreclosure notice or filing unless one of

the following occurs: (i) the servicer sends a notice to the borrower stating that the borrower is ineligible for any loss mitigation option and if an appeal is available, either the borrower did not timely appeal, or the appeal has been denied; (ii) the borrower rejects all the offered loss mitigation options; or (iii) the borrower fails to perform under a loss mitigation agreement.

Prohibition on Foreclosure Sale – 12 CFR 1024.41(g)

If a borrower submits a complete loss mitigation application after the servicer has made the first foreclosure notice or filing but more than 37 days before a foreclosure sale, the servicer cannot conduct a foreclosure sale or move for foreclosure judgment or sale unless one of the following occurs: (i) the servicer sends a notice to the borrower stating that the borrower is ineligible for any loss mitigation option and the appeal process is inapplicable, the borrower did not timely appeal, or the appeal has been denied; (ii) the borrower rejects all the offered loss mitigation options; or (iii) the borrower fails to perform under a loss mitigation agreement.

Appeal Process – 12 CFR 1024.41(h)

A borrower has the right to appeal a servicer's denial of a loss mitigation application for any trial or permanent loan modification available to the borrower if the borrower submitted a complete application 90 days or more before a foreclosure sale (or during the pre-foreclosure period set forth in 12 CFR 1024.41(f)). The borrower must commence the appeal within 14 days after the servicer provides the notice stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower.

Within 30 days of the borrower making the appeal, the servicer must provide a notice to the borrower stating: (i) whether it will offer the borrower a loss mitigation option based on the appeal, and (ii) if applicable, how long the borrower has to accept or reject this loss mitigation option or a previously offered loss mitigation option. If the servicer offers a loss mitigation option after an appeal, the servicer must provide the borrower at least 14 days to decide whether to accept the offered loss mitigation option.

The servicer's personnel who evaluated the borrower's application cannot also evaluate the appeal, although personnel who supervised the initial evaluation may evaluate the appeal so long as they were not directly involved in the initial evaluation.

Duplicative Requests – 12 CFR 1024.41(i)

A servicer is required to comply with these loss mitigation procedures for only a single complete loss mitigation application for a borrower's mortgage loan account.

Small Servicer Requirements – 12 CFR 1024.41(j)

A small servicer cannot make the first foreclosure notice or filing required by any judicial or non-judicial foreclosure process until (i) the borrower is more than 120 days delinquent, (ii) the foreclosure is based on a borrower's violation of a due-on-sale clause, or (iii) the servicer is joining a subordinate lienholder's foreclosure action. If the borrower is performing according to the terms of a loss mitigation agreement, a small servicer also cannot make the first foreclosure notice or filing, move for a foreclosure judgment or order of sale, or conduct a foreclosure sale.

Examination Objectives

1. To determine if the financial institution has established policies and procedures to ensure compliance with the Real Estate Settlement Procedures Act (RESPA) and Regulation X.

2. To determine whether the financial institution engages in any practices prohibited by RESPA or Regulation X, such as kickbacks, payment or receipt of referral fees or unearned fees, or excessive escrow assessments.

3. To determine if the Special Information Booklet, Good Faith Estimate, Uniform Settlement Statement (Form HUD-1 or HUD 1A), mortgage servicing transfer disclosures, and other required disclosures are in a form that complies with Regulation X, are properly completed, and provided to borrowers within prescribed time periods.

4. To determine if the institution is submitting the required initial and annual escrow account statements to borrowers as applicable, properly administrating escrow accounts, and otherwise complying with requirements and limitations on escrow account arrangements.

5. To determine whether the institution is responding to borrower error notices relating to the servicing of their mortgage loans in compliance with the provisions of Regulation X.

6. To determine whether the institution is responding to borrower inquiries for information relating to the servicing of their mortgage loans in compliance with the provisions of Regulation X.

7. To determine whether the institution is providing proper notices to borrowers of mortgage loans before assessing charges or fees for force-placed insurance and refunding charges and fees in appropriate cases as RESPA and Regulation X require.

8. To determine whether the institution complies with Regulation X's record management requirements.

9. To determine whether the institution is following Regulation X's early intervention and continuity of contact requirements, as applicable.

10. To determine whether the institution is complying with Regulation X's loss mitigation procedures, as applicable.

Examination Procedures

Each examination should be risk-based and may not require an examiner to address all of the procedures below. In addition, each supervising agency may have its own supervisory strategy that will dictate which examination procedures are required to be completed.

If the financial institution has loans covered by RESPA, determine whether the institution's policies, practices, and procedures ensure compliance with RESPA and Regulation X.

General Procedures

1. Review the types of loans covered by RESPA, applicable exemptions, loan policies, and operating procedures in connection with federally related mortgage loans. 12 CFR 1024.5 provides RESPA's general coverage and applicable exemptions, though other RESPA and Regulation X provisions include additional exemptions.

2. Assess whether mortgage personnel are knowledgeable about the requirements of RESPA and Regulation X.

3. Review the Special Information Booklet, good faith estimate (GFE) form, Uniform Settlement Statement form (HUD-1 or HUD-1A), mortgage servicing transfer disclosure forms, and affiliated business arrangement disclosure form for compliance with the requirements of Regulation X. Review standardized and model forms and clauses in the appendices to the regulation.

4. If electronic disclosures are provided, determine whether the institution has policies and procedures to provide electronic delivery in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign).

5. Through reviewing written loan policies and operating procedures in connection with federally related mortgage loans and by discussing them with institution personnel, or through other appropriate methods, determine whether the financial institution has policies and procedures that address the following:

    - The information that will be collected from applicants in connection with issuing a GFE, and what information will be relied on to issue a GFE.
    - Provision of a revised GFE in the event of changed circumstances, both in the course of a new home purchase and in other kinds of transactions.
    - To cure a tolerance violation by reimbursing the borrower the amount by which the tolerance was exceeded within 30 calendar days from date of settlement.
    - To cure a technical or inadvertent error on the HUD-1/1A by providing a revised settlement statement to the borrower within 30 calendar days of settlement.

6. Through interviews with mortgage lending personnel or other appropriate methods, determine:

    - Identity of persons or entities referring federally related mortgage loan business;
    - The nature of services provided by referral sources, if any;
    - Settlement service providers used by the institution; and
    - Any providers whose services are required by the institution.

7. Through interviews with mortgage lending personnel or other appropriate methods, assess how the institution complies with the general servicing policies and procedures required by Regulation X, as applicable, including:

    - How and for how long the institution maintains documentation and information related to a mortgage loan account and the institution's process for aggregating such information into a servicing file within five days;
    - How the institution determines whether to engage third-party service providers, including the criteria the institution considers to evaluate potential service providers;
    - How the institution monitors the performance of third-party service providers;
    - How the institution ensures that it receives all necessary documentation and information concerning mortgage loan files that are transferred to it by another institution; and
    - How the institution ensures that it sends all necessary documentation and information concerning mortgage loan files to another institution when it transfers files to that institution.

Subpart B – Mortgage Settlement and Escrow Accounts

Special Information Booklet – 12 CFR 1024.6

8. Determine through appropriate methods such as discussions with management and reviewing credit files whether the Special Information Booklet, if required, is provided within three business days after the financial institution or broker receives a written application for a loan (12 CFR 1024.6(a)(1)).

Good Faith Estimate – 12 CFR 1024.7

9. Determine whether the financial institution provides a good faith estimate of charges for settlement services, if required, within three business days after receipt of a written application (12 CFR 1024.7(a)).

10. Review the Good Faith Estimate to determine if it appears exactly as set forth in Appendix C to Part 1024.

11. Review a sample of loan files that include GFEs to determine the following:

    - Whether the financial institution followed GFE application requirements.
    - Whether the institution provided revised GFEs to applicants when warranted due to changed circumstances.
    - If the institution provided a revised GFE to the applicant due to changed circumstances, determine whether the institution followed regulatory requirements for issuing a revised GFE due to changed circumstances.
    - Whether the GFE was completed as required in the regulations and instructions (12 CFR 1024.7 and Appendix C to 12 CFR Part 1024) and whether it included the following information:
        - Interest rate expiration date;
        - Settlement charges expiration date;
        - Rate lock period;
        - Number of days before settlement the interest rate must be locked, if applicable;
        - Summary of loan information;
        - Escrow account information;
        - Estimates for settlement charges; and
        - Left hand column on trade-off table completed for loan in the GFE.
        - Whether, for no cost loans, all third-party fees paid by the financial institution are itemized and listed in the appropriate blocks on the second page of the GFE.
    - Whether a separate sheet was provided with the GFE that identifies the settlement service providers for the services listed on the GFE.

Uniform Settlement Statement Form (HUD-1 and HUD-1A) – 12 CFR 1024.8

12. Using the same sample of loan files as used for the review of the GFE, review the Uniform Settlement Statement (HUD-1 or HUD-1A, as appropriate) (12 CFR 1024.8 and Appendix A to 12 CFR Part 1024) to determine whether:

    - Charges are properly itemized in accordance with the instructions for completion of the HUD-1 or HUD-1A (Appendix A to 12 CFR Part 1024);
    - All charges paid by the borrower and the seller are itemized and include the name of the recipient (12 CFR 1024.8(b), Appendix A);
    - Average charges for settlement services are calculated in accordance with 12 CFR 1024.8(b)(2); and
    - Charges required by the financial institution but paid outside of closing are itemized on the settlement statement, marked as "paid outside of closing" or "P.O.C.," but not included in cost totals (12 CFR 1024.8(b); Appendix A).

13. If the financial institution conducts the settlement, determine whether:

    - The borrower, upon request, is allowed to inspect the HUD-1 or HUD-1A at least one business day prior to settlement (12 CFR 1024.10(a));
    - The HUD-1 or HUD-1A is provided to the borrower and seller at or before settlement (except where the borrower has waived the right to delivery and in the case of exempt transactions) (12 CFR 1024.10(b)); or
    - In cases where the right to delivery is waived or the transaction is exempt, the HUD-1/1A is mailed as soon as practicable after settlement (12 CFR 1024.10(b),(c), and (d)).

14. Determine whether, in the case of an inadvertent or technical error on the HUD-1/1A, the financial institution

provides a revised HUD-1/1A to the borrower within 30 calendar days after settlement (12 CFR 1024.8(c)).

15. Review the HUD-1 or HUD-1A form prepared in connection with each GFE reviewed to determine if the amount stated for any itemized service exceeds the amount shown on the GFE for that service. If the amount stated on the HUD-1 exceeds the amount shown on the GFE and such overcharge violates the tolerance for that category of settlement services, determine whether the financial institution cured the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded, at settlement or within 30 calendar days from date of settlement (12 CFR 1024.7(i)).

16. Determine whether HUD-1 and HUD-1A forms are retained for five years after settlement if the institution retains its interest in the mortgage and/or services. If the financial institution disposes of its interest in the mortgage and does not service the loan, determine whether the HUD-1 or HUD-1A form is transferred to the new asset owner with the loan file (12 CFR 1024.10(e)).

Homeownership Counseling Organization List – 12 CFR 1024.20

17. Determine whether the lender (or a mortgage broker or dealer) provided a clear and conspicuous written list of homeownership counseling services in the applicant's location no later than three business days after the lender, mortgage broker or dealer received the application or information sufficient to complete an application (for RESPA-covered loans except for reverse mortgages or timeshare loans) (12 CFR 1024.20(a) and (c)). The written list does not need to be provided if, within the three-business-day period, the lender denies the application or the applicant withdraws it (12 CFR 1024.20(a)(5)).

18. Determine whether the lender obtained the list from either the website maintained by the CFPB or data made available by the CFPB or HUD for lenders complying with this requirement, no earlier than 30 days prior to the time it was provided to the applicant (12 CFR 1024.20(a)).

No Fees for RESPA Disclosures – 12 CFR 1024.12

19. Determine whether the financial institution charges a fee specifically for preparing and distributing the HUD-1 forms, escrow statements or documents required under the Truth in Lending Act (12 CFR 1024.12).

20. If any fee is charged before providing a GFE, determine whether such fee is limited to the cost of a credit report (12 CFR 1024.7(a)(4)).

Purchase of Title Insurance – 12 CFR 1024.16

21. When the financial institution owns the property being sold, determine whether it requires that title insurance be purchased from a particular company (12 CFR 1024.16).

Payment or Receipt of Referral or Unearned Fees – 12 CFR 1024.14

22. Through interviews with institution management and reviews of audits, policies, and procedures or other appropriate methods, determine if management is aware of the prohibition against payment and receipt of any fee, kickback, or thing of value in return for the referral of settlement services business. (12 CFR 1024.14).

23. Through interviews with institution management and reviews of audits, policies, and procedures or other appropriate methods, determine if management is aware of the prohibition against unearned fees where a charge for settlement services is divided between two or more parties.

24. Through interviews with institution management and personnel, file reviews, review of good faith estimates, and HUD-1 and HUD-1A or other appropriate methods, determine if federally related mortgage loan transactions are referred to the institution by brokers, affiliates, or other parties. Also, identify persons or entities to which the institution refers settlement services business in connection with a federally related mortgage transaction.

    - Identify the types of services rendered by the broker, affiliate, or service provider
    - By a review of the institution's general ledger or otherwise determine if fees were paid to the institution or any parties identified.
    - Determine whether any fees paid or received by the institution are for goods or facilities actually furnished or services actually performed and are not kickbacks or referral fees (12 CFR 1024.14(b)). This includes payments by the institution to an affiliate or the affiliate's employees in connection with real estate settlements.
    - In cases where a fee is split between the institution and one or more other parties, determine whether each party actually performed services for that fee (12 CFR 1024.14(c)). This includes payments by the

institution to an affiliate or the affiliate's employees in connection with real estate settlements.

Affiliated Business Arrangements – 12 CFR 1024.15

25. Determine from the HUD-1 or HUD-1A and from interviews with institution management, or through other appropriate methods, if the institution referred a borrower to a settlement service provider with which the institution was affiliated or in which the institution had a direct or beneficial ownership interest of more than 1 percent (hereinafter, an "affiliated business arrangement").

26. If the financial institution had an affiliated business arrangement, determine whether the affiliated business arrangement disclosure statement (Appendix D to Part 1024) was provided as required by 12 CFR 1024.15(b)(1).

27. Other than an attorney, credit reporting agency, or appraiser representing the lender, if the financial institution referred a borrower to a settlement service provider, determine whether the institution required the use of the provider (12 CFR 1024.15(b)(2)).

28. Determine if compensation received by the lender in connection with an affiliated business arrangement is limited to a return on an ownership interest or other amounts permissible under RESPA (12 CFR 1024.15(b)(3)).

Escrow Accounts – 12 CFR 1024.17

If the institution maintains escrow accounts in connection with a federally related mortgage loan, complete the following procedures.

29. Determine whether the institution performed an initial escrow analysis (12 CFR 1024.17(c)(2)) and provided the initial escrow statement required by 12 CFR 1024.17(g). The statement must contain the following:

    - Amount of monthly payment;
    - Portion of the monthly payment being placed in escrow;
    - Charges to be paid from the escrow account during the first 12 months;
    - Disbursement dates; and
    - Amount of cushion.

30. Determine if the statement was given to the borrower at settlement or within 45 days after the escrow account was established. This statement may be incorporated into the HUD-1 statement (12 CFR 1024.17(g)(1) and (2)).

31. Determine whether the institution performs an annual analysis of the escrow account (12 CFR 1024.17(c)(3) and (7), and 1024.17(i)).

32. Determine whether the annual escrow account statement is provided to the borrower within 30 days of the end of the computation year (12 CFR 1024.17(i)).

33. Determine if the annual escrow statement contains the following:

    - Amount of monthly mortgage payment and portion placed in escrow;
    - Amount of past year's monthly mortgage payment and portion that went into escrow;
    - Total amount paid into escrow during the past computation year;
    - Total amount paid out of escrow account during same period for taxes, insurance, and other charges;
    - Balance in the escrow account at the end of the period;
    - How a surplus, shortage, or deficiency is to be paid/handled; and
    - If applicable, the reason why the estimated low monthly balance was not reached (12 CFR 1024.17(i)(1)).

34. Determine whether monthly escrow payments following settlement are within the limits of 12 CFR 1024.17(c).

Force-Placed Insurance

12 CFR 1024.17(k)(5) includes requirements with respect to borrowers who had established an escrow account for the payment of hazard insurance. The provision contains a limited exception for small servicers. 12 CFR 1026.41(e)(4)(ii) provides that an institution qualifies as a small servicer if it either (a) services, together with any affiliates, 5,000 or fewer mortgage loans, as that term is used in 12 CFR 1026.41(a)(1), for all of which the institution (or an affiliate) is the creditor or assignee, or (b) is a Housing Finance Agency, as defined in 24 CFR 266.5 (§ 1026.41(e)(4)(ii)). The following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage

transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans (12 CFR 1026.41(e)(4)(iii)).

The procedures related to 12 CFR 1024.38 discuss the definition of smaller servicer in greater detail. In addition, the procedures related to 12 CFR 1024.34 and 37 may be applicable to escrow accounts and fees or charges for force-placed insurance.

35. If the institution purchased force-placed insurance for a borrower who had established an escrow account for the payment of hazard insurance, determine whether the institution was permitted to do so under 12 CFR 1024.17(k)(5). Under that provision, an institution may not purchase force-placed insurance unless (i) the borrower was more than 30 days delinquent, and (ii) the institution was unable to disburse funds from the escrow account to ensure that the borrower's hazard insurance premium charges were paid in a timely manner.

    An institution is unable to disburse funds if it has a reasonable basis to believe that either (a) the borrower's property is vacant, or (b) the borrower's hazard insurance has terminated for reasons other than non-payment of the premium charges. An institution is not unable to disburse funds from the borrower's escrow account solely because the account has insufficient funds for paying hazard insurance premium charges (12 CFR 1024.17(k)(5)(ii)).

36. ***Small servicer exception.*** Notwithstanding the above, a small servicer may charge borrowers for force-placed insurance. If the institution is a small servicer and charged borrowers for force-placed insurance, determine whether the cost to each borrower of the force-placed insurance was less than the amount the institution would have needed to disburse from the borrower's escrow account to ensure that hazard insurance charges were paid in a timely manner (12 CFR 1024.17(k)(5)(iii)).

Subpart C – Mortgage Servicing

Applicability: Except as otherwise noted below, the provisions of Subpart C – Mortgage Servicing, 12 CFR 1024.30-41, apply to any mortgage loan, as that term is defined in 12 CFR 1024.31.

Mortgage Servicing Transfer Disclosures – 12 CFR 1024.33

Disclosure Statement

Complete the following if the institution received an application for a first-lien mortgage loan, as defined in 12 CFR 1024.31.

37. Determine whether the institution provided a proper servicing disclosure statement to the borrower within three days (excluding legal public holidays, Saturdays, and Sundays) after receipt of the application. The disclosure statement must advise whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time. A model disclosure statement is set forth in Appendix MS-1 (12 CFR 1024.33(a)).

    The disclosure statement is required only for applications for first liens. Additionally, the disclosure statement is not required if the institution denied the application within the three-day period.

Transfers of Mortgage Servicing Rights – Disclosures

Complete the following if the institution has transferred or received mortgage servicing rights. The following are generally not considered transfers: (1) transfers between affiliates; (2) transfers resulting from mergers or acquisitions of servicers or subservicers; and (3) transfers between master servicers, when the subservicer remains the same. Additionally, the Federal Housing Administration (FHA) is not required to provide a notice of transfer to the borrower where a mortgage insured under the National Housing Act is assigned to FHA (12 CFR 1024.33(b)).

38. If the institution has transferred mortgage servicing rights, determine whether notice to the borrower was given at least 15 days prior to the transfer (12 CFR 1024.33(b)(3)). This notice may be combined with the transferee's notice (discussed below) into one notice if delivered to the borrower at least 15 days before the effective date of the transfer. Notices provided at the time of settlement satisfy the timing requirements.

39. If the institution has received mortgage servicing rights, determine whether notice was given to the borrower within 15 days after the transfer (12 CFR 1024.33(b)(3)). This notice may be combined with the transferor's notice (discussed above) into one notice if delivered to the borrower at least 15 days before the effective date of the transfer. Notices provided at the time of settlement satisfy the timing requirements.

40. Determine whether the notice sent by the institution includes the following information (12 CFR 1024.33(b)(4)). Sample language for the notice of transfer is contained in Appendix MS-2 to 12 CFR Part 1024.

    - The effective date of the transfer;
    - The name, address, and toll-free or collect-call telephone number for an employee or department of

the transferee servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;

- The name, address, and toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;
- The date on which the transferor servicer will cease accepting payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. The dates must either be the same or consecutive dates;
- Whether the transfer will affect the terms or the availability of optional insurance and any action the borrower must take to maintain such coverage; and
- A statement that the transfer does not affect the terms or conditions of the mortgage (except as directly related to servicing) (Appendix MS-2 to 12 CFR Part 1024).

41. Determine whether the notice by the transferor and transferee was sent to the borrower's address listed in the mortgage loan documents, unless the borrower notified the institution of a new address pursuant to the institution's requirements (12 CFR Part 1024, Supp. I., Comment 1024.33(b)(3)-1).

Transfers of Mortgage Servicing Rights – Treatment of Post-Transfer Payments

Complete the following if the institution has transferred or received mortgage servicing rights.

42. If the borrower sent any payments to the transferor servicer within the 60 days following a transfer of servicing rights, determine whether the institution imposed late fees or otherwise treated such payments as late (12 CFR 1024.33(c)(1)).

43. If the borrower sent any payments to the transferor servicer within the 60 days following a transfer of servicing rights, determine whether the transferor servicer either (a) forwarded the payment to the transferee servicer, or (b) returned the payment and informed the payor of the proper recipient of the payment (12 CFR 1024.33(c)(2)).

Timely Escrow Payments and Treatment of Escrow Account Balances – 12 CFR 1024.34

Complete the following if the terms of a borrower's mortgage loan, as defined in 12 CFR 1024.31, require the borrower to make payments to the institution for deposit into an escrow account to pay taxes, insurance premiums, and other charges for the mortgaged property.

44. Determine whether the institution made payments from the escrow account in a timely manner (12 CFR 1024.34). A "timely manner" means on or before the deadline to avoid a penalty, as governed by the requirements in 12 CFR 1024.17(k).

45. Determine whether the institution returned amounts remaining in escrow within 20 days (excluding legal public holidays, Saturdays, and Sundays) after the borrower paid the mortgage loan in full (12 CFR 1024.34(b)). The institution does not need to return this amount if it and the borrower agree to credit the remaining funds towards an escrow account for certain new mortgage loans.

Error Resolution Procedures – 12 CFR 1024.35

Complete the following based upon a review of a sample of mortgage loan (as defined in 12 CFR 1024.31) files that included error notices from borrowers or through other appropriate methods.

Address for Error Notices

46. If the institution designates an address or addresses to which borrowers must send error notices, complete the following:
    - Determine whether the institution provided written notice of the address to the borrower, along with a statement that the borrower must use that address to assert errors (12 CFR 1024.35(c)).
    - Determine whether the institution also provided that address to the borrower in each of the following three types of communications:
        - Any periodic statement or coupon book required under 12 CFR 1026.41;
        - Any website the institution maintains in connection with the servicing of the loan; and
        - Any notice required pursuant to 12 CFR 1024.39 (early intervention) or .41 (loss mitigation) that includes contact information for

assistance (12 CFR Part 1024, Supp. I., Comment 1024.35(c)-2).

- Determine whether the institution designated the same address for receiving information requests pursuant to Section 1024.36(b) (12 CFR 1024.35(c)).

- If the institution establishes an electronic method for submitting error notices that is its exclusive online intake process, determine whether this electronic process was in addition to, and not in lieu of, any process for receiving error notices by mail (12 CFR Part 1024, Supp. I., Comment 1024.35(c)-4).

47. If the institution does not establish a specific address to which to send error notices, determine whether the institution responds to error notices sent to any of its offices (12 CFR Part 1024, Supp. I., Comment 1024.35(c)-1).

Acknowledgement of Error Notices

48. Determine whether:

- The institution properly acknowledged the error notice by providing written acknowledgement of the error notice to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving an error notice (12 CFR 1024.35(d)); or

- Acknowledgment was not required because:

  - The institution corrected the errors asserted and notified the borrower in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the error notice (12 CFR 1024.35(f));

  - The institution determined that it was not required to respond and provided written notice, with the basis for its decision not to take any action, to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after making that determination (12 CFR 1024.35(g)); or

  - The error notice related to violations of certain loss mitigation procedures under 12 CFR 1024.35(b)(9) or (10) and was received by the institution seven or fewer days before a foreclosure sale. With respect to such error notices, the institution must make a good faith attempt to respond orally or in writing to the borrower and either correct the error or state the reason the institution determined that no error occurred (12 CFR 1024.35(f)(2)).

Response to Error Notices

49. Determine whether:

- The institution properly responded to a borrower's written error notice by:

  - Correcting the errors identified by the borrower as well as any different or additional errors that were discovered during the investigation and providing written notice to the borrower of the corrections, the date the corrections took effect, and contact information for further assistance; or

  - Conducting a reasonable investigation and providing the borrower with a written notice stating that the institution has determined that no error occurred, the reasons for its determination, the borrower's right to request documents relied upon by the institution in reaching its determination and how to do so, and contact information for further assistance (12 CFR 1024.35(e)); AND

  - Undertaking one of the above within the following time frames:

    - If the alleged error was a failure to provide an accurate payoff balance amount, the institution responded within seven days (excluding legal public holidays, Saturdays, and Sundays) (12 CFR 1024.35(e)(3)(A));

    - If the alleged error was either (1) making the first notice or filing for a judicial or non-judicial foreclosure process in violation of 12 CFR 1024.41(f) or (j), or (2) moving for foreclosure judgment or order of sale or conducting a foreclosure sale in violation of 12 CFR 1024.41(g) or (j), the institution responded by the earlier of 30 days (excluding legal public holidays, Saturdays, and Sundays) or the date of a foreclosure sale (12 CFR 1024.35(e)(3)(B)). However, if the institution received the error notice seven or fewer days before a foreclosure sale, the institution is not required to respond in writing, but must nevertheless make a good faith attempt to respond orally or in writing to the borrower and either correct the error or state the reason the institution determined that no error occurred (12 CFR 1024.35(f)(2));

- For all other alleged errors, the institution responded within 30 days (excluding legal public holidays, Saturdays, and Sundays) unless, prior to the expiration of that 30-day period, the institution extended the time for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) by notifying the borrower in writing of the extension and the reasons for it (12 CFR 1024.35(e)(3)); OR

- The above responses were not required because:
  - The institution corrected the errors asserted and notified the borrower in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the error notice (12 CFR 1024.35(f));
  - The institution determined that it was not required to respond and provided written notice, with the basis for its decision not to take any action, to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after making that determination (12 CFR 1024.35(g)); or
  - The error notice related to violations of certain loss mitigation procedures under 12 CFR 1024.35(b)(9) or (10) and was received by the institution seven or fewer days before a foreclosure sale. With respect to such error notices, the institution must make a good faith attempt to respond orally or in writing to the borrower and either correct the error or state the reason the institution determined that no error occurred (12 CFR 1024.35(f)(2)).

Determination that No Error Occurred

50. If the institution stated that no error occurred and the borrower requested supporting documentation, determine whether the institution provided the documents that it relied upon to determine that no error occurred within 15 days (excluding legal public holidays, Saturdays, and Sundays) (12 CFR 1024.35(e)(4)). If the institution withheld documents that constituted confidential, proprietary, or privileged information, determine whether it provided written notification to the borrower within 15 days (excluding legal public holidays, Saturdays, and Sundays) (12 CFR 1024.35(e)(4)).

Determination that No Response was Required

51. If the institution determined that it was exempt from the requirement to respond, determine whether the institution reasonably determined that one of the following three exemptions applied:

    - The error asserted is substantially the same as an error previously asserted by the borrower for which the institution complied with 12 CFR 1024.35(d) and (e), unless the borrower provides new and material information to support the error;
    - The error notice was overbroad. An error notice is overbroad if the institution cannot reasonably determine from the error notice the specific error that has occurred on a borrower's account; or
    - The error notice was untimely. An error notice is untimely if it is delivered to the institution more than one year after either (i) the institution transferred servicing responsibility to another institution, or (ii) the mortgage loan was discharged (12 CFR 1024.35(g)(1)). A mortgage loan is discharged when both the debt and all corresponding liens have been extinguished or released, as applicable.

Asserted Errors Related to Non-Bona Fide Fees

52. If the borrower asserted that the institution charged a fee without a reasonable basis to do so, determine whether the institution in fact had a reasonable basis to impose the fee (12 CFR 1024.35(b)(5)). An institution lacks a reasonable basis to impose fees that are not bona fide, such as (i) a late fee for a payment that was not late, (ii) a charge for a service that a service provider did not actually provide, (iii) a default management fee for borrowers who are not delinquent, or (iv) a charge for force-placed insurance that is not permitted by 12 CFR 1024.37 (12 CFR Part 1024, Supp. I., Comment 1024.35(b)-2).

Impermissible Fees and Conditions and Other Restrictions

53. Determine whether the institution conditioned its investigation of the asserted error on the borrower providing supporting documentation (12 CFR 1024.35(e)(2)(i)).

54. Determine whether the institution determined that no error occurred because the borrower failed to provide any requested information without conducting a reasonable investigation (12 CFR 1024.35(e)(2)(ii)).

55. Determine whether the institution charged a fee or required the borrower to make any payments as a condition to responding to an error notice (12 CFR 1024.35(h)).

56. Determine whether the institution furnished adverse information to any consumer reporting agency regarding a payment that was the subject of an error notice within 60 days after receiving the notice (12 CFR 1024.35(i)).

Requests for Information – 12 CFR 1024.36

Complete the following based upon a review of a sample of mortgage loan (as defined in 12 CFR 1024.31) files that included information requests from borrowers or other appropriate methods.

Address for Information Requests

57. If the institution designates an address or addresses to which borrowers must send information requests, complete the following:

    - Determine whether the institution provided written notice of the address to the borrower, along with a statement that the borrower must use that address to request information (12 CFR 1024.36(b)).
    - Determine whether the institution also provided that address to the borrower in each of the following three communications:
        - Any periodic statement or coupon book required under 12 CFR 1026.41;
        - Any website the institution maintains in connection with the servicing of the loan; and
        - Any notice required pursuant to 12 CFR 1024.39 (early intervention) or .41 (loss mitigation) that includes contact information for assistance (12 CFR Part 1024, Supp. I., Comment 1024.36(c)-2).
    - Determine whether the institution designated the same address for receiving information requests pursuant to Section 1024.35(c) (12 CFR 1024.36(b)).
    - If the institution establishes an electronic method for submitting information requests that is its exclusive online intake process, determine whether this electronic process was in addition to, and not in lieu of, any process for receiving information requests by mail (12 CFR Part 1024, Supp. I., Comment 1024.36(c)-4).

58. If the institution does not establish a specific address to which to send information requests, determine whether the institution responds to information requests sent to any of its offices (12 CFR Part 1024, Supp. I., Comment 1024.36(b)-1).

Acknowledgement of Information Requests

59. Determine whether:

    - The institution properly acknowledged the information request by providing written acknowledgement to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the information request (12 CFR 1024.36(c)); or
    - Acknowledgement was not required because:
        - The institution provided the borrower with the information requested and contact information (including telephone number) for further assistance within five days (excluding legal public holidays, Saturdays, and Sundays) (12 CFR 1024.36(e)); or
        - The institution determined that it was not required to respond and provided written notice with the basis for its determination not to respond to the request to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after making that determination (12 CFR 1024.36(f)).

Response to Information Requests

60. Determine whether:

    - The institution properly responded to the information request by:
        - Providing the requested information and contact information for further assistance (12 CFR 1024.36(d)(1)(i)); or
        - Conducting a reasonable search for the requested information and providing the borrower with a written notice advising the borrower that the institution has determined that the requested information is not available to it, the basis for the institution's determination, and contact information for further assistance (12 CFR 1024.36(d)(1)(ii)). Information is not available to the institution if the information is not in the institution's control or possession or if it cannot be retrieved in the ordinary course of business through reasonable efforts such as, for example, if electronic back-up media is not normally accessible to the institution's personnel and would take an extraordinary effort to identify and restore. Information stored offsite

but which personnel can access upon request is available to the institution; AND

- Undertaking one of the above within the following time frames:

  - If the borrower requested the identity of or contact information for the owner or assignee of a mortgage loan, responding within 10 days (excluding legal public holidays, Saturdays, and Sundays);

  - For all other information requests, responding within 30 days (excluding legal public holidays, Saturdays, and Sundays) unless, prior to the expiration of that 30-day period, the institution extended the time for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) by notifying the borrower in writing of the extension and the reasons for it (12 CFR 1024.36(d)); OR

- The above responses were not required because:

  - The institution provided the borrower with the information requested and contact information (including telephone number) for further assistance within five days (excluding legal public holidays, Saturdays, and Sundays) (12 CFR 1024.36(e)); or

  - The institution determined that it was not required to respond and provided written notice with the basis for its determination not to respond to the request to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after making that determination (12 CFR 1024.36(f)(2)).

Information Requests Regarding the Identity or Contact Information of the Owner or Assignee of a Mortgage Loan

61. If the information requested is the identity or contact information of the owner or assignee of a mortgage loan, determine whether the institution complied by identifying the person on whose behalf the institution receives payments (12 CFR Part 1024, Supp. I., Comment 1024.36(a)-2). For example, if the owner is a trust, then the institution should identify the trust as the owner and provide the trustee's contact information.

Determination that No Response was Required

62. If the institution determined that it was exempt from the requirement to respond, determine whether the institution reasonably determined that one of the following five exemptions applied:

    - The information requested is substantially the same as information the borrower previously requested for which the institution has already complied with the requirements for responding to written information requests (12 CFR 1024.36(f)(1)(i));

    - The information requested is confidential, proprietary, or privileged (12 CFR 1024.36(f)(1)(ii));

    - The information requested is not directly related to the borrower's mortgage loan account (12 CFR 1024.36(f)(1)(iii));

    - The information request is overbroad or unduly burdensome. A request is overbroad if the borrower requests that the institution provide an unreasonable volume of documents or information. A request is unduly burdensome if a diligent institution could not respond within the time periods set forth in 12 CFR 1024.46(d)(2) or would incur costs (or have to dedicate resources) that would be unreasonable in light of the circumstances (12 CFR 1024.36(f)(1)(iv)); or

    - The information request is sent more than one year after either the mortgage loan balance was discharged or the institution transferred the mortgage loan to another servicer (12 CFR 1024.36(f)(1)(v)). A mortgage loan is discharged when both the debt and all corresponding liens have been extinguished or released, as applicable.

Determination that Information Request was Overbroad

63. If the institution determined that a submitted request was overbroad or unduly burdensome, determine whether the institution could reasonably have identified a valid information request in the submission and whether the institution did so (12 CFR 1024.36(f)(1)(iv)).

Impermissible Fees and Conditions

64. Determine whether the institution charged a fee, or required a borrower to make any payment that was owed on the borrower's account, as a condition of responding to an information request (12 CFR 1024.36(g)).

Force-Placed Insurance – 12 CFR 1024.37

Applicability: Servicers must comply with restrictions on purchasing, renewing, and assessing fees for "force-placed insurance," which is defined as hazard insurance that a servicer obtains on behalf of the owner or assignee to insure

the property securing the mortgage loan (but does not include (i) flood insurance required by the Flood Disaster Protection Act of 1973; (ii) hazard insurance obtained by a borrower but renewed by the borrower's servicer in accordance with 12 CFR 1024.17(k)(1), (2), or (5); or (iii) hazard insurance obtained by a borrower but renewed by the borrower's servicer at its discretion with the borrower's agreement).

The provisions of 12 CFR 1024.37 define when an institution may assess fees on borrowers related to force-placed insurance. These provisions apply to any mortgage loan, as that term is defined in 12 CFR 1024.31.

Assessing Charges or Fees Related to Force-Placed Insurance

Complete the following if the institution assessed a charge or fee on a borrower related to force-placed insurance.

Reasonable Basis

65. Determine whether the institution had a reasonable basis to believe that the borrower has failed to comply with the mortgage loan contract's requirement to maintain hazard insurance (12 CFR 1024.37(b)). An institution's "reasonable basis" may be based upon information about a borrower's hazard insurance which the institution receives from the borrower, the borrower's insurance provider, or the borrower's insurance agent. If the institution receives no such information, the institution may satisfy the "reasonable basis" standard if it acts with reasonable diligence to ascertain the borrower's hazard insurance status and does not receive evidence of hazard insurance. A servicer that complies with the initial and reminder notice requirements (below) has acted with reasonable diligence (12 CFR Part 1024, Supp. I, Comment 1024.37(b)-1).

Initial Notice

66. Determine whether the institution provided the initial written notice to the borrower at least 45 days before assessing a fee or charge (12 CFR 1024.37(c)).

67. Determine whether the initial notice included the following information (12 CFR 1024.37(c)). Sample language for the initial notice is contained in Appendix MS-3(A) to 12 CFR Part 1024.

    - The date of the notice;
    - The institution's name and mailing address;
    - The borrower's name and mailing address;
    - A statement that requests the borrower provide hazard insurance information for the borrower's property and that identifies the property by its physical address;
    - A statement that the borrower's hazard insurance has expired or is expiring (as applicable), that the institution lacks evidence that the borrower has hazard insurance coverage past the expiration date, and (if applicable) that identifies the type of hazard insurance lacking;
    - A statement that hazard insurance is required on the borrower's property and that the institution has purchased or will purchase insurance at the borrower's expense;
    - A request that the borrower promptly provide the institution with insurance information;
    - A description of the requested insurance information, how the borrower may provide such information, and (if applicable) that the requested information must be in writing;
    - A statement that the insurance coverage the institution has purchased or will purchase may cost significantly more than, and provide less coverage than, hazard insurance purchased by the borrower;
    - The institution's phone number for borrower inquiries; and
    - A statement advising that the borrower review additional information provided in the same transmittal (if applicable).

68. Determine whether the initial notice was in the correct form. The notice must provide certain information in bold text and, other than the specific statements listed above, the institution cannot provide any information on the initial notice (though the institution can provide additional information on separate pages of paper contained in the same transmittal) (12 CFR 1024.37(c)(3)-(4)). A sample notice is contained in Appendix MS-3(A) to 12 CFR Part 1024.

Reminder Notice

69. If the institution received no hazard insurance information or did not receive evidence of continuous coverage, determine whether the institution provided a reminder notice (i) at least 30 days after mailing or delivering the initial notice, and (ii) at least 15 days before assessing any charges or fees for force-placed insurance (12 CFR 1024.37(d)(1)).

70. For borrowers who did not provide hazard insurance information, determine whether the reminder notice (i) contains the date of the reminder notice and all of the other information provided in the initial notice; (ii) advises that it is a second and final notice; and (iii) identifies the annual cost of force-placed insurance or, if unknown, a reasonable estimate (12 CFR 1024.37(d)(2)(i)). Sample language for the reminder notice is contained in Appendix MS-3(B) to 12 CFR Part 1024.

71. When the institution receives hazard insurance information but does not receive evidence of continuous coverage, determine whether the reminder notice includes the following information (12 CFR 1024.37(d)(2)(ii)). Sample language for the reminder notice is contained in Appendix MS-3(C) to 12 CFR Part 1024.

    - The date of the reminder notice;
    - The institution's name and mailing address;
    - The borrower's name and mailing address;
    - A statement requesting that the borrower provide hazard insurance information for the borrower's property and that identifies the property by its physical address;
    - The institution's phone number for borrower inquiries;
    - A statement advising that the borrower review additional information provided in the same transmittal (if applicable);
    - A statement that it is the second and final notice;
    - The annual cost of force-placed insurance, or if unknown, a reasonable estimate;
    - A statement that the institution has received the hazard insurance information that the borrower provided;
    - A request that the borrower provide the missing information; and
    - A statement that the borrower will be charged for insurance the institution purchases for the time period in which the institution cannot verify coverage.

72. Determine whether the reminder notice was in the correct form. The notice must provide certain information in bold text and, other than the specific statements listed above, the institution cannot provide any information on the reminder notice (though the institution can provide additional information on separate pages of paper contained in the same transmittal) (12 CFR 1024.37(d)(3)-(4)). Sample notices are contained in Appendix MS-3(B) and (C) to 12 CFR Part 1024.

73. Determine whether, by the end of the 15-day period after the institution sent the reminder notice, the borrower provided evidence that it has had hazard insurance that complies with the loan contract continuously in place. As evidence, the institution may require a copy of the borrower's hazard insurance policy declaration page, the borrower's insurance certificate, the borrower's insurance policy, or other similar forms of written confirmation (12 CFR 1024.37(c)(1)(iii) and 12 CFR Part 1024, Supp. I, Comment 1024.37(c)(1)(iii)-2).

Assessing Charges or Fees for Renewing or Replacing Force-Placed Insurance

If the institution assessed a charge or fee on a borrower for renewing or replacing force-placed insurance, complete the following.

74. Determine whether the institution provided a written renewal notice to the borrower at least 45 days before assessing any fee or charge (12 CFR 1024.37(e)(1)(i)).

75. Determine whether the renewal notice includes the following information (12 CFR 1024.37(e)(2)). Sample language for the renewal of force-placed insurance notice is contained in Appendix MS-3(D) to 12 CFR Part 1024.

    - The date of the renewal notice;
    - The institution's name and mailing address;
    - The borrower's name and mailing address;
    - A statement that requests the borrower to update the hazard insurance information for the borrower's property and that identifies the property by its physical address;
    - A statement that the institution previously purchased force-placed insurance at the borrower's expense because the institution did not have evidence that the borrower had hazard insurance coverage;
    - A statement that the force-placed insurance has expired or is expiring, as applicable, and that the institution intends to renew or replace it because hazard insurance is required on the property;
    - A statement that the insurance coverage the institution has purchased or will purchase may cost significantly more than, and provide less coverage

than, insurance purchased by the borrower, and identifying the annual premium cost of force-placed insurance or a reasonable estimate;

- A statement that if the borrower purchases hazard insurance, the borrower should promptly provide the institution with insurance information;
- A description of the requested insurance information and how the borrower may provide such information, and if applicable, that the requested information must be in writing;
- The institution's telephone number for borrower inquiries; and
- A statement advising the borrower to review additional information provided in the same mailing (if applicable).

76. Determine whether the renewal notice was in the correct form. The notice must provide certain information in bold text and, other than the specific statements listed above, the institution cannot provide any information on the renewal notice (though the institution can provide additional information on separate pages of paper contained in the same transmittal) (12 CFR 1024.37(e)(3)-(4)). A sample notice is contained in Appendix MS-3(D) to 12 CFR Part 1024.

77. Determine whether in the 45 days after sending the renewal notice the institution received evidence demonstrating that the borrower had purchased hazard insurance coverage (12 CFR 1024.37(e)(1)(ii)). As evidence, the institution may require a copy of the borrower's hazard insurance policy declaration page, the borrower's insurance certificate, the borrower's insurance policy, or other similar forms of written confirmation.

General Mailing Requirements, Canceling Force-Placed Insurance, and Bona Fide and Reasonable Fee Requirements

78. If the institution mailed any of the written initial, reminder, or renewal notices (12 CFR 1024.37(c)(1)(i), (c)(1)(ii), or (e)(1)), determine whether the servicer used a class of mail not less than first-class mail (12 CFR 1024.27(f)).

79. If the institution received evidence that the borrower had required hazard insurance coverage in place, determine whether the institution did the following within 15 days:

    - Canceled the force-placed insurance;
    - Refunded force-placed insurance premiums charges and fees for the period of overlapping coverage; and
    - Removed all force-placed charges and fees from the borrower's account for the period of overlapping coverage (12 CFR 1024.37(g)).

80. Determine whether all fees or charges assessed on the borrower related to force-placed insurance are bona fide and reasonable (except for charges subject to State regulation and charges authorized by the Flood Disaster Protection Act of 1973). A "bona fide and reasonable charge" is one that is reasonably related to the institution's cost of providing the service and is not otherwise prohibited by law (12 CFR 1024.37(h)).

General Servicing Policies, Procedures, and Requirements – 12 CFR 1024.38

Applicability: The general servicing policies, procedures, and requirements apply to all mortgage loans, as that term is defined in 12 CFR 1024.31, except that the requirements do not apply to (i) small servicers, as that term is defined in 12 CFR 1026.41(e);[25] (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1026.33(a); and (iii) qualified lenders, as defined under the Farm Credit Act of 1971 and accompanying regulations.

Policies and Procedures – Accessing and Providing Timely and Accurate Information

81. Determine whether the institution has policies and procedures that are reasonably designed to ensure that it has access to and provides timely and accurate information (12 CFR 1024.38(a) & (b)(1)). This includes policies and procedures that are reasonably designed to ensure the following:

    - Providing accurate and timely disclosures to the borrower;
    - Investigating, responding to, and making corrections in response to borrowers' complaints, including promptly obtaining information from service providers to investigate and if applicable correct errors resulting from actions of service providers;
    - Providing borrowers with accurate and timely information and documents in response to borrower

[25] An institution qualifies as a small servicer if it either (a) services, together with any affiliates, 5,000 or fewer mortgage loans, as that term is used in 12 CFR 1026.41(a)(1), for all of which the institution (or an affiliate) is the creditor or assignee, or (b) is a Housing Finance Agency, as defined in 24 CFR 266.5 (§ 1026.41(e)(4)(ii)). The following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans (12 CFR 1026.41(e)(4)(iii)).

requests for information with respect to the borrower's mortgage loan;

- Providing owners and assignees of mortgage loans with accurate and current information and documents about all the mortgage loans they own, including information about the institution's evaluations of borrowers for loss mitigation options and loss mitigation agreements with borrowers;
- Submitting accurate and current information and documents that comply with applicable law during the foreclosure process; and
- Upon learning of a borrower's death, promptly communicating with the borrower's successor in interest concerning the secured property.

Policies and Procedures – Proper Evaluation of Loss Mitigation Applications

82. Determine whether the institution has policies and procedures that are reasonably designed to ensure that its personnel properly evaluate loss mitigation applications (12 CFR 1024.38(a) & (b)(2)). This includes policies and procedures that are reasonably designed to ensure the following:

    - Providing accurate information regarding available loss mitigation options from the owner or assignee of the borrower's loan;
    - Identifying with specificity all loss mitigation options for which a borrower may be eligible, including identifying, with respect to each owner or assignee, all of the loss mitigation options the institution may consider when evaluating a borrower, as well as the criteria the institution should apply for each option;
    - Providing the loss mitigation personnel assigned to the borrower's mortgage loan pursuant to 12 CFR 1026.40 with prompt access to all of the documents and information that the borrower submitted in connection with a loss mitigation option;
    - Identifying the documents and information a borrower must submit to complete a loss mitigation application; and
    - In response to a complete loss mitigation application, properly evaluating the borrower for all eligible loss mitigation options pursuant to any requirements established by the owner or assignee of the mortgage loan, even if those requirements are otherwise beyond the requirements of 12 CFR 1024.41.

Policies and Procedures – Oversight of Servicer Providers

83. Determine whether the institution has policies and procedures that are reasonably designed to facilitate oversight of, and compliance by, service providers (12 CFR 1024.38(a) & (b)(3)). This includes policies and procedures that are reasonably designed to ensure the following:

    - Providing appropriate personnel with access to accurate and current documents and information concerning the service providers' actions;
    - Facilitating periodic reviews of service providers; and
    - Facilitating the sharing of accurate and current information regarding the status of a borrower's loss mitigation application and any foreclosure proceeding among appropriate institution personnel, including the loss mitigation personnel assigned to the borrower's mortgage loan, and appropriate service provider personnel, including service provider personnel responsible for handling foreclosure proceedings.

Policies and Procedures – Transfer of Information

84. Determine whether the institution has policies and procedures that are reasonably designed to facilitate the transfer of information during servicing transfers (12 CFR 1024.38(a) & (b)(4)). This includes policies and procedures that are reasonably designed to ensure the following:

    - For a transferor servicer, the timely and accurate transfer of all information and documents in its possession and control related to a transferred mortgage loan to the transferee servicer in a manner that ensures its accuracy and that allows the transferee to comply with the terms of the mortgage loan and applicable law, including any information about the status of any loss mitigation agreements or discussions with the borrower and any analysis performed with respect to potential recovery from non-performing mortgage loans; and
    - For a transferee servicer, identifying necessary documents or information that may not have been transferred, obtaining such missing documentation or information from the transferor servicer (for documents and information related to loss mitigation, the transferee's policies and procedures must address obtaining missing documents from the transferor servicer before attempting to obtain such documents from the borrower).

Policies and Procedures – Notifying Borrowers of Error Notice and Information Request Procedures

85. Determine whether the institution has policies and procedures that are reasonably designed to inform borrowers of procedures for submitting written error notices and written information requests (12 CFR 1024.38(a) and (b)(5)). This includes policies and procedures reasonably designed to ensure that the institution informs borrowers who are dissatisfied with the institution's response to oral complaints or information requests of the procedures for submitting written error notices under 12 CFR 1024.35 and written information requests under 12 CFR 1024.36.

Records Maintenance – Accurate Records

86. For any mortgage loan, determine if the institution is retaining accurate records that document actions with respect to the mortgage loan account (which includes any mortgage loan that has been transferred or paid in full). The institution must retain these records until one year after the loan is discharged or the institution transfers servicing for the mortgage loan to a transferee servicer. (12 CFR 1024.38(c)(1)).

Records Maintenance – Facilitating Aggregation of Information

87. For documents or information created on or after January 10, 2014, determine whether the institution maintains the following five items for each mortgage loan file in a manner that allows the institution to aggregate these items into a servicing file within five days:

    - A schedule of all credits and debits to the account (including escrow accounts and suspense accounts);
    - A copy of the security instrument that establishes the lien securing the mortgage loan;
    - Any notes created by institution personnel reflecting communications with the borrower concerning the account;
    - A report of the data fields relating to the borrower's account created by the institution's electronic systems (if applicable); and
    - Copies of any information or documents provided by the borrower to the institution in connection with written error notices or loss mitigation (12 CFR 1024.38(c)(2)).

Early Intervention Requirements for Certain Borrowers – 12 CFR 1024.39

Applicability: The early intervention requirements apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence (12 CFR 1024.30(c)(2)). The requirements do not apply to (i) small servicers, as that term is defined in 12 CFR 1026.41(e),[26] (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1026.33(a), and (iii) qualified lenders, as defined under the Farm Credit Act of 1971 and accompanying regulations (12 CFR 1024.30(b)). Additionally, institutions are not required to comply with the live contact and written notice requirements if doing so would violate applicable law (12 CFR 1024.39(c)). Finally, institutions are exempted from the early intervention requirements (i) as to borrowers who are in bankruptcy,[27] and (ii) if the institution is subject to the Fair Debt Collection Practices Act (FDCPA) and the borrower has sent an FDCPA "cease communication" notification with respect to the mortgage loan (12 CFR 1024.39(d)).

Complete the following for any delinquent borrowers (which, for purposes of Section 1024.39, do not include borrowers performing as agreed under a loss mitigation agreement).

Live Contact

88. Determine whether the institution made good faith efforts to establish live contact with the borrower within 36 days after each time the borrower became delinquent (12 CFR 1024.39(a)). A delinquency begins each time a borrower

[26] An institution qualifies as a small servicer if it either (a) services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the institution (or an affiliate) is the creditor or assignee, or (b) is a Housing Finance Agency, as defined in 24 CFR 266.5 (§ 1026.41(e)(4)(ii)). The following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans (12 CFR 1026.41(e)(4)(iii)).

[27] With respect to any portion of the mortgage debt that is not discharged through bankruptcy, a servicer must resume compliance with the early intervention requirement after the first delinquency that follows the earliest of the following: (i) the borrower's bankruptcy case is dismissed; (ii) the borrower's bankruptcy case is closed; or (iii) the borrower receives a general discharge of debts under the Bankruptcy Code (11 U.S.C. 101 et seq.). However, a servicer is not required to communicate with a borrower in any way that would violate applicable bankruptcy law or a court order in a bankruptcy case, and a servicer may adapt the early intervention requirement in any manner believed necessary. A servicer also is not required to comply with the early intervention requirement for any portion of the mortgage debt that was discharged under the Bankruptcy Code or if a bankruptcy case is revived (12 CFR 1024.39(d)),

The bankruptcy exception applies if two or more borrowers are joint obligors with primary liability on a mortgage loan and any one of the borrowers is in bankruptcy. For example, if a husband and wife jointly own a home and the husband files for bankruptcy, the servicer is exempt from the early intervention requirements as to both the husband and wife (12 CFR Part 1024, Supp. I., Comment 1024.39(d)(1)-3).

fails to make a payment sufficient to cover principal, interest, and (if applicable) escrow for a given billing cycle.

89. After the institution established live contact, determine whether the institution promptly informed the borrower of loss mitigation options, if appropriate (as determined based on the institution's reasonable discretion) (12 CFR 1024.39(a)).

Written Notice

90. Determine whether the institution sent a written notice to the borrower within 45 days after the borrower became delinquent (12 CFR 1024.39(b)(1)). The institution does not need to send the notice to a borrower more than once in a 180-day period.

91. Determine whether the notice included the following items (12 CFR 1024.39(b)(2)). Sample language for the notice is contained in Appendix MS-4(A), MS-4(B), and MS-4(C) to 12 CFR Part 1024.

    - A statement encouraging the borrower to contact the institution;
    - The telephone number to access assigned loss mitigation personnel;
    - A brief description of examples of loss mitigation options that may be available to the borrower (if applicable);
    - Loss mitigation application instructions or instructions as to how to obtain more information about loss mitigation options (such as by contacting the institution), if applicable; and
    - Either the CFPB's or HUD's website to access homeownership counselors or counseling organizations list and HUD's toll-free number to access homeownership counselors or counseling organizations.

Continuity of Contact – 12 CFR 1024.40

Applicability: The continuity of contact requirements apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence (12 CFR 1024.30(c)(2)). The requirements do not apply to (i) small servicers, as that term is defined in 12 CFR 1026.41(e),[28] (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1026.33(a), and (iii) qualified lenders, as defined under the Farm Credit Act of 1971 and accompanying regulations (12 CFR 1024.30(b)).

92. Determine whether the institution had policies and procedures reasonably designed to assign personnel to a delinquent borrower by the time the written early intervention notice was provided, and in any event, within 45 days after the borrower became delinquent (12 CFR 1024.40(a)).

93. Determine whether the institution had policies and procedures reasonably designed to ensure that the assigned personnel were available, via telephone, to answer the borrower's questions and (as applicable) assist the borrower with available loss mitigation options until the borrower has made, without incurring a late charge, two consecutive mortgage payments in accordance with the terms of a permanent loss mitigation agreement (12 CFR 1024.40(a)(2)).

94. Determine whether the institution had policies and procedures reasonably designed to ensure that, if a borrower contacts the assigned personnel and does not immediately receive a live response, the institution can provide a live response in a timely manner (12 CFR 1024.40(a)(3)).

95. Determine whether the institution maintains policies and procedures reasonably designed to ensure that the assigned personnel can perform, among others, the following tasks:

    - Provide the borrower with accurate information about available loss mitigation options, including the steps the borrower must take to be evaluated for such options, including how to complete a loss mitigation application or appeal a denial of a loan modification option (if applicable);
    - Provide the borrower with accurate information about the status of any loss mitigation application submitted;

[28] An institution qualifies as a small servicer if it either (a) services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the institution (or an affiliate) is the creditor or assignee, or (b) is a Housing Finance Agency, as defined in 24 CFR 266.5 (§ 1026.41(e)(4)(ii)). The following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans voluntarily serviced by the servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; and (c) mortgage loans secured by consumers' interests in timeshare plans (12 CFR 1026.41(e)(4)(iii)).

- Provide the borrower with accurate information about the circumstances under which the institution may refer the account to foreclosure;
- Provide the borrower with accurate information about applicable loss mitigation deadlines;
- Timely retrieve a complete record of the borrower's payment history and all written information the borrower has provided to the institution (or the institution's predecessors) in connection with a loss mitigation application, and provide these documents to other persons required to evaluate the borrower for available loss mitigation options; and
- Provide the borrower with information about submitting a written error notice or written request for information (12 CFR 1024.40(b)).

Loss Mitigation Procedures – 12 CFR 1024.41

Applicability: The loss mitigation procedure requirements apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence (12 CFR 1024.30(c)(2)). Except for the requirements of 1024.41(j), the loss mitigation procedure requirements do not apply to (i) small servicers, as that term is defined in 12 CFR 1026.41(e), (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1026.33(a), and (iii) qualified lenders, as defined under the Farm Credit Act of 1971 and accompanying regulations (12 CFR 1024.30(b)).

Calculating Time Periods: 12 CFR 1024.41 provides borrowers certain protections depending on whether the institution receives a complete loss mitigation application at least a specified number of days before a foreclosure sale. See, e.g., 12 CFR 1024.41(c)(1) (37 days); 12 CFR 1024.41(e) & (h) (90 days). These time periods are calculated as of the date the servicer receives a complete loss mitigation application. Thus, scheduling or rescheduling a foreclosure sale after the servicer receives the complete loss mitigation application will not affect the borrower's protections (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(3)-2). If no foreclosure sale is scheduled as of the date the servicer receives a complete loss mitigation application, the application is considered received more than 90 days before a foreclosure sale (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(3)-1).

Definition of First Notice or Filing: 12 CFR 1024.41 includes certain prohibitions on making the first notice or filing for a judicial or non-judicial foreclosure, and provides borrowers certain protections depending on whether such a notice or filing has been made. Whether a particular document qualifies as the first notice or filing depends on the foreclosure process under the applicable State law at issue:

- ***Judicial foreclosure***. Where foreclosure procedure requires a court action or proceeding, the first notice or filing is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding. Depending on the particular foreclosure process, examples of these documents could be a complaint, petition, order to docket, or notice of hearing;
- ***Non-judicial foreclosure – recording or publication requirement.*** Where foreclosure procedure does not require an action or court proceeding (such as under a power of sale), the first notice or filing is the earliest document required to be recorded or published to initiate the foreclosure process; or
- ***Non-judicial foreclosure – no recording or publication requirement.*** Where foreclosure procedure does not require an action or court proceeding, and also does not require any document to be recorded or published, the first notice or filing is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

Note that a document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the documents must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure (12 CFR Part 1024, Supp. I., Comment 1024.41(f)-1).

Applications Received at Least 45 Days Before a Foreclosure Sale (Review for Completeness)

Complete the following for any loss mitigation application that the institution received at least 45 days before a foreclosure sale

96. Determine whether the institution promptly determined whether the application was complete (12 CFR 1024.41(b)(1)). A loss mitigation application is viewed expansively and includes oral inquiries by the borrower where the borrower also provides information the institution would use to evaluate loss mitigation applications, or where a borrower requests that the institution determines whether the borrower is "prequalified" for a loss mitigation application by evaluating the borrower against preliminary criteria (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(1)-2). An institution is required to comply with the loss mitigation procedures for only a single complete loss mitigation application for a borrower's mortgage loan account (12 CFR 1024.41(i)).

Complete Applications – Written Acknowledgement

Complete the following if the application was complete.

97. Determine whether the institution provided written acknowledgement to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the loss mitigation application. The acknowledgement must state that the application was complete and include a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options (12 CFR 1024.41(b)(2)(1)(B)).

Facially Complete Applications – Additional Information or Corrected Documents Required

Complete the following if the application was facially complete and the institution later discovered that additional information or corrections to a previously submitted document were required to complete the application. A loss mitigation application is facially complete if either (i) the institution's initial notice under Section 1024.41(b) advised the borrower that the application was complete, or (ii) the institution's initial notice under Section 1024.41(b) requested additional information from the borrower to complete the application and the borrower submitted such additional information.

98. Determine whether, upon discovering that additional information or corrected documents were required to complete the application, the institution (i) promptly requested the missing information or corrected documents, and (ii) gave the borrower a reasonable opportunity to complete the application (12 CFR 1024.41(c)(2)(iv)). A reasonable opportunity depends on the particular facts and circumstances, but must provide the borrower sufficient time to gather the necessary information and documents (12 CFR Part 1024, Supp. I., Comment 1024.41(c)(2)(iv)-1).

99. Determine whether the institution treated the borrower's application as complete for purposes of 12 CFR 1024.41(f)(2) ("Application received before foreclosure referral") and 12 CFR 1024(g) ("Prohibition on foreclosure sale") until the borrower is given a reasonable opportunity to submit additional information or corrected documents (12 CFR 1024.41(c)(2)(iv)).

Incomplete Applications – Written Acknowledgement, Reasonable Diligence, and Short-Term Forbearance

Complete the following if the application was incomplete.

100. Determine whether the institution provided written acknowledgement to the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the loss mitigation application. The acknowledgement must (1) state that the application was incomplete, (2) identify the additional information needed to complete the application, (3) identify a reasonable date by which the borrower must submit the additional information, and (4) include a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options (12 CFR 1024.41(b)(2)). Except when doing so would be impracticable (such as requesting a borrower to submit documentation in less than seven days), a reasonable deadline is generally one of the following that maximizes the borrower's loss mitigation protections: (a) the date by which any document or information submitted by the borrower will be stale or invalid, (b) the 120th day of the borrower's delinquency, (c) 90 days before a foreclosure sale; or (d) 38 days before a foreclosure sale (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(2)(ii)-1).

101. Determine whether the institution exercised reasonable diligence in obtaining documents and information to complete the application (12 CFR 1024.41(b)(1)). Examples of reasonable diligence include: (a) where the institution requires additional information from the borrower (such as an address or telephone number to verify employment), promptly contacting the borrower to obtain the information; and (b) where the borrower's loan is transferred to the institution from another servicer, reviewing documents the institution received from the prior servicer to determine if the required information is contained in those documents. Additionally, if the institution offered the borrower a short-term forbearance plan based upon information contained in an incomplete loss mitigation application, reasonable diligence would involve notifying the borrower that they are being offered a payment forbearance program based on an evaluation of an incomplete loss mitigation application, and that the borrower has the option of completing the application to receive a full evaluation for all loss mitigation options available to the borrower (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(1)-4.iii).

102. If the institution offered the borrower a short-term forbearance plan based upon information contained in an incomplete loss mitigation application, determine whether the institution either (a) made the first notice or filing for any judicial or non-judicial foreclosure process, (b) moved for foreclosure judgment or an order of sale, or (c) conducted a foreclosure sale while the borrower was performing under such plan (12 CFR 1024.41(c)(2)(iii)). A short-term forbearance program allows a borrower to forgo making certain payments or portions of payments

due over a period of no more than six months (12 CFR Part 1024, Supp. I., Comment 41(c)(2)(iii)-1).

Complete Applications Received More Than 37 Days Before a Foreclosure Sale (Evaluation of Application)

Complete the following for any complete loss mitigation application that the institution received more than 37 days before a foreclosure sale.

103. Determine whether, within 30 days, the institution (i) evaluated the borrower for all available loss mitigation options, and (ii) provided the borrower with a notice stating (a) which loss mitigation options (if any) the institution would offer the borrower, (b) the amount of time the borrower has to accept or reject an offered loss mitigation option pursuant to 12 CFR 1024.41(e), and (c) if applicable, that the borrower has the right to appeal a denial of a loan modification option and the time period for making any appeal pursuant to 12 CFR 1024.41(h) (12 CFR 1024.41(c)).

104. If the institution denied the application, determine whether the notice also stated the specific reason or reasons for denying each such option, and, if applicable, that the borrower was not evaluated on other criteria (12 CFR 1024.41 (d)).

Denial of Loan Modification Option Based Upon Investor Criteria; Use of a Waterfall

Complete the following if the institution denied an application for a loan modification option due to a failure to meet investor guidelines.

105. Determine whether the institution identified in its notice to the borrower (i) the owner or assignee of the mortgage loan, and (ii) the specific criteria the borrower failed to meet (12 CFR 1024.41(d), 12 CFR Part 1024, Supp. I., Comment 41(d)-1). (Note: if the borrower's application was evaluated under an investor's waterfall and the borrower qualified for a particular option, it is sufficient for the institution to inform the borrower that the investor's requirements include a ranking of options and that an offer of a loan modification option necessarily results in a denial of any other options ranked below the option for which the borrower is eligible (12 CFR Part 1024, Supp. I., Comment 41(d)-1).

Denial Based Upon Net Present Value Calculation

Complete the following if the institution denied the application due to a net present value calculation.

106. Determine whether the institution disclosed the inputs used in that calculation (12 CFR Part 1024, Supp. I., Comment 41(d)-2).

Denial Using Hierarchy of Eligibility Criteria

Complete the following if the institution established a hierarchy of eligibility criteria and, after reaching the first criterion that causes a denial, did not evaluate whether the borrower would have satisfied the remaining criteria.

107. Determine whether the institution identified in the notice: (i) the specific reason or reasons why the borrower was actually rejected, and (ii) that the borrower was not evaluated on other criteria. An institution is not required to determine or disclose whether a borrower would have been denied based on other criteria if the servicer did not actually evaluate these additional criteria (12 CFR Part 1024, Supp. I., Comment 41(d)-4).

Time for Acceptance of an Offered Loss Mitigation Option

Complete the following if the institution offered the borrower a loss mitigation option.

Complete Applications Received at Least 90 Days Before a Foreclosure Sale

Complete the following if institution offered a loss mitigation option and had received the complete application at least 90 days before a foreclosure sale.

108. Determine whether the institution provided the borrower with at least 14 days to accept or reject any offered loan modification option after the servicer provided notice of the offer to the borrower (12 CFR 1024.41(e)). This acceptance period can be extended if, within 14 days, the borrower makes an appeal of a denial of any loan modification option (12 CFR 1024.41(e)(2)(iii)). In the event of an appeal, the borrower's time for acceptance is extended to 14 days after the institution provides a notice of its determination of the appeal under 12 CFR 1024.41(e)(iii).

Complete Applications Received Between 37 and 90 days Before a Foreclosure Sale

Complete the following if institution offered a loss mitigation option and had received the complete application fewer than 90 days before a foreclosure sale but more than 37 days before the sale.

109. Determine whether the institution provided the borrower with at least seven days to accept or reject any offered loss mitigation options after the servicer provided notice of the offer to the borrower (12 CFR 1024.41(e)(1)).

No Borrower Response to Offered Trial Loan Modification Plan

Complete the following if the institution offered a borrower a trial loan modification plan and the borrower did not respond within seven or 14 days (as applicable under 12 CFR 1024.41(e)(1)).

110. Determine (i) whether the borrower submitted payments in accordance with the offered plan, and (ii) if so, whether the institution gave the borrower a reasonable period of time to fulfill any remaining requirements to accept the plan (12 CFR 1024.41(e)(2)(ii)).

Prohibitions on Commencing Foreclosure Proceedings and Dual Tracking

Complete the following for any borrower.

111. Determine whether the institution made any first judicial or non-judicial foreclosure notices or filings without meeting one of the following conditions: (i) the borrower was more than 120 days delinquent; (ii) the foreclosure is based on a borrower's violation of a due-on-sale clause; or (iii) the institution is joining the foreclosure action of a subordinate lienholder (12 CFR 1024.41(f)(1)). (Note that this requirement as applicable to small servicers is addressed below.)

Complete Applications Received During the Pre-foreclosure Period

Complete the following if the institution received a complete loss mitigation application either within the first 120 days of delinquency or before the institution made the first judicial or non-judicial foreclosure notice or filing. Note that the following does not apply if the foreclosure is based on a borrower's violation of a due-on-sale clause, or if the institution is joining the foreclosure action of a subordinate lienholder.

112. Determine whether the institution made the first foreclosure notice or filing only after one of the following occurred: (i) the institution notified the borrower that the borrower is ineligible for any loss mitigation option and if an appeal is available, either the appeal period expired or the appeal had been denied; (ii) the borrower rejected all the offered loss mitigation options; or (iii) the borrower failed to perform under a loss mitigation agreement (12 CFR 1024.41(f)(2)).

Complete Applications Received More Than 37 Days Before a Foreclosure Sale

Complete the following if the institution received a complete loss mitigation application after the institution initiated foreclosure but more than 37 days before a foreclosure sale.

113. Determine whether the institution improperly conducted a foreclosure sale or moved for foreclosure judgment or sale before one of the following occurred: (i) the institution notified the borrower that it had denied the loss mitigation application for any loss mitigation option and if an appeal is available, either the appeal period had expired or the appeal had been denied; (ii) the borrower rejected all the offered loss mitigation options; or (iii) the borrower fails to perform under a loss mitigation agreement (12 CFR 1024.41(g)).

Appeal Process

Complete the following if (a) the institution denied a complete loss mitigation application for any trial or permanent loan modification option, and (b) the institution received that complete application (i) before the borrower was more than 120 days delinquent, (ii) before the institution made the first judicial or non-judicial foreclosure notice or filing, or (iii) at least 90 days before a foreclosure sale.

114. For any borrower who timely appealed a denial of an available loan modification option, determine whether the institution provided a notice to the borrower within 30 days stating (i) whether it will offer the borrower a loss mitigation option based on the appeal, and (ii) if applicable, how long the borrower has to accept or reject this loss mitigation option or a previously offered loss mitigation option. (12 CFR 1024.41(h)(4)).

115. For any appeal that the institution granted, determine whether the institution afforded the borrower 14 days to accept or reject any offered loan modification option (12 CFR 1024.41(h)(4)).

116. Determine whether the institution used different personnel to evaluate the appeal than the personnel who had evaluated the borrower's loss mitigation application (12 CFR 1024.41(h)(3)).

Small Servicers

Complete the following if the institution is a small servicer as that term is defined in 12 CFR 1026.41(e).

117. If the institution is a small servicer, determine whether the institution made the first foreclosure notice or filing before (i) the borrower was more than 120 days delinquent, (ii) the foreclosure is based on a borrower's

violation of a due-on-sale clause, or (iii) the institution is joining a subordinate lienholder's foreclosure action (12 CFR 1024.41(j)).

118. If the institution is a small servicer and the borrower is performing according to the terms of a loss mitigation agreement, determine whether the institution (i) made the first foreclosure notice or filing, (ii) moved for a foreclosure judgment or order of sale, or (iii) conducted a foreclosure sale (12 CFR 1024.41(j)).

References

12 USC §2601: Real Estate Settlement Procedures Act of 1974

24 CFR §1024: Real Estate Settlement Procedures Act

Financial Institution Letters

FIL 45-2000: Guidance on Completing HUD-1, HUD-1A and Good Faith Estimate Forms for Home Mortgage Loans

FIL 103-99: Potential Violations of Section 8 of the Real Estate Settlement Procedures Act

FIL 21-99: HUD Policy Statement on Lender Payments to Mortgage Brokers

FIL 61-97: Revisions to HUD's Special Information Booklet for Applications of Residential Real Estate Loans

Job Aids

RESPA Escrow Program
The RESPA Escrow Program is an efficient tool for determining whether a financial institution is properly calculating and disclosing escrow account information as required under §1024.17 of the Department of Housing and Urban Development's Regulation X.

Examination Checklist—Real Estate Settlement Procedures Act

	Yes	No
1. Are written loan policies in connection with federally related mortgage loans in compliance with Regulation X?		
2. Does the institution have established operating procedures which address the requirements of Regulation X?		
3. Are mortgage lending personnel knowledgeable of the requirements of RESPA and Regulation X?		
Special Information Booklet		
4. For applicable transactions, is the Special Information Booklet provided within three business days after the financial institution or broker receives or prepares a written application for a loan?		
Good Faith Estimate		
5. Does the financial institution use the standard/required Good Faith Estimate Form (GFE)?		
6. Is a GFE of charges for settlement services, if required, provided within three business days after an application is received or prepared?		
7. Does the GFE appear in the exact form as in Appendix C to Regulation X?		
8. Does the GFE contain the following required elements:?		
a. (i) Interest rate expiration date? (ii) Settlement charges expiration date? (iii) Rate lock period? (iv) Number of days before settlement the interest rate must be locked, if applicable? (v) Summary of loan information? (vi) Escrow account information? (vii) Estimates for settlement charges? (viii) Left hand column on trade-off table completed for loan in the GFE?		
b. For all loans, are all third party fees, including those paid by the financial institution in the case of no cost loans, itemized and listed in the appropriate blocks on the second page of the GFE?		
c. Did the financial institution provide a separate sheet that identifies the settlement service providers for the services listed?		
Affiliated Business Arrangements		
9. Does the financial institution refer borrowers to settlement service providers?		
10. If the institution refers borrowers to affiliated settlement service providers, is the Affiliated Business Disclosure statement provided to each borrower as set forth in Appendix D to Part 1024?		
11. Other than an attorney, credit reporting agency, or appraiser representing the lender, does the financial institution require the use of an affiliate?		
Uniform Settlement Statement Form (HUD 1 and HUD 1A)		
12. Does the financial institution use the current Uniform Settlement Statement (HUD-1 or HUD-1A) as appropriate?		

	Yes	No
13. Does the HUD-1 or HUD-1A contain the following:		
a. Charges properly itemized for both borrower and seller in accordance with the instructions for completion of the HUD-1 or HUD-1A?		
b. All charges paid to one other than the lender itemized and the recipient named?		
c. Charges required by the financial institution but paid outside of closing, itemized on the settlement statement, marked as "paid outside of closing" or "P.O.C.," but not included in totals?		
d. Where an average charge was listed for a settlement service, was the charge calculated in accordance with requirements set forth in §1024.8(b)(2)?		
14. From a review of the HUD-1 or HUD-1/A prepared in connection with each GFE reviewed, are amounts shown on the GFE the same as the fees actually paid by the borrower?		
15. If a charge stated on the HUD-1/1A exceeds the charges stated on the GFE by more than the permitted tolerance, does the financial institution cure the tolerance violation by reimbursing the borrower the amount by which the tolerance was exceeded at settlement, or by delivering or placing the payment in the mail within 30 calendar days after settlement?		
16. If the financial institution conducts settlement:		
a. Is the borrower, upon request, allowed to inspect the HUD-1 or HUD-1A at least one day prior to settlement?		
b. Is the HUD-1 or HUD-1A provided to the borrower and seller a settlement?		
c. In cases where the right to delivery is waived or the transaction is exempt, is the statement mailed as soon as possible after settlement?		
17. In the case of an inadvertent or technical error on the HUD-1/1A, does the institution provide a revised HUD-1/1A to the borrower within 30 calendar days after settlement?		
18. If the financial institution retains its interest in the mortgage and/or services it, is the HUD-1 or HUD-1A form retained for five years?		
19. If the financial institution disposes of its interest in the mortgage and does not service the loan, is the HUD-1/1A transferred to the new asset owner with the loan file?		
Mortgage Servicing Transfer Disclosure		
20. Does the mortgage servicing transfer disclosure form language substantially conform to the model disclosure in Appendix MS-1 to Part 1024?		
21. Does the lender provide the mortgage servicing transfer disclosure within three business days after receipt of the application?		
22. Does the disclosure state whether the loan may be assigned or transferred while outstanding?		

	Yes	No
Notice to Borrower of Transfer of Mortgage Servicing		
23. If the institution has transferred servicing rights, was notice to the borrower given at least fifteen days prior to the transfer?		
24. If the institution has received servicing rights, was notice given the borrower within fifteen days after the transfer?		
25. Does the notice by transferor and transferee include the following information as contained in Appendix MS-2 to Part 1024?		
a. The effective date of the transfer?		
b. The new servicer's name, address, and toll-free or collect call telephone number of the transferor servicer?		
c. A toll-free or collect call telephone number of the present servicer to answer inquiries relating to the transfer?		
d. The date on which the present servicer will cease accepting payments and the date the new servicer will begin accepting payments relating to the transferred loan?		
e. Any information concerning the effect of the transfer on the availability of terms of optional insurance and any action the borrower must take to maintain coverage?		
f. A statement that the transfer does not affect the terms or conditions of the mortgage, other than terms directly related to its servicing?		
g. A statement of the borrower's rights in connection with complaint resolution?		
Responding to Borrower Inquiries		
26. Have late fees been imposed within 60 days following a transfer of servicing or were payments treated as late when received by transferor rather than transferee?		
27. Does the institution respond to borrower inquiries relating to servicing of RESPA covered mortgage loans and refinancings as prescribed in the regulation? Specifically, does the institution:		
a. Provide a written response acknowledging receipt of a qualified written request from a borrower for information relating to the servicing of the loan within 20-business days?		
b. If not, has the action requested by the borrower been taken within the 20-business day period?		
c. Within 60-business days after the receipt of a qualified written request, does the institution make appropriate corrections in the account of the borrower and provide a written notification of the correction (including in the notice the name and the telephone number of a representative of the institution who can provide assistance)? OR		

	Yes	No
Provide the borrower with a written explanation: i. Stating the reasons the account is correct (including the name and telephone number of a representative of the institution who can provide assistance)? OR ii. Explaining why the information requested is unavailable or cannot be obtained by the institution (including the name and telephone number of a representative of the institution who can provide assistance)?		
28. Does the institution provide information regarding an overdue payment to any consumer reporting agency during the sixty-day period beginning on the date the institution received any qualified written request relating to a dispute regarding the borrower's payments?		
Escrow Accounts		
29. Does the institution perform an escrow analysis at the creation of the escrow account?		
30. For continuing escrow arrangements, is an annual escrow statement provided to the borrower at least once every twelve months?		
31. For continuing escrow arrangements, is an annual escrow statement provided to the borrower at least once every twelve months?		
32. Does the initial escrow statement itemize:		
a. Amount of monthly mortgage payment?		
b. Portion of the monthly payment being placed in escrow?		
c. Charges to be paid from the escrow account during the first 12 months?		
d. Disbursement date?		
e. Amount of cushion?		
33. Is the annual escrow statement provided within thirty days of the completion of the escrow account computation year?		
34. Does the annual escrow statement itemize:		
a. Current mortgage payment and portion going to escrow?		
b. Amount of last year's mortgage payment and portion that went to escrow?		
c. Total amount paid into the escrow account during the past computation year?		
d. Total amount paid from the escrow account during the year for taxes, insurance premiums, and other charges?		
e. Balance in the escrow account at the end of the period?		
f. Explanation of how any surplus is being handled?		
g. Explanation of how any shortage or deficiency is to be paid by the borrower?		
h. If applicable, the reason(s) why the estimated low monthly balance was not reached?		

	Yes	No
35. Are monthly escrow payments following settlement no larger than 1/12 of the amount expected to be paid for taxes, insurance premiums, and other charges in the following twelve months, plus 1/6 of that amount?		
36. Does the servicer notify the borrower at least annually of any shortage or deficiency in the escrow account?		
37. Does the institution make payments from the escrow account for taxes, insurance premiums and other charges in a timely manner as they become due?		
No Fees for RESPA Disclosures		
38 a. Does the financial institution charge a fee specifically for preparing and distributing the HUD-1 forms, escrow statements or documents required under the Truth in Lending Act?		
b. If a fee is charged for a GFE, is the fee limited to the cost of a credit report?		
Purchase of Title Insurance		
39. When the financial institution owns the property being sold, does it require that title insurance is required from a particular company?		
Payment or Receipt of Referral or Unearned Fees		
40. Is institution management aware of the prohibitions against payment or receipt of kickbacks and unearned fees?		
41. Are federally related mortgage loan transactions referred by brokers, affiliates, or other parties? OR Does the institution refer services to brokers, affiliates, or other parties?		
42. If fees were paid to the institution or any parties identified, were all fees paid to the broker, affiliate, service provider, or other party consistent with all the requirements of section 1024.14 (g) and for goods or facilities actually furnished or services actually performed?:		