

### 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,<sup>1</sup> 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, November 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 (GFE) 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 Technical changes, including streamlined mortgage servicing disclosure language, elimination of outdated escrow account provisions, and a provision permitting an “average charge” to be listed on the GFE and HUD-1 Settlement Statement, took effect on January 16,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).<sup>2</sup>

The Dodd-Frank Wall Street Reform and Consumer

Protection Act, Pub. L. 111-203 (July 10, 2010) (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.<sup>3</sup> In December 2011, the CFPB restated HUD’s implementing regulation at [12 CFR Part 1024](#) (76 Fed. Reg. 78978) (December 20, 2011).

Since December 2011, the CFPB has issued a series of final rules amending Regulation X. On January 17, 2013, the CFPB issued a final rule that implemented certain provisions of Title XIV of the Dodd-Frank Act and included substantive and technical changes to the existing regulations. (78 Fed. Reg. 10695) (February 14, 2013). 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 were effective as of January 10, 2014.

Subsequently, on July 10, 2013, September 13, 2013, and October 22, 2014, the CFPB issued final rules to further amend Regulation X ((78 Fed. Reg. 44685) (July 24, 2013), (78 Fed. Reg. 60381) (October 1, 2013), and (79 Fed. Reg. 65299) (November 3, 2014)). 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) (October 23, 2013) to exempt servicers from the early intervention requirements in certain circumstances. The Regulation X amendments were effective as of January 10, 2014.

On December 31, 2013, the CFPB published final rules implementing Sections 1098(2) and 1100A(5) of the Dodd-Frank Act, which direct the CFPB to publish a single, integrated disclosure for mortgage transactions, which includes mortgage disclosure requirements under the Truth in Lending Act (TILA) and Sections 4 and 5 of RESPA. These amendments are referred to in this document as the “TILA-RESPA Integrated Disclosure Rule” or “TRID,” and are applicable to covered closed-end mortgage loans for which a creditor or mortgage broker receives an application on or after October 3, 2015. As a result, Regulation Z now houses

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<sup>1</sup> Pub. L. 104-208, Div. A., Title II § 2103 (c), September 30, 1996.

<sup>2</sup> 15 U.S.C. 7001 *et seq.*

<sup>3</sup> 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).

## V. Lending — RESPA

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the integrated forms, timing, and related disclosure requirements for most closed-end consumer mortgage loans.

The new integrated disclosures are not used to disclose information about reverse mortgages, home equity lines of credit (HELOCs), chattel-dwelling loans such as loans secured by a mobile home or by a dwelling that is not attached to real property (i.e., land), or other transactions not covered by the TILA-RESPA Integrated Disclosure Rule. The final rule also does not apply to loans made by a creditor who makes five or fewer mortgages in a year. Creditors originating these types of mortgages must continue to use, as applicable, the GFE, HUD-1 Settlement Statement, and Truth in Lending (TIL) disclosures.

On August 4, 2016, the CFPB issued a final rule to further clarify, revise, and amend provisions of Regulation X as well as Regulation Z, the regulation implementing TILA. (81 Fed. Reg. 72160) (October 19, 2016). The amendments in the final rule are referenced in this document as the “2016 Servicing Rule.” The 2016 Servicing Rule establishes a definition of successor in interest and provides that confirmed successors in interest are considered “borrowers” for the purposes of Regulation X’s mortgage servicing provisions. Confirmed successor in interest means a successor in interest once a servicer has confirmed the successor in interest’s identity and ownership interest in a property that secures a mortgage loan subject to Subpart C of Regulation X. The 2016 Servicing Rule also addresses compliance with certain servicing requirements when a person is a debtor in bankruptcy or sends a cease communication request under the Fair Debt Collection Practices Act (FDCPA).

Additionally, the 2016 Servicing Rule clarifies, revises, or amends provisions regarding force-placed insurance notices, policy and procedure requirements, early intervention, and loss mitigation requirements under Regulation X’s mortgage servicing provisions; and which loans are considered in determining whether a servicer qualifies as a small servicer, certain periodic statement requirements relating to bankruptcy and charge-off, and prompt crediting requirements under Regulation Z’s mortgage servicing provisions. The 2016 Servicing Rule was effective October 19, 2017, except for the provisions related to successors in interest and periodic statements for borrowers in bankruptcy, which take effect on April 19, 2018.

The CFPB concurrently issued an interpretive rule under the FDCPA to clarify the interaction of the FDCPA and specified mortgage servicing rules in Regulations X and Z. (81 Fed. Reg. 71977) (October 19, 2016).<sup>4</sup> This interpretive rule

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<sup>4</sup> See Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the

constitutes an advisory opinion for purposes of the FDCPA and provides safe harbors from liability for servicers acting in compliance with it.

On October 4, 2017, the CFPB issued an interim final rule amending a provision of the 2016 Servicing Rule relating to the timing for servicers to provide modified written early intervention notices under Regulation X to borrowers who have invoked their cease communication rights under the FDCPA. (82 FR 47953) (October 16, 2017). The interim final rule was effective October 19, 2017.

### Subpart A – General Provisions

#### Coverage – 12 CFR 1024.5(a)

RESPA is applicable to all “federally related mortgage loans,” except as provided under 12 CFR 1024.5(b) and 1024.5(d), 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:
  - 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,<sup>5</sup> creditor,<sup>6</sup> dealer;<sup>7</sup>
  - Loans made or insured by an agency of the federal government;

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Truth in Lending Act (Regulation Z) (81 Fed. Reg. 71977) (Oct. 19, 2016) (hereinafter 2016 FDCPA Interpretive Rule). The interpretations contained in this interpretive rule are included in Regulation X comments 30(d)-1 and 39(d)-2; Regulation Z comment 2(a)(11)-4.ii.

<sup>5</sup> A lender includes financial institutions either regulated by, or whose deposits or accounts are insured by, any agency of the federal government.

<sup>6</sup> A creditor is defined in Section 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.

<sup>7</sup> “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.

## V. Lending — RESPA

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- 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);<sup>8</sup> 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 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.<sup>9</sup>
- 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 contract to a lender, is a secondary market transaction.

### Partial Exemptions for Certain Mortgage Loans – 12 CFR 1024.5(d)

Most closed-end mortgage loans are exempt from the requirement to provide the GFE, HUD-1 settlement statement, and application servicing disclosure requirements of 12 CFR 1024.6, 1024.7, 1024.8, 1024.10, and 1024.33(a). Instead, these loans are subject to disclosure, timing, and other requirements under TILA and Regulation Z. Specifically, the aforementioned provisions do not apply to a federally related mortgage loan that:

- Is subject to the special disclosure (TILA-RESPA Integrated Disclosure) requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, 12 CFR 1026.19(e), (f), and (g); or
- Is subject to the partial exemption under 12 CFR 1026.3(h) (i.e., certain no-interest loans secured by subordinate liens made for the purpose of down payment or similar home buyer assistance, property rehabilitation, energy efficiency, or foreclosure avoidance or prevention. (12 CFR 1026.3(h)).

*NOTE: A creditor may not use the TILA-RESPA Integrated Disclosure forms instead of the GFE, HUD-1, and TIL forms for transactions that continue to be covered by TILA or RESPA that require those disclosures (e.g., reverse mortgages).<sup>10</sup>*

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<sup>8</sup> FNMA – Federal National Mortgage Association; GNMA - Government National Mortgage Association; FHLMC – Federal Home Loan Mortgage Corporation.

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<sup>9</sup> 12 CFR 1024.5(b)(6).

<sup>10</sup> Open-end reverse mortgages receive open-end disclosures, rather than GFEs or HUD-1s.

**Summary of Applicable Disclosure Requirements:**

<p><i>Use TILA-RESPA Integrated Disclosures (See Regulation Z):</i></p> <ul style="list-style-type: none"> <li>• Most closed-end mortgage loans, including:             <ul style="list-style-type: none"> <li>○ Construction-only loans</li> <li>○ Loans secured by vacant land or by 25 or more acres</li> </ul> </li> </ul>	<p><i>Continue to use existing TIL, RESPA Disclosures (as applicable):</i></p> <ul style="list-style-type: none"> <li>• HELOCs (subject to disclosure requirements under Regulation Z, 12 CFR 1026.40)</li> <li>• Reverse mortgages (subject to existing TIL and GFE disclosures)</li> <li>• Chattel-secured mortgages (i.e., mortgages secured by a mobile home or by a dwelling that is not attached to real property, such as land) (subject to existing TIL disclosures, and not RESPA)</li> </ul>
<p><i>But note:</i> In both cases, there is a partial exemption from these disclosures under 12 CFR 1026.3(h) for loans secured by subordinate liens and associated with certain housing assistance loan programs for low- and moderate-income persons.</p>	

**Subpart B – Mortgage Settlement and Escrow Accounts**

Examiners should note that certain provisions in Subpart B (12 CFR 1024.6, 1024.7, 1024.8, and 1024.10) are applicable only to limited categories of mortgage loans. See the discussion of 12 CFR 1024.5(d) above.

**Special Information Booklet – 12 CFR 1024.6**

For mortgage loans that are not subject to the TILA-RESPA Integrated Disclosure Rule (see 12 CFR 1026.19(e), (f) and (g)),\* a loan originator<sup>11</sup> 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.

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. (12 CFR 1024.19(g)(1)(iii)).

A loan originator that complies with Regulation Z (12 CFR

1026.40) for open-end home equity plans (including providing the brochure entitled “What You Should Know About Home Equity Lines of Credit” or a suitable substitute) is deemed to have complied with this section.

*NOTE: The Special Information Booklet may also be required under 12 CFR 1026.19(g) for those closed-end mortgage loans subject to the TILA-RESPA Integrated Disclosure Rule. A discussion of those requirements is located in the Regulation Z examination procedures.*

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

For closed-end reverse mortgages, 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.

<sup>11</sup> A “loan originator” is defined as a lender or mortgage broker. 12 CFR 1024.2(b).

### *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 12 CFR 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 TIL 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 initial 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. Specific instructions are provided with respect to closed-end reverse mortgages.
- 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. Specific instructions are provided with respect to closed-end reverse mortgages.
- 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,<sup>12</sup> 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,

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<sup>12</sup> The 2008 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.

## V. Lending — RESPA

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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 2008 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.

### **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 than 10 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



## V. Lending — RESPA

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to issuing the GFE may later become the basis for a “changed circumstance” upon which it may offer a revised GFE, unless: it can demonstrate 1) that there was a change in the particular information; 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 2008 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.<sup>13</sup>

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

For closed-end reverse mortgages, the person conducting the settlement (settlement agent) must 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 2008 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 TILA and Regulation Z, Appendix A to 12 CFR 1024 contains the instructions for completing the forms.

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<sup>13</sup> 73 Fed. Reg. 68204, 68232 (November 17, 2008).

### **Key 2008 RESPA Reform Enhancements to the HUD-1/1A Settlement Statement**

While the 2008 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 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.

12 CFR 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

## V. Lending — RESPA

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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***

For closed-end reverse mortgages, and 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 TILA.

### **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)<sup>14</sup> 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:

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<sup>14</sup> 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).

- 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.

#### **Title Insurance 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 insurance 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 final rule established 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 one-twelfth 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 one-sixth of the estimated total annual payments from the account.

Starting April 19, 2018, a servicer must treat a confirmed successor in interest as a borrower for purposes of 12 CFR 1024.17 and for Subpart C's provisions.

#### ***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.

## V. Lending — RESPA

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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. 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.

Regulation X includes a limited exemption from the restriction on force-placed insurance purchases for small

servicers. Subject to the requirements of 12 CFR 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 under 12 CFR 1026.41(e)(4)(ii) if:

- The institution 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;
- The institution is a Housing Finance Agency, as defined in 24 CFR 266.5 (12 CFR 1026.41(e)(4)(ii)); or
- The institution is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(I)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit entity is the creditor.

The determination as to whether a servicer qualifies as a small servicer is generally 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. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the 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 from which the servicer is no longer exempt as a small servicer.

Under 12 CFR 1026.41(e)(4)(iii), 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 non-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; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

#### **List of Homeownership Counseling Organizations** – 12 CFR 1024.20

For any application for a federally related mortgage loan, as that term is defined in 12 CFR 1024.2 subject to the exemptions in 12 CFR 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. The procedures set forth in 12 CFR 1024.39 through 1024.41 regarding early intervention, continuity of contact, and loss mitigation only apply to a mortgage loan secured by a property that is the borrower's principal residence. If a property ceases to be a borrower's principal residence, the procedures set forth in the early intervention provisions (12 CFR 1024.39), the continuity of contact provisions (12 CFR 1024.40), and the loss mitigation provisions (12 CFR 1024.41) do not apply to the mortgage loan secured by the property. (Comment 30(c)(2)-1). The determination of principal residence status will depend on the specific facts

and circumstances regarding the property and applicable state law. For example, a vacant property may still be a borrower's principal residence. (Comment 30(c)(2)-1).

Starting April 19, 2018, a servicer must treat a confirmed successor in interest as a borrower under Subpart C's provisions and under the escrow account requirements in 12 CFR 1024.17. Further, a servicer that is a debt collector under the FDCPA with respect to a mortgage loan does not violate the FDCPA Section 805(b)'s prohibition on communicating with third parties by communicating with a confirmed successor in interest in compliance with the mortgage servicing rules because "consumer" for purposes of FDCPA Section 805 includes any person who meets the definition in this part of confirmed successor in interest. (Comment 30(d)-1).<sup>15</sup>

### Definitions – 12 CFR 1024.31

Regulation X, 12 CFR 1024.31 contains definitions that are applicable to Subpart C – Mortgage Servicing, 12 CFR 1024.30-41. Among other definitions, Regulation X provides that "mortgage loan" means "any federally related mortgage loan, as that term is defined in 12 CFR 1024.2 subject to the exemptions in 12 CFR 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.

The 2016 Servicing Rule establishes definitions of "successor in interest" and "confirmed successors in interest," and provides that the latter are considered "borrowers" for the purposes of Regulation X's mortgage servicing provisions. The 2016 Servicing Rule also adds a new definition of "delinquency."

#### *Successors in Interest (Effective April 19, 2018)*

"Successor in interest" means a person to whom an ownership interest in a property securing a mortgage loan if the transfer is:

- (1) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- (2) A transfer to a relative resulting from the death of a borrower;

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<sup>15</sup> See also the 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71979).

(3) A transfer where the spouse or children of the borrower become an owner of the property;

(4) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or

(5) A transfer into an *inter vivos* trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

"Confirmed successor in interest" means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in a property that secures a mortgage loan subject to Subpart C of Regulation X.

#### *Delinquency*

The definition of "delinquency" applies to the servicing provisions in Subpart C of Regulation X and the provisions regarding periodic statements for mortgage loans in Regulation Z.<sup>16</sup> Under the definition, a borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a payment sufficient to cover principal, interest, and, if applicable, escrow, becomes due and unpaid, and the borrower remains delinquent until such time as no periodic payment is due and unpaid (even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee).

If a servicer applies payments to the oldest outstanding payment, a payment by a delinquent borrower advances the date the borrower's delinquency began. For example, assume a borrower's mortgage loan requires borrower to make periodic payments of principal, interest, and escrow by the first of each month. The borrower fails to make a payment on January 1 or on any day in January, and on January 31 the borrower is 30 days delinquent. On February 3, the borrower makes a periodic payment. The servicer applies the payment it received on February 3 to the outstanding January payment. On February 4, the borrower is three days

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<sup>16</sup> For purposes of periodic statements for residential mortgage loans under Regulation Z, 12 CFR 1026.41(d)(8), the length of a consumer's delinquency is measured as of the date of the periodic statement or the date of the written notice provided under 12 CFR 1026.41(e)(3)(iv). A consumer's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and escrow, if applicable, becomes due and unpaid, even if the consumer is afforded a period after the due date to pay before the servicer assesses a late fee. A consumer is delinquent if one or more periodic payments of principal, interest, and escrow, if applicable, are due and unpaid. (Comment 1026.41(d)(8)-1).

delinquent. (Comment 31-2).

Further, if a servicer chooses to accept a payment that is less than the periodic payment due without considering the borrower delinquent for purposes of any provisions in Subpart C, the borrower is not delinquent for any other provisions in the Subpart. (Comment 31-3).<sup>17</sup>

### **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,<sup>18</sup> 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 TILA or the Truth in Savings Act), or by the terms of an agreement with a federal or state regulatory agency.

#### ***Successors in Interest – 12 CFR 1024.32(c) (Effective April 19, 2018)***

Under 12 CFR 1024.32(c), servicers have the option to provide a written notice and acknowledgment form to confirmed successors in interest who have not assumed the mortgage loan and are not otherwise liable on it. Among other things, the written notice must explain that the confirmed successor in interest may be entitled to receive certain notices and communications about the mortgage loan if the servicer is not providing them to another confirmed

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<sup>17</sup> A creditor is not prevented from exercising a right provided by a mortgage loan contract to accelerate payment for a breach of that contract. Failure to pay the amount due after the creditor accelerates the mortgage loan obligation in accordance with the mortgage loan contract would begin or continue delinquency. (Comment 31-4).

<sup>18</sup> 15 U.S.C. 7001 *et seq.*

successor in interest or borrower on the account. The notice also must explain that in order to receive such notices and communications, the successor in interest must execute and provide to the servicer the acknowledgment form.

Servicers that send this type of notice and acknowledgement form are not required to provide to the confirmed successor in interest any written disclosure required by 12 CFR 1024.17, 1024.33, 1024.34, 1024.37, or 1024.39, or to comply with the live contact requirements in 12 CFR 1024.39(a) with respect to the confirmed successor in interest until the confirmed successor in interest either assumes the mortgage loan or executes the acknowledgment form.

Regardless of whether the confirmed successor in interest executes the acknowledgment form, the written notice must state the successor in interest is entitled to submit notices of error under 12 CFR 1024.35, requests for information under 12 CFR 1024.36, and requests for a payoff statement under 12 CFR 1026.36 with respect to the mortgage loan account, and the notice must include a brief explanation of those rights and how to exercise them, including appropriate address information.

*Furthermore*, except as required by 12 CFR 1024.36, a servicer is not required to provide to a confirmed successor in interest any written disclosure required by 12 CFR 1024.17, 1024.33, 1024.34, 1024.37, or 1024.39(b) if the servicer is providing the same specific disclosure to another borrower on the account. A servicer is also not required to comply with the live contact requirements in 12 CFR 1024.39(a) with respect to a confirmed successor in interest if the servicer is complying with those requirements with respect to another borrower on the account. A confirmed successor in interest who does not receive servicing communications because the servicer is providing them to another borrower on the account can request additional information as needed through the request for information process under Regulation X.

### **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 reverse mortgage transactions.

#### ***Servicing Disclosure Statement – 12 CFR 1024.33(a)***

A lender, mortgage broker who anticipates using table funding, or dealer in a first-lien dealer loan that receives an



## V. Lending — RESPA

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application for a reverse mortgage transaction 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.

### *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; and
- A statement that the transfer does not affect the terms or conditions of the mortgage (except as directly related to servicing).

Servicers may use the disclosure in Appendix MS-2 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.<sup>19</sup>

#### ***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); and
- 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).

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<sup>19</sup> [CFPB Bulletin 2013-12](#).

### **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 12 CFR 1024.39 (early intervention) or 12 CFR 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.

### **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.

Furthermore, servicers responding to a notice of error request for documentation may omit location, contact, and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) if: (i) the information pertains to a potential or confirmed successor in interest who is not the requester; or (ii) the requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester. (*Effective April 19, 2018*).

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 12 CFR 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.<sup>20</sup>

**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:

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<sup>20</sup> CFPB Bulletin 2013-12.

## V. Lending — RESPA

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(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 12 CFR 1024.39 (early intervention) or 12 CFR 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 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.

In its response to a request for information, a servicer may

omit location, contact, and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) if: (i) the information pertains to a potential or confirmed successor in interest who is not the requester; or (ii) the requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester. (12 CFR 1024.36(d)(3)). (*Effective April 19, 2018*).

### ***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.

#### ***Potential Successors in Interest – 12 CFR 1024.36(i) (Effective April 19, 2018)***

A servicer must respond to a written request from a person indicating that the person may be a successor in interest if the request includes the name of the transferor borrower from whom the person received an ownership interest and information that enables the servicer to identify the mortgage loan. The response must generally provide a written description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property as well as contact information, including a telephone number, for further assistance. With respect to the written request, a servicer must treat the potential successor in interest as a borrower for the purposes of 12 CFR 1024.36(c) through 1024.36(g).

A servicer must respond to such a request not later than the time limits set forth in 12 CFR 1024.36(d)(2) for information requests. Depending on the facts and circumstances of the request, responding promptly may require a servicer to respond more quickly than the time limits established in 12 CFR 1024.36(d)(2). (Comment 36(i)-2).

Under 12 CFR 1024.38(b)(1)(vi)(B), a servicer, other than a small servicer, must maintain policies and procedures that are reasonably designed to promptly facilitate communication with potential successors in interest and promptly confirm a potential successor in interest's identity and ownership interest in the property securing the mortgage loan.

#### **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 12 CFR 1024.37.<sup>21</sup>

#### ***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

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<sup>21</sup> CFPB Bulletin 2013-12.

## V. Lending — RESPA

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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, is expiring, or provides insufficient coverage, as applicable; that the servicer lacks evidence that the borrower has hazard insurance coverage past the expiration date or lacks evidence of sufficient coverage, as applicable; 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).

The servicer cannot provide any information on the initial notice other than the specific statements listed above and, at the servicer's option, the loan account number. The servicer, however, 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 received no hazard insurance information in response to the initial notice described above, 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 sufficient 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;
- 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;
- 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.

The servicer cannot provide any additional information on the reminder notice other than specific statements listed above and, at the servicer's option, the loan account number.

The servicer, however, 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. For purposes of 12 CFR 1024.37(d)(5), five days (excluding legal holidays, Saturdays, and Sundays) is a reasonable time. (Comment 37(d)(5)-1).

*Fourth*, by the end of the 15-day period beginning on the date the servicer delivers the reminder notice or places it in the mail, 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 written notice at least 45 days before assessing a premium charge or fee. 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).

The servicer cannot provide any additional information on the renewal notice other than the specific statements listed above, and, at the servicer's option, the loan account number. The servicer, however, 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 period beginning on the date the written notice was delivered or placed in the mail, 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.



## V. Lending — RESPA

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### *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 under 12 CFR 1026.41(e)(4)(ii) if it (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, (b) is a Housing Finance Agency, as defined in 24 CFR 266.5, or (c) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an

associated nonprofit entity is the creditor.<sup>22</sup>

The determination as to whether a servicer qualifies as a small servicer is generally 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. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the 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 from which the servicer is no longer exempt as a small servicer.

As specified in 12 CFR 1026.41(e)(4)(iii), 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 non-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; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

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.*<sup>23</sup>

### *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

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<sup>22</sup> The definition of small servicer is set forth at 12 CFR 1026.41(e)(4)(ii).

<sup>23</sup> 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.

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.
      1. Upon notification of a borrower’s death, promptly identify and facilitate communication with the borrower’s successor in interest concerning the secured property. (*Effective until April 19, 2018*).
      2. Upon receiving notice of a borrower’s death or of any transfer of the secured property, promptly facilitate communication with any potential or confirmed successors in interest regarding the property. (*Effective April 19, 2018*).
  - g. Upon receiving notice of the existence of a potential successor in interest, promptly determine the documents the servicer reasonably requires to confirm the person’s identity and ownership interest in the property (see commentary to 12 CFR 1024.38(b)(1)(vi) for illustrative examples) and promptly provide to the potential successor in interest a description of those documents and how the person may submit a written request under 12 CFR 1024.36(i). (*Effective April 19, 2018*).
  - h. Upon the receipt of such documents, promptly make a confirmation determination and promptly notify the person, as applicable, that the servicer has confirmed the person’s status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest. (*Effective April 19, 2018*).
- 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.
    - 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.

- f. Promptly identify and obtain documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, to offer the borrower in accordance with the requirements of 12 CFR 1024.41(c)(4).

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.

- o Further a servicer's policies and procedures must be reasonably designed to ensure that servicer personnel promptly inform service provider personnel handling foreclosure proceedings that the servicer has received a complete loss mitigation application and promptly instruct foreclosure counsel to take any step required by 12 CFR 1024.41(g)—which generally sets forth limitations on moving for judgment or order of sale, or conducting a foreclosure sale—sufficiently timely to avoid violating the prohibition against moving for judgment or order of sale, or conducting a foreclosure sale.(Comment 38(b)(3)(iii)-1).

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 under 12 CFR 1026.41(e)(4)(iii) if it (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, (b) is a Housing Finance Agency, as defined in 24 CFR 266.5, or (c) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit entity is the creditor.

The determination as to whether a servicer qualifies as a small servicer is generally 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. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the 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 from which the servicer is no longer exempt as a small servicer.

As specified in 12 CFR 1026.41(e)(4)(iii), the following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer: (a) mortgage loans

## V. Lending — RESPA

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voluntarily serviced by the servicer for a non-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; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

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. The servicer's live contact requirement is continuous so long as the borrower remains delinquent.

Under 12 CFR 1024.31, "delinquency" for Subpart C's provisions means a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid, until such time as no periodic payment is due and unpaid. *See also* the related commentary to 1024.31 for more on the delinquency definition. Borrowers are not delinquent for purposes of early intervention requirements under 12 CFR 1024.39 if they are performing as agreed according to the terms of a loss mitigation plan designed to bring the borrower current on a previously missed payment, but they may be considered delinquent for other purposes under the servicing rules and may also become delinquent for purposes of early intervention requirements 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."

Promptly after establishing live contact, the servicer must inform the borrower of any loss mitigation options, if appropriate. It is within the servicer's reasonable discretion

to determine whether it is appropriate under the circumstances to inform a borrower of the availability of 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.

If the servicer has established and is maintaining ongoing contact with the borrower under the loss mitigation procedures in 12 CFR 1024.41, including during the borrower's completion of a loss mitigation application or the servicer's evaluation of the borrower's complete loss mitigation application, or if the servicer has sent the borrower a notice pursuant to 12 CFR 1024.41(c)(1)(ii) that the borrower is not eligible for any loss mitigation options, the servicer complies with its live contact requirements under 12 CFR 1024.39(a) and need not otherwise establish or make good faith efforts to establish live contact. A servicer must resume compliance with the live contact requirements for a borrower who becomes delinquent again after curing a prior delinquency. (Comment 39(a)-6).

### **Written Notice – 12 CFR 1024.39(b)**

Servicers must send a borrower a written notice within 45 days after the borrower becomes delinquent and again no later than 45 days after each payment due date so long as the borrower remains 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), MS-4(C), and MS-4(D) that servicers subject to the FDCPA can use to comply with a new disclosure requirement for the written notice, as discussed more below.

A servicer is not required to provide the written notice under this section to a borrower more than once in any 180-day period. For 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. If a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 180 days after the provision of the prior written notice. If the borrower is less than 45 days delinquent at the end of that period, a servicer must provide the notice again no later than 45 days after the payment due date for which the borrower remains delinquent.

A transferee servicer is required to provide the written notice to the borrower regardless of whether the transferor servicer provided a written notice in the preceding 180-day period. However, a transferee servicer is not required to provide a written notice if the transferor servicer provided one within 45 days of the transfer date. For example, assume a borrower has monthly payments, with a payment due on March 1. The transferor servicer provides the notice required by 12 CFR 1024.39(b) on April 10. The loan is transferred on April 12. Assuming the borrower remains delinquent, the transferee servicer is not required to provide another written notice until 45 days after May 1, the first post-transfer payment due date—i.e., by June 15. (Comment 39(b)(1)-5).

### **Borrowers in bankruptcy – 12 CFR 1024.39(c)**

#### *Partial Exemption*

Servicers are exempt from complying with the live contact obligations under 12 CFR 1024.39(a) while any borrower on a mortgage loan is a debtor in bankruptcy under title 11 of the United States Code, with regard to that mortgage loan. Servicers are also exempt from providing the written notice under 12 CFR 1024.39(b) while any borrower on a mortgage loan is a debtor in bankruptcy under Title 11 of the United States Code, with regard to that mortgage loan, if no loss mitigation option is available or if any borrower on the mortgage loan has provided a cease communication notice under the FDCPA with respect to that mortgage loan (and the servicer is subject to the FDCPA for that loan).

If the above conditions relating to the written notice exemption are not met, and any borrower on the mortgage loan is a debtor in bankruptcy, then the servicer must comply with modified written notice requirements under 12 CFR 1024.39(b):

- Content: the notice may not contain a request for payment.

- Timing:
  - If a borrower is delinquent when the borrower becomes a debtor in bankruptcy, the servicer must provide the written notice not later than the 45th day after the borrower files a bankruptcy petition under Title 11 of the United States Code.
  - However, if the borrower is not delinquent at the time of the bankruptcy petition filing, but subsequently becomes delinquent while a debtor in bankruptcy, the servicer must provide the written notice not later than the 45th day of the borrower's delinquency.
  - A servicer must comply with these timing requirements regardless of whether the servicer provided the written notice in the preceding 180-day period.
  - A servicer is not required to provide the written notice more than once during a single bankruptcy case.

#### *Resuming Compliance*

A servicer that was exempt from the live contact and written early intervention notice requirements must resume compliance with such requirements after the next payment due date that follows the earliest of the following events:

- The bankruptcy case is dismissed,
- The bankruptcy case is closed, and
- The borrower reaffirms personal liability for the mortgage loan.

A servicer is not required to resume compliance with the live contact requirements with respect to a mortgage loan for which the borrower has discharged personal liability pursuant to sections 727, 1141, 1228, or 1328 of Title 11 of the United States Code, but must resume compliance with the written notice requirement if the borrower has made any partial or periodic payment on the mortgage loan after the commencement of the borrower's bankruptcy case.

### **Fair Debt Collections Practices Act Partial Exemption – 12 CFR 1024.39(d)**

If a mortgage servicer is a debt collector under the FDCPA with regard to a borrower's mortgage loan, 12 CFR 1024.39(d) clarifies the servicer's early intervention obligations when that borrower has invoked cease communication protections by providing a notification pursuant to Section 805(c) of the FDCPA.

## V. Lending — RESPA

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For such borrowers invoking their FDCPA cease communication protections, servicers are exempt from the live contact requirements under 12 CFR 1024.39(a).

Servicers are also exempt from the written notice requirements under 12 CFR 1024.39(b) when such a borrower on the loan has invoked the FDCPA cease communication protections and either of the following applies: (1) no loss mitigation option is available or (2) any borrower on the mortgage loan is a debtor in bankruptcy under Title 11 of the United States Code. However, servicers are required to comply with modified written notice requirements if the borrower has invoked FDCPA cease communication protections and these conditions are not met (e.g., a loss mitigation option is available or no borrower on that loan is a debtor in bankruptcy):

- Content:
  - The modified written notice must include a statement that the servicer may or intends to invoke its remedy of foreclosure.
  - The written notice, however, may not contain a request for payment.

Servicers subject to the FDCPA can use MS-4(D) to comply with a new disclosure requirement for the written notice.

- Timing:
  - A servicer is prohibited from providing the written notice more than once during any 180-day period. If a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 190 days after the provision of the prior written notice. If a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent or 190 days after the provision of the prior written notice, whichever is later.<sup>24</sup>

Further, such servicers do not violate FDCPA Section 805(c) with respect to the mortgage loan when providing the written early intervention notice required by 12 CFR 1024.39(b)(3), as modified by 12 CFR 1024.39(d)(3), to a borrower who has invoked the cease communication rights.<sup>25</sup> Nor does a servicer

violate FDCPA Section 805(c) by providing loss mitigation information or assistance in response to a borrower-initiated communication after the borrower has invoked the cease communication rights.<sup>26</sup> A servicer subject to the FDCPA, however, must continue to comply with all other applicable provisions of the FDCPA, including restrictions on communications and prohibitions on harassment or abuse, false or misleading representations, and unfair practices.<sup>27</sup>

### 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 (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, (b) is a Housing Finance Agency, as defined in 24 CFR 266.5, or (c) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(I)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit entity is the creditor. The determination as to whether a servicer qualifies as a small servicer is generally 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. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the 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 from which the servicer is no longer exempt as a small servicer.

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<sup>24</sup> See Interim Final Rule, 82 Fed. Reg. 47953, 47957-58 (October 16, 2017).

<sup>25</sup> Comment 39(d)-2. See also 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71979-80).

<sup>26</sup> Comment 39(d)-2. See also 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71980-81).

<sup>27</sup> See 15 U.S.C. §§ 1692c through 1692f.

As specified in 12 CFR 1026.41(e)(4)(iii), 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 non-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; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

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 12 CFR 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 (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, (b) is a Housing Finance Agency, as defined in 24 CFR 266.5 or (c) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit entity is the creditor. The determination as to whether a servicer qualifies as a small servicer is generally 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. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the 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 from which the



servicer is no longer exempt as a small servicer.

As specified in 12 CFR 1026.41(e)(4)(iii), 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 non-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; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

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 issued an interpretive rule clarifying, among other things, that when a servicer that is a debt collector under the FDCPA with respect to a borrower's mortgage loan responds to a borrower-initiated communication concerning loss mitigation after the borrower's invocation of FDCPA Section 805(c)'s cease communication protections with regard to that loan, the servicer does not violate FDCPA Section 805(c) with respect to such communications as long as the servicer's response is limited to a discussion of any potentially available loss mitigation option.<sup>28</sup> Only if the borrower provides a communication to the servicer specifically withdrawing the request for loss mitigation does the cease communication prohibition apply to communicating about the specific loss mitigation action.

### ***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. Second, the servicer must notify the borrower in writing within five days (excluding legal public holidays, Saturdays, and Sundays) that, among other things, it has received the application and state whether it is complete or incomplete.

A loss mitigation application includes an oral or written request by the borrower where the borrower expresses an interest in applying for a loss mitigation option and provides information a servicer would evaluate in connection with a

loss mitigation application. A loss mitigation application is considered expansively and includes any "prequalification" for a loss mitigation option. For example, if a borrower requests that a servicer determine whether the borrower is "prequalified" for a loss mitigation program by evaluating the borrower against preliminary criteria to determine eligibility for a loss mitigation option, the request constitutes a loss mitigation application. 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.

### ***Complete Loss Mitigation Application – 12 CFR 1024.41(b)(1)***

An application is complete when it contains all the information the servicer requires from the borrower to evaluate an application for loss mitigation options. (12 CFR 1024.41(b)(1)). Upon receiving an application that is not complete, a servicer is generally required to exercise reasonable diligence<sup>29</sup> in obtaining documents and information to complete the application. A servicer has flexibility to establish its own application requirements, but, with certain exceptions, a servicer is generally prohibited from offering a loss mitigation based on an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

### ***Review of Loss Mitigation Application Submission – 12 CFR 1024.41(b)(2)***

As stated above, if the servicer receives a loss mitigation application 45 days or more before a foreclosure sale, the servicer must notify the borrower in writing 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 date by which the borrower must submit them.

Generally, 30 days from the date the servicer provides the written notice is a "reasonable date." (Comment 41(b)(2)(ii)-1). Furthermore, the reasonable date must be no later than the earliest of:

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<sup>28</sup> See 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977, 71980-81). See also Comment 39(d)-2.

<sup>29</sup> See Comment 41(b)(1)-4 for examples of what constitutes reasonable diligence.

- The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower,
- The date that is the 120th day of the borrower's delinquency,
- The date that is 90 days before a foreclosure sale,
- The date that is 38 days before a foreclosure sale.

(Comment 41(b)(2)(ii)-2).

A reasonable date, however, must never be less than seven days from the date on which the servicer provides the written notice. (Comment 41(b)(2)(ii)-3).

As explained above, 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). (12 CFR 1024.41(b)(1)).

In the course of gathering documents and information from a borrower to complete a loss mitigation application, a servicer may stop collecting documents and information for a particular loss mitigation option after receiving information confirming that, pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan, the borrower is ineligible for that option. A servicer may not stop collecting documents and information for any loss mitigation option based solely upon the borrower's stated preference. The servicer, however, may stop collecting documents and information for any loss mitigation option based on the borrower's stated preference *in conjunction with* other information, as prescribed by any requirements established by the owner or assignee. A servicer must continue to exercise reasonable diligence to obtain documents and information from the borrower that the servicer requires to evaluate the borrower as to all other loss mitigation options available to the borrower. (Comment 41(b)(1)-1).

For example, assume applicable requirements established by the owner or assignee provide that a borrower is not eligible for home retention options if the borrower states a preference for a short sale and provides evidence of another applicable hardship, such as military Permanent Change of Station orders or a specified employment transfer more than 50 miles away. If the borrower indicates a preference for a short sale, the servicer may not stop collecting documents and

information pertaining to available home retention options solely because the borrower has indicated the preference. The servicer, however, may stop collecting such documents and information once it receives information confirming that the borrower meets the applicable hardship standards.

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 12 CFR 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)***

12 CFR 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) and (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 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 limited exceptions, a servicer may not offer a loss mitigation option based on an evaluation of an incomplete application.

- I. *Offers permitted if not based on an evaluation of an incomplete application.* Regulation X does not prohibit a servicer from offering loss mitigation options to a borrower who has not submitted a loss mitigation application. Further, nothing prohibits a servicer from offering a loss mitigation option to a borrower who has submitted an incomplete loss mitigation application where the offer of the loss mitigation option is not based on any evaluation of information submitted by the borrower in connection with such application.
- II. *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 12 CFR 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).

III. *Short-Term Loss Mitigation Options Exception.* A servicer may offer a short-term payment forbearance program or a short-term repayment plan to a borrower based upon an evaluation of an incomplete loss mitigation application. Promptly after offering a payment forbearance program or a repayment plan, unless the borrower has rejected the offer, the servicer must provide the borrower a written notice stating:

- The specific payment terms and duration of the program or plan,
- That the servicer offered the program or plan based on an evaluation of an incomplete application,
- That other loss mitigation options may be available, and
- That the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all loss mitigation options available to the borrower regardless of whether the borrower accepts the program or plan.

If the borrower is performing pursuant to the terms of a forbearance program or repayment plan offered under this provision, 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. A servicer may also offer a short-term payment forbearance program in conjunction with a short-term repayment plan.

A servicer must comply with the remaining loss mitigation requirements in 12 CFR 1024.41 with respect to the incomplete application, such as the requirement in 12 CFR 1024.41(b)(2) to review the application to determine if it is complete, the requirement in 12 CFR 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application, and the requirement in 12 CFR 1024.41(b)(2)(i)(B) to provide the borrower with written notice that the servicer acknowledges the receipt of the application and has determined that the application is incomplete. (Comment 41(c)(2)(iii)-2).

For instance, a servicer must exercise reasonable diligence as clarified in part in Comment 41(b)(1)-4.iii. The comment states that, if a borrower is complying with a short-term payment forbearance program or short-term repayment plan and the borrower does not request further assistance, the servicer may suspend reasonable diligence efforts until near the end of the program or plan. However, if the borrower fails to comply with the short-term loss mitigation option or requests further assistance, the servicer must immediately resume reasonable diligence efforts. Additionally, near the end of a short-term payment forbearance program, and prior to the end of the forbearance period, if the borrower remains delinquent, a servicer must contact the borrower to determine if the borrower

wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation. (Comment 41(b)(1)-4.iii).

If the borrower completes the loss mitigation application, the servicer must comply with all of the loss mitigation procedure requirements in 12 CFR 1024.41 even if the servicer has offered a short-term payment forbearance program or short-term repayment plan based on an evaluation of an incomplete application. (Comment 41(c)(2)(iii)-3).

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

A loss mitigation application is facially complete when (i) the servicer's initial notice under 12 CFR 1024.41(b) advised the borrower that the application was complete, (ii) the servicer's initial notice under 12 CFR 1024.41(b) requested additional information from the borrower to complete the application and the borrower submits such additional information, or (iii) the servicer is required to provide the borrower a written notice of a complete application under 12 CFR 1024.41(c)(3)(i).

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 12 CFR 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 12 CFR 1024.41(c), and the application is considered complete as of the date it was facially complete for purposes of 12 CFR 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.

#### ***Notice of Complete Application – 12 CFR 1024.41(c)(3)***

Within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving the borrower's complete loss mitigation application, the servicer shall provide the borrower a written notice setting forth the following information:

- That the loss mitigation application is complete;
- The date the servicer received the complete application;

- That the servicer expects to complete its evaluation within 30 days of the date it received the complete application;
- That the borrower is entitled to certain foreclosure protections because the servicer has received the complete application, and, as applicable, either:
  - If the servicer has not made the first foreclosure notice or filing required by applicable law, that the servicer cannot make the first notice or filing to commence a foreclosure before evaluating the borrower's complete application; or
  - If the servicer has made the first foreclosure notice or filing, that the servicer has begun the foreclosure process and that the servicer cannot conduct a foreclosure sale before evaluating the borrower's complete application.
- That the servicer may need additional information at a later date; and
- That the borrower may be entitled to additional protections under state or federal law.

A servicer is not required, however, to provide a notice of complete application if:

- The servicer has already provided the borrower a notice under 12 CFR 1024.41(b)(2)(i)(B) informing the borrower the application is complete and the servicer has not requested any additional information;
- The application was not complete more than 37 days before a foreclosure sale; or
- The servicer has already provided the borrower a notice regarding its determination of the borrower's application under 12 CFR 1024.41(c)(1)(ii).

#### ***Information not in the Borrower's Control – 12 CFR 1024.41(c)(4)***

If a servicer requires documents or information not in the borrower's control to determine which loss mitigation options, if any, it will offer to the borrower, the servicer must exercise reasonable diligence in obtaining such documents or information. A servicer must not deny a complete loss mitigation application solely because the servicer lacks required documents or information not in the borrower's control, unless the servicer has been unable to obtain the documents and information for a significant period of time following the 30-day evaluation period provided under Section 1024.41(c)(1) and is unable to make a determination on the complete application. However, a servicer is permitted

## V. Lending — RESPA

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to offer a borrower a loss mitigation option, even if the servicer does not obtain the requested documents or information.

The servicer lacking third-party information must provide the borrower a written notice under 12 CFR 1024.41(c)(4)(ii)(B) informing the borrower:

- That the servicer has not received the third-party documents or information that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower;
- Of the specific documents or information that the servicer lacks;
- That the servicer has requested such documents or information; and
- That the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the documents or information.

If a servicer has exercised reasonable diligence to obtain the third-party information, but the servicer has been unable to do so for a significant period of time and cannot complete its determination without the required documents or information, the servicer may deny the application and provide the borrower with a written notice in accordance with 12 CFR 1024.41(c)(1)(ii). In conjunction with such notice, the servicer must provide a copy of the written notice provided under 12 CFR 1024.41(c)(4)(ii)(B).

### ***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 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 superior or 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 order of sale. The servicer must instruct foreclosure counsel promptly not to make a dispositive motion for foreclosure judgment or order of sale; to avoid a ruling on the motion or issuance of an order of sale where such a dispositive motion is pending; and, where a sale is scheduled, to prevent conduct of a foreclosure sale, except as provided below. The servicer may move forward with those specific foreclosure proceedings (or need not instruct foreclosure counsel as provided above) if 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. A servicer is not relieved of its obligations because foreclosure counsel's actions or inaction caused a violation. Absent one of the specified circumstances, conduct of the sale violates the regulation, even if a person other than the servicer administers or conducts the foreclosure sale proceedings.

#### ***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 must comply with these loss mitigation procedures for a borrower's loss mitigation application, unless the servicer has previously complied with the loss mitigation requirements for a complete loss mitigation application submitted by the borrower and the borrower has been delinquent at all times since submitting the prior complete application.

Thus, for example, if the borrower has previously submitted a complete loss mitigation application and the servicer complied fully with 12 CFR 1024.41 for that application, but the borrower then ceased to be delinquent and later became delinquent again, the servicer is required to again comply with 12 CFR 1024.41 for any subsequent loss mitigation application submitted by the borrower.

### ***Small Servicer Requirements – 12 CFR 1024.41(j)***

Although small servicers are exempt from most of the policy-and-procedure requirements (12 CFR 1024.38), continuity of contact requirements (12 CFR 1024.40), and loss mitigation requirements (12 CFR 1024.41) of Regulation X, certain provisions still apply to them. Small servicers 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 superior or 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.

### ***Servicing Transfers – 12 CFR 1024.41(k)***

When a transferee servicer acquires the servicing of a mortgage loan for which there is a loss mitigation application pending as of the transfer date, it must comply with 12 CFR 1024.41(k), which addresses and clarifies how loss mitigation procedures and timelines apply to these pending loss mitigation applications. A loss mitigation application is considered pending if the application is subject to the loss mitigation rules but was not fully resolved prior to the transfer date. (Comment 41(k)-1). The transfer date is defined for these provisions as the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to 12 CFR 1024.33(b)(4)(iv).

Specifically:

- Subject to the exceptions below, for loss mitigation applications pending as of the transfer date, a transferee servicer must comply with the loss mitigation requirements within the same timeframes that applied to the transferor servicer based on the date the transferor servicer received the loss mitigation application;
  - A transferor servicer must timely transfer, and a transferee servicer must obtain from the transferor servicer, documents and information submitted by a borrower in connection with a loss mitigation application.
  - Subject to the modifications of timing requirements below, a borrower's rights and protections under the loss mitigation procedures to which the borrower was entitled to before a transfer continue to apply post-transfer.
  - In the transfer context, reasonable diligence under 12 CFR 1024.41(b)(1) includes ensuring that a borrower is informed of any changes to the application process, such as a change in address to which the borrower should submit documents and information to complete the application, as well as ensuring that the borrower is informed about which documents and information are necessary to complete the application.
- Within 10 days (excluding legal public holidays, Saturdays, and Sundays) of the transfer date, a transferee servicer must provide the borrower an acknowledgement notice under 12 CFR 1024.41(b)(2)(i)(B) if the prior transferor had not provided such notice and the applicable period to provide the notice has not expired as of the transfer date;
  - If a transferee servicer is required to provide the acknowledgment notice as described above, the transferee servicer is prohibited from making the first foreclosure notice or filing required by applicable law for any judicial or non-judicial foreclosure process until a date that is after the reasonable date disclosed in the acknowledgment notice.
  - If a borrower submits a complete loss mitigation application to the transferee or transferor servicer 37 or fewer days before the foreclosure sale but on or before the reasonable date disclosed in the acknowledgment notice, the servicer must evaluate the application in accordance with 12 CFR 1024.41(c) and provide a denial notice in accordance with 12 CFR 1024.41(d) (if applicable), and is prohibited from moving for foreclosure

judgment or sale in accordance with 12 CFR 1024.41(g).

- For a complete application pending as of the transfer date, the transferee servicer must evaluate the application within 30 days of the transfer date;
- A transferee servicer must make a determination on appeals pending as of the transfer date if it is able to do so or, if unable to do so, must treat the appeal as a pending complete loss mitigation application;
  - If the transferee servicer is required to make a determination on an appeal, the servicer must complete the determination and provide the notice required under 12 CFR 1024.41(h)(4) within the later of 30 days of the transfer date or 30 days of the date the borrower made the appeal.
- A transfer does not affect a borrower's ability to accept or reject a pending loss mitigation offer if the time period to accept or reject has not expired as of the transfer date. In this instance, the transferee servicer must allow the borrower to accept or reject the offer during the unexpired balance of the applicable time period.

#### ***Loss Mitigation Applications from Potential Successors in Interest (Effective April 19, 2018)***

If a servicer receives a loss mitigation application from a potential successor in interest before confirming that person's identity and ownership interest in the property, the servicer may, but need not, review and evaluate the loss mitigation application in accordance with the procedures set forth in 12 CFR 1024.41. (Comment 41(b)-1.i).

If a servicer receives a loss mitigation application from a potential successor in interest and elects not to review and evaluate the loss mitigation application before confirming that person's identity and ownership interest in the property, the servicer must preserve the loss mitigation application and all documents submitted in connection with the application. Upon confirmation of the successor in interest's status, the servicer must review and evaluate the loss mitigation application in accordance with the procedures set forth in 12 CFR 1024.41 if the property is the confirmed successor in interest's principal residence and the loss mitigation procedures are otherwise applicable. For purposes of 12 CFR 1024.41, the servicer must treat the loss mitigation application as if it had been received on the date that the servicer confirmed the successor in interest's status. If the loss mitigation application is incomplete at the time of confirmation because documents submitted by the successor in interest became stale or invalid after they were submitted

and confirmation is 45 days or more before a foreclosure sale, the servicer must identify the stale or invalid documents that need to be updated in a notice pursuant to 12 CFR 1024.41(b)(2). Comment 41(b)-1.ii.

#### **Examination Objectives**

- To determine the financial institution's compliance with the Real Estate Settlement Procedures Act (RESPA) and Regulation X.
- To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.

#### **Examination Procedures<sup>30</sup>**

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. Determine whether the loan disclosure and timing requirements of Regulation X (rather than Regulation Z, 12 CFR 1026.19(e) and (f)) apply to the loans being reviewed (generally for closed-end reverse mortgages).
4. Review the Special Information Booklet, good faith estimate (GFE) form, Uniform Settlement Statement form (HUD-1 or HUD-1A), and mortgage servicing transfer disclosure forms for compliance with the requirements of Regulation X. Review standardized and

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<sup>30</sup> These reflect the interagency examination procedures in their entirety.



## V. Lending — RESPA

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model forms and clauses in the appendices to the regulation.

5. Review the 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.
6. 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).
7. Through reviewing written loan policies and operating procedures in connection with federally related mortgage loans that are not partially exempt under 12 CFR 1024.5(d) (i.e., reverse mortgages) 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.
8. Through interviews with mortgage lending personnel or other appropriate methods, determine:
  - The 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.
9. 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.
10. Determine if the institution is a small servicer. (12 CFR 1026.41(e)(4)(ii) and (iii)). Small servicers are exempt from a number of Regulation X requirements.

*NOTE: A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance. Under 12 CFR 1026.41(e)(4)(iii), 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 non-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; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).*

## **Subpart B – Mortgage Settlement and Escrow Accounts**

### **Special Information Booklet – 12 CFR 1024.6**

11. For mortgages that are not subject to the TILA-RESPA Integrated Disclosure Rule under 12 CFR 1026.19(e) and (f), other than reverse mortgages, 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)).

*NOTE: The Special Information Booklet may be required under 12 CFR 1026.19(g) for closed-end mortgage loans subject to the TILA-RESPA Integrated Disclosure Rule.*

### **Good Faith Estimate – 12 CFR 1024.7**

12. For closed-end reverse mortgages (*see* 12 CFR 1024.5(d)), determine whether the financial institution provides a GFE of charges for settlement services, if required, within three business days after receipt of a written application (12 CFR 1024.7(a)).
13. Review the GFE to determine if it appears exactly as set forth in Appendix C to Part 1024.
14. 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**

15. Using the same sample of loan files as used for the review of the GFE (i.e., for reverse mortgages), 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).

## V. Lending — RESPA

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16. 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)).
17. 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)).
18. 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)).
19. 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

20. 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)).

21. 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

22. 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).
23. If any fee is charged before providing a GFE in a reverse mortgage transaction, 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

24. 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

25. 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).
26. 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.
27. Through interviews with institution management and personnel, file reviews, review of: good faith estimates and HUD-1 or HUD-1A (for closed-end reverse mortgages), the TILA-RESPA Integrated Disclosures (for other closed-end mortgages secured by a dwelling), 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**

28. Determine from the TILA-RESPA Integrated Disclosures (or the HUD-1 or HUD-1A for reverse mortgages) 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 one percent (hereinafter, an "affiliated business arrangement").
29. 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).
30. 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)).
31. 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. (NOTE: Effective April 19, 2018, a servicer must treat a confirmed successor in interest, as defined in 12 CFR 1024.31, as a borrower for purposes of 12 CFR 1024.17).

32. 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.
33. If the institution is a transferee (new) servicer and changed either the monthly payment amount or the accounting method used by the transferor (old) servicer, determine whether the institution provided a borrower with an initial escrow account statement within 60 days of the date of the servicing transfer. (12 CFR 1024.17(e)(1)). A transferee servicer providing an initial escrow statement must use the effective date of transfer of servicing to establish the new escrow account computation year. (12 CFR 1024.17(e)(1)(i)).
34. If the institution is a transferee servicer and retains the monthly payments and accounting method used by the prior servicer, but chooses to change the computation year, determine whether the institution provided a short-year statement to the borrower. (12 CFR 1024.17(e)(1)(ii)). *See also* procedures related to 12 CFR 1024.17(i)(4).
 

*NOTE: Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis and provide the borrower with an annual escrow account statement. 12 CFR 1024.17(e)(1)(ii).*
35. Determine whether the institution treats shortages, surpluses, and deficiencies in the escrow account according to the procedures set forth in 12 CFR 1024.17(f).
36. 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)).

## V. Lending — RESPA

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37. Determine whether the institution performs an annual analysis of the escrow account (12 CFR 1024.17(c)(3) and (7), and 1024.17(i)).
38. 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)).
39. 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)).
40. Determine whether the servicer complied with the requirements relating to short-year statements in 12 CFR 1024.17(i)(4) within 60 days from the end of the short year or within 60 days after receiving funds that pay off the loan.
41. Determine whether monthly escrow payments following settlement are within the limits of 12 CFR 1024.17(c).

### Timely Payment of Hazard Insurance; Force-Placed Insurance

*NOTE: The procedures in this section do not apply to small servicers.<sup>31</sup> In addition to the information provided in this*

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<sup>31</sup> Refer to 12 CFR 1026.41(e)(4)(ii) and (iii). A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of

*section, examiners should also refer to 12 CFR 1024.37, which sets forth further requirements relating to force-placed insurance.*

In addition, the procedures related to 12 CFR 1024.34 and 1024.37 may be applicable to escrow accounts and fees or charges for force-placed insurance.

42. 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)).

43. *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

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the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance. Under 12 CFR 1026.41(e)(4)(iii), 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 non-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; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

to any mortgage loan, as that term is defined in 12 CFR 1024.31. Effective April 19, 2018, a servicer must treat confirmed successors in interest as borrowers under the provisions of Subpart C. (12 CFR 1024.30(d)).

### **General Disclosure Requirements – 12 CFR 1024.32(c)** *(Effective April 19, 2018)*

#### ***Successors in Interest***

44. For servicers providing the optional written notice and acknowledgment form under 12 CFR 1024.32(c) to confirmed successors in interest who have not assumed the mortgage loan and are otherwise liable on it:

- Determine whether the written notice explains that the confirmed successor in interest may be entitled to receive certain notices and communications about the mortgage loan if the servicer is not providing them to another confirmed successor in interest or borrower on the account. The notice also must explain that in order to receive such notices and communications, the successor in interest must execute and provide to the servicer the acknowledgment form.

NOTE: Servicers that send this type of notice and acknowledgement form are not required to provide to the confirmed successor in interest any written disclosure required by 12 CFR 1024.17, 1024.33, 1024.34, 1024.37, or 1024.39, or to comply with the live contact requirements in 12 CFR 1024.39(a) with respect to the confirmed successor in interest until the confirmed successor in interest either assumes the mortgage loan or executes the acknowledgment form.

- Determine whether the servicer stated in the written notice that, regardless of whether the successor in interest executes the acknowledgement form, the successor in interest is entitled to submit notices of error under 12 CFR 1024.35, requests for information under 12 CFR 1024.36, and requests for a payoff statement under 12 CFR 1026.36. The notice must include a brief explanation of those rights and how to exercise them, including appropriate address information.

### **Mortgage Servicing Transfer Disclosures – 12 CFR 1024.33**

#### ***Reverse Mortgage Disclosure Statement***

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

45. Determine whether the lender, mortgage broker who anticipates using table funding, or dealer in a first-lien dealer loan 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)).

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)).

46. 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.
47. 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.
48. 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).

49. 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.

50. 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)).
51. 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.

52. 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).
53. 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 written error notices from borrowers or through other appropriate methods.

#### ***Address for Error Notices***

54. 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 12 CFR 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).

55. 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***

56. 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***

57. 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***

58. 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)).

*NOTE: A servicer responding to a notice of error request for documentation may omit location, contact, and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) if: (i) the information pertains to a potential or confirmed successor in interest who is not the requester; or (ii) the requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester. (12 CFR 1024.35(e)(5)) (Effective April 19, 2018).*

### ***Determination that No Response was Required***

59. 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***

60. 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***

61. Determine whether the institution conditioned its investigation of the asserted error on the borrower providing supporting documentation (12 CFR 1024.35(e)(2)(i)).
62. 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)).
63. 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)).

64. 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 written information requests from borrowers or other appropriate methods.

#### ***Address for Information Requests***

65. 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 12 CFR 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).
66. 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***

67. 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***

68. 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)).

*NOTE: A servicer in its response to a request for information may omit location, contact, and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) if: (i) the information pertains to a potential or confirmed successor in interest who is not the requester; or (ii) the requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester. (12 CFR 1024.36(d)(3)) (Effective April 19, 2018).*

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

69. For a borrower's information request regarding the owner or assignee of a mortgage loan, when a loan is not held in trust for which an appointed trustee receives payments on behalf of the trust, 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.i).

However, when the loan is held in a trust for which an appointed trustee receives payments on behalf of the trust, determine first what specific information is being requested, and second whether the servicer complied with the requirements clarified in 12 CFR Part 1024, Supp. I., Comment 1024.36(a)-2.ii:

- For loans held in trust in which the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) is not the owner of the loan or the trustee, determine that the institution complied by identifying the name of the trust, and the name, address, and appropriate contact information for the trustee. (12 CFR Part 1024, Supp. I., Comment 1024.36(a)-2.ii.A)
- For loans held in a trust in which Fannie Mae or Freddie Mac is the owner of the loan or trustee, determine that the institution complied by providing the following information:
  1. If the request did not expressly request the name or number of the trust or pool, the name and contact information for Fannie Mae or Freddie Mac, as applicable. The institution does not need to provide the name of the trust.
  2. If the request did expressly request the name or number of the trust or pool, the name of the trust, and the name, address, and appropriate contact information for the trustee. (12 CFR Part 1024, Supp. I., Comment 1024.36(a)-2(ii)(B)-(C)).

NOTE: Comment 36(a)-2 clarifies that a servicer is not the owner or assignee for purposes of information requests under 12 CFR 1024.36 if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the mortgage loan obligation. It also states that the Government National Mortgage Association (Ginnie Mae) is not the owner or assignee for purposes of such requests for information solely as a result of its role as the guarantor of the security in which the loan serves as the collateral. (12 CFR Part 1024, Supp. I., Comment 1024.36(a)-2).

### **Determination that No Response was Required**

70. 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***

71. 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***

72. 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)).

***Potential Successors in Interest (Effective April 19, 2018)***

73. In response to a written request from a potential successor in interest, determine whether the servicer provided the potential successor in interest with a written description of the documents the servicer reasonably required to confirm the person’s identity and ownership interest in the property as well as contact information, including a telephone number, for further assistance. (12 CFR 1024.36(i)(1)).
74. With respect to the written request, determine whether the servicer treated the potential successor in interest as a borrower for purposes of the requirements in 12 CFR 1024.36 (c)-(g), including responding to the request not later than the time limits set forth in 12 CFR

1024.36(d)(2). (12 CFR 1024.36(i)(1); 12 CFR Part 1024, Supp. I., Comment 1024.36(i)-2).

**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 regulate when an institution may assess a premium charge or fee 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***

75. 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***

76. 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)).
77. Determine whether the initial notice included the following information (12 CFR 1024.37(c)). Sample

## V. Lending — RESPA

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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, is expiring, or provides insufficient coverage (as applicable), that the institution lacks evidence that the borrower has hazard insurance coverage past the expiration date or lacks evidence that the borrower has hazard insurance that provides sufficient coverage (as applicable), and (if applicable) that identifies the type of hazard insurance lacking. (12 CFR 1024.37(c)(2)(v));
- 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).

78. 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 and the loan number, 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*

79. 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)).
80. 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.
81. When the institution receives hazard insurance information but does *not* receive evidence of continuous sufficient 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;
  - 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 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.

82. 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 and the loan number, 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.
83. 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.

84. 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)).
85. 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).

86. 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 and the loan number, 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.
87. 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.

## V. Lending — RESPA

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

88. 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)).
89. 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)).
90. 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)(4)(ii);<sup>32</sup> (ii) reverse mortgage transactions,

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<sup>32</sup> Refer to 12 CFR 1026.41(e)(4)(ii) and (iii). A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance. Under 12 CFR 1026.41(e)(4)(iii), 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

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**

91. 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) and (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 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;
  - Upon notification of a borrower's death, promptly communicating with the borrower's successor in interest concerning the secured property (*Effective until April 19, 2018*);
  - Upon receiving notice of a borrower's death or of any transfer of the secured property, promptly facilitating communication with any potential or confirmed successors in interest regarding the property (*Effective April 19, 2018*);

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a non-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; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

- Upon receiving notice of the existence of a potential successor in interest, promptly determining the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property (see commentary to 12 CFR 1024.38(b)(1)(vi) for illustrative examples) and promptly providing to the potential successor in interest a description of those documents and how the person may submit a written request under 12 CFR 1024.36(i) (*Effective April 19, 2018*); and
- Upon the receipt of such documents, promptly making a confirmation determination and promptly notifying the person, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest (*Effective April 19, 2018*)

***Policies and Procedures – Proper Evaluation of Loss Mitigation Applications***

92. 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) and (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;
  - 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; and

- Promptly identifying and obtaining documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, to offer the borrower in accordance with the requirements of 12 CFR 1024.41(c)(4).

***Policies and Procedures – Oversight of Servicer Providers***

93. 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) and (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.
    - For instance, the policies and procedures must be reasonably designed to ensure that the servicer promptly informs service provider personnel handling foreclosure proceedings that the servicer has received a complete loss mitigation application and promptly instructs foreclosure counsel to take any step required by 12 CFR 1024.41(g) sufficiently timely to avoid violating the prohibition against moving for judgment or order of sale, or conducting a foreclosure sale.

***Policies and Procedures – Transfer of Information***

94. 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) and (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*

95. 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.

### *Record Retention – Accurate Records*

96. 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)).

### *Servicing File – Facilitating Aggregation of Information*

97. 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)(4)(ii),<sup>33</sup> (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)). Refer to 12 CFR 1024.39(c)-(d) and associated commentary for an institution's obligation to comply with the live contact requirements under 12 CFR 1024.39(a) and written notice requirements under 12 CFR 1024.39(b) for borrowers in bankruptcy and for borrowers who have invoked cease

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<sup>33</sup> Refer to 12 CFR 1026.41(e)(4)(ii) and (iii). A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance. Under 12 CFR 1026.41(e)(4)(iii), 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 non-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; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

communication rights under the FDCPA.

Complete the following for any delinquent borrowers.

*NOTE: Delinquency for purposes of 12 CFR 1024.39 (and certain other sections in Regulation X) means a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid, until such time as no periodic payment is due and unpaid. (12 CFR 1024.31). For purposes of 12 CFR 1024.39, this definition does not include borrowers performing as agreed under a loss mitigation agreement designed to bring the borrower current on a previously missed payment. (12 CFR Part 1024, Supp. I., Comment 1024.39(a)-1.ii).*

#### **Live Contact**

98. 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)).
99. 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**

100. 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 generally does not need to send the notice to a borrower more than once in a 180-day period. Different timing requirements might apply when a borrower has filed for bankruptcy (*see* 12 CFR 1024.39(c)) or has provided a cease communication notice pursuant to section 805(c) of the FDCPA (*see* 12 CFR 1024.39(d)).
101. 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), MS-4(C), and MS-4(D) (that servicers subject to the FDCPA can use to comply with a new disclosure requirement for the written notice) 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;
- 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; and
- If a mortgage servicer is a debt collector under the FDCPA with regard to a borrower's mortgage loan, a statement that the servicer may or intends to invoke its specified remedy of foreclosure.

#### **Borrowers in Bankruptcy**

102. Determine whether the institution is exempt under 12 CFR 1024.39(c)(1)(i) for purposes of the live contact requirements or exempt under 12 CFR 1024.39(c)(1)(ii) for purposes of the written notice requirements.
103. For servicers that are not exempt under 12 CFR 1024.39(c)(1)(i) or (ii), determine whether the servicer complied with, as applicable, the live contact requirements under 12 CFR 1024.39(a) or the written notice requirements under 12 CFR 1024.39(b) as modified by 12 CFR 1024.39(c)(1)(iii).
104. For servicers that were exempt under 12 CFR 1024.39(c)(1)(i) and (ii) (unless they have discharged personal liability for the mortgage loan through bankruptcy), determine whether the servicer resumed compliance with the live contact and written notice requirements after the next payment due date that followed the earliest of the following events: (i) the bankruptcy case is dismissed; (ii) the bankruptcy case is closed; or (iii) the borrower reaffirms personal liability for the mortgage loan. (12 CFR 1024.39(c)(2)(i)).
105. With respect to a mortgage loan for which the borrower has discharged personal liability under sections 727, 1141, 1228, or 1328 of title 11 of the United States Code, determine whether the servicer resumed compliance with the written notice requirements under 12 CFR 1024.39(b) if the borrower has made any partial or periodic payment on the mortgage loan after the commencement of the borrower's bankruptcy case. (12 CFR 1024.39(c)(2)(ii)). (The servicer need not resume compliance with the live contact requirements under 12 CFR 1024.39(a) if the borrower has discharged personal liability as set forth above.)

### *Fair Debt Collection Practices Act (FDCPA)*

Note: Servicers subject to the FDCPA can use MS-4(D) to comply with a new disclosure requirement for the written notice.

106. If a mortgage servicer was a debt collector under the FDCPA with regard to a borrower's mortgage loan for which any borrower has invoked cease communication rights pursuant to Section 805(c) of the FDCPA:

- Determine whether the servicer was exempt from the written notice requirements under 12 CFR 1024.39(b) because either:
  - No loss mitigation option was available; or
  - A borrower on the mortgage loan was a debtor in bankruptcy under title 11 of the United States Code. (12 CFR 1024.39(d)(2)).
- Determine whether the servicer was required to provide a modified written early intervention notice and that notice complied with the following:
  - Content:
    - The modified written notice included a statement that the servicer may or intends to invoke its remedy of foreclosure.
    - The written notice did not contain a request for payment.
  - Timing:
    - The servicer did not provide the written notice more than once during any 180-day period.
      - If a borrower was 45 days or more delinquent at the end of any 180-day period after the servicer had provided the written notice, determine whether the servicer provided the written notice again no later than 190 days after the provision of the prior written notice.
      - If a borrower was less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, determine whether the servicer provided the written notice again no later than 45 days after the payment due date for which the borrower remained delinquent or 190 days after the provision of the prior written notice, whichever was later.

(12 CFR 1024.39(d)(3)).

*NOTE: A mortgage servicer that is a debt collector under the FDCPA with regard to a borrower's mortgage loan for which any borrower has invoked cease communication rights pursuant to section 805(c) of the FDCPA institution is exempt from the live contact requirements under 12 CFR 1024.39(a).*

### **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)(4)(ii),<sup>34</sup> (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)).

107. 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)).

108. 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

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<sup>34</sup> Refer to 12 CFR 1026.41(e)(4)(ii) and (iii). A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance. Under 12 CFR 1026.41(e)(4)(iii), 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 non-affiliate of the servicer and for which the servicer does not receive any compensation or fees; (b) reverse mortgage transactions; (c) mortgage loans secured by consumers' interests in timeshare plans; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

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)).

109. 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)).
110. 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;
  - 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 12 CFR 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)(4)(ii),<sup>35</sup> (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)). A servicer must comply with the loss mitigation procedures for subsequent loss mitigation applications, unless the servicer previously complied with the requirements for a complete loss mitigation application from a borrower and the borrower has been delinquent at all times since submitting the prior complete application. (12 CFR 1024.41(i)).

**Calculating Time Periods:** 12 CFR 1024.41 provides borrowers certain protections if 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), and 12 CFR 1024.41(e) and (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). (However, scheduling the sale is not necessarily the same as making the first notice or filing. If the servicer has not made the first notice or filing required by applicable law by the time it receives a complete application, it is generally prohibited from doing so before evaluating the application, pursuant to 1024.41(c).) If no foreclosure sale is scheduled as of the date the servicer receives a complete loss

<sup>35</sup> Refer to 12 CFR 1026.41(e)(4)(ii) and (iii). A small servicer is defined as (1) a servicer that, together with any affiliates, services 5,000 or fewer loans, for all of which the servicer or any affiliate is the creditor or assignee; (2) a servicer that is a housing finance agency under 24 CFR 226.5; or (3) a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(1)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(2)), for all of which the servicer or an associated nonprofit is the creditor. Small servicer status is generally based on the loans serviced by the servicer and any affiliates as of January 1 for the remainder of the year. However, to determine small servicer status under the nonprofit small servicer definition, a nonprofit servicer should be evaluated based on the mortgage loans serviced by the servicer (and not those serviced by associated nonprofit entities) as of January 1 for the remainder of the calendar year. Servicers that cease to qualify as a small servicer will have the later of six months after the date they ceased to qualify, or until the next January 1 to come into compliance. Under 12 CFR 1026.41(e)(4)(iii), 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 non-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; and (d) certain seller-financed transactions that meet the criteria identified in 12 CFR 1026.36(a)(5).

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 at the time the servicer receives a complete application. 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).*

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

*Review of an application received at least 45 days before a foreclosure sale (12 CFR 1024.41(b)(2))*

111.If the institution received a loss mitigation application at least 45 days before a foreclosure sale, determine that the institution:

- Promptly upon receipt of a loss mitigation application, reviewed the loss mitigation application to determine if the loss mitigation application was complete. (12 CFR 1024.41(b)(2)(i)(A); 12 CFR 1024.41(b)(1)).

*NOTE: A loss mitigation application that would trigger this requirement 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). A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. (12 CFR 1024.41(b)(1)). If no foreclosure sale has been scheduled as of the date a servicer receives a loss mitigation application, the servicer must treat the application as having been received 45 days or more before any foreclosure sale. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(2)(i)-1).*

- Notified the borrower in writing within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving the loss mitigation application that the servicer acknowledged receipt of the loss mitigation application and determined that the loss mitigation application was either complete or incomplete. (12 CFR 1024.41(b)(2)).
  - If the application is complete, determine that the written acknowledgement stated that the application was complete and included 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)(i)(B) and (b)(2)(ii)).
  - If a loss mitigation application is incomplete, stated, in the notice: (i) the additional documents and information the borrower must submit to make the loss mitigation application complete, (ii) the reasonable date by which the borrower must submit such documents or information, and (iii) 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)).

*NOTE: For the reasonable date deadline, 30 days from the date the servicer provides the written notice is generally reasonable. The reasonable date, however, must be no later than the earliest of following milestones, but not less than seven days from the date of the notice: (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., Comments 1024.41(b)(2)(ii)-1 through .41(b)(2)(ii)-3).*

**Reasonable diligence requirements (12 CFR 1024.41(b)(1))**

112.If the institution received an incomplete loss mitigation application, determine whether the institution exercised reasonable diligence to collect information needed to complete the application after receiving the loss mitigation application. (12 CFR 1024.41(b)(1); 12 CFR Part 1024, Supp. I., Comments 1024.41(b)(1)-1, and .41(b)(1)-4).

*NOTE: 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. (12 CFR Part 1024, Supp. I., Comments 1024.41(b)(1)-4i and .41(b)(1)-4ii).*

- For borrowers offered short-term payment forbearance programs or short-term repayment plans on the basis of an incomplete application under 12 CFR 1024.41(c)(2)(iii), refer to Comment 1024.41(b)(1)-4.iii for guidance relating to a servicer's reasonable diligence obligations. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(2)(ii)).

113.If the institution stopped collecting documents and information for a particular loss mitigation option, determine whether its decision was based on receiving information confirming that, pursuant to requirements established by the owner or assignee of the borrower's mortgage loan, the borrower was ineligible for that option. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(1)-1).

*NOTE: A servicer may not stop collecting documents and information for any loss mitigation option based solely upon the borrower's stated preference but may stop collecting documents and information for any loss mitigation option based on the borrower's stated preference in conjunction with other information, as prescribed by any requirements*

established by the owner or assignee. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)(1)-1).

**Evaluation of Loss Mitigation Applications (12 CFR 1024.41(c))**

**Complete loss mitigation application evaluation (12 CFR 1024.41(c)(1))**

114.If the institution received a complete loss mitigation application more than 37 days before a foreclosure sale, determine whether the institution, within 30 days of receiving the complete loss mitigation application:

- Evaluated the borrower for all loss mitigation options available to the borrower (12 CFR 1024.41(c)(1)(i)); and
- Provided the borrower with a written notice of the institution's determination stating:
  - Which loss mitigation options (if any) the institution would offer the borrower,
  - 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 and the time period for making any appeal pursuant to 12 CFR 1024.41(h)

(12 CFR 1024.41(c)(1)).

**Incomplete loss mitigation application evaluation (12 CFR 1024.41(c)(2)(i)-(iii))**

115.If the borrower submitted an incomplete application and the institution has offered a loss mitigation option, determine whether the institution's offer was permitted because:

- The offer of the loss mitigation option was not based on any evaluation of information submitted by the borrower in connection with such application (12 CFR Part 1024, Supp. I., Comment 1024.41(c)(2)(i)-1);
- The institution offered a loss mitigation option upon the evaluation of an incomplete application after it exercised reasonable diligence in obtaining documents and information to complete the loss mitigation application, but the application remained incomplete for a significant period of time under circumstances without any further progress by the borrower to complete the application (12 CFR 1024.41(c)(2)(ii)); or

*Note: Any such evaluation and offer is not subject to the requirements of this section and shall not constitute an evaluation of a single complete loss mitigation application for purposes of the duplicative request exception in 12 CFR 1024.41(i)*

- The institution offered a short-term payment forbearance program or a short-term repayment plan based upon an evaluation of an incomplete application (12 CFR 1024.41(c)(2)(iii)).

116. If the institution offered the borrower a short-term payment forbearance plan or short-term repayment plan based upon information contained in an incomplete loss mitigation application, determine whether the institution promptly provided the borrower, unless the borrower rejected the offer, a written notice stating:

- The specific payment terms and duration of the program or plan;
- That the servicer offered the program or plan based on an evaluation of an incomplete application,
- That other loss mitigation options may be available; and
- That the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all loss mitigation options available to the borrower regardless of whether the borrower accepts the program or plan.

(12 CFR 1024.41(c)(2)(iii)).

*NOTE: A short-term payment forbearance program for these purposes 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 1024.41(c)(2)(iii)-1). A short-term repayment plan for these purposes is a loss mitigation option with terms under which a borrower would repay all past due payments over a specified period of time to bring the mortgage loan account current. A short-term repayment plan allows for the repayment of no more than three months of past due payments and allows a borrower to repay the arrearage over a period lasting no more than six months. (12 CFR Part 1024, Supp. I., Comment 1024.41(c)(2)(iii)-4).*

117. If the institution offered the borrower a short-term payment forbearance plan or short-term repayment plan based upon information contained in an incomplete loss mitigation application, determine whether the institution improperly (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)).

### **Facially Complete Application – Additional Information or Corrected Documents Required (12 CFR 1024.41(c)(2)(iv))**

118. If the application was facially complete but the servicer later discovered that additional information or corrected documents were required to complete the application, determine whether:

- 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)).

*NOTE: A loss mitigation application is facially complete when (i) the institution’s initial notice under 12 CFR 1024.41(b)(2)(i)(B) advised the borrower that the application was complete, (ii) the institution’s initial notice under 12 CFR 1024.41(b)(2)(i)(B) requested additional information from the borrower to complete the application and the borrower submits such additional information; or (iii) the servicer is required to provide the borrower a written notice of a complete application under 12 CFR 1024.41(c)(3)(i). 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).*

119. In this same scenario, 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)).

### **Notice of Complete Application (12 CFR 1024.41(c)(3))**

120. If none of the exceptions to the notice of complete application requirement listed in 12 CFR 1024.41(c)(3)(ii) apply (see Note below), determine whether the institution has provided a written notice that the application is complete in accordance with 12 CFR 1024.41(c)(3)(i). The notice of complete application must be provided within five days (excluding legal public holidays, Saturdays, and Sundays) after receiving a borrower’s complete loss mitigation application and must include the following information:

- That the loss mitigation application is complete;

- The date the servicer received the complete application;
- That the servicer expects to complete its evaluation within 30 days of the date it received the complete application;
- That the borrower is entitled to certain foreclosure protections because the servicer has received the complete application, and, as applicable, either:
  - If the servicer has not made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that the servicer cannot make the first notice or filing required to commence or initiate the foreclosure process under applicable law before evaluating the borrower's complete application; or
  - If the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that the servicer has begun the foreclosure process, and that the servicer cannot conduct a foreclosure sale before evaluating the borrower's complete application;
- That the servicer may need additional information at a later date to evaluate the application, in which case the servicer will request that information from the borrower and give the borrower a reasonable opportunity to submit it, the evaluation process may take longer, and the foreclosure protections could end if the servicer does not receive the information as requested; and
- That the borrower may be entitled to additional protections under state or federal law.

*NOTE: Under 12 CFR 1024.41(c)(3)(ii), a servicer is not required to provide a notice of complete application if: The servicer has already provided the borrower an acknowledgement notice under 1024.41(b)(2)(i)(B) stating the application is complete and the servicer has not subsequently requested additional information or corrected versions of previously submitted documents; The application was not complete or facially complete more than 37 days before a foreclosure sale; or The servicer has already provided the borrower a notice of its determination under 1024.41(c)(1)(ii).*

**Information not in the borrower's control (12 CFR 1024.41(c)(4))**

121. Determine whether the servicer exercised reasonable diligence in obtaining information not in the borrower's control that the servicer needs to determine which loss mitigation options to offer the borrower ( 12 CFR 1024.41(c)(4)(i)).
122. Determine whether the servicer improperly denied the borrower's complete loss mitigation application solely because the servicer lacks required documents or information not in the borrower's control, (12 CFR 1024.41(c)(4)(ii)(A)(i), unless it was unable to obtain the documents and information for a significant period of time following the 30-day evaluation period and was unable to make a determination on the complete application. (12 CFR 1024.41(c)(4)(ii)(A)(2)). If this is the case, determine whether the servicer provided the written denial notice in accordance with 12 CFR 1024.41(c)(1)(ii) and the written notice required under 12 CFR 1024.41(c)(4)(ii)(B) (*see* question below).

*NOTE: A servicer, however, is permitted to offer a borrower a loss mitigation option, even if the servicer does not obtain the requested documents or information. (12 CFR Part 1024, Supp. I., Comment 1024.41(c)(4)(ii)-2).*

123. If the servicer is unable to make a determination within 30 days of receiving a borrower's complete loss mitigation application due to the lack of the third-party information, review whether the servicer provided the written required notice to the borrower under 12 CFR 1024.41(c)(4)(ii)(B) containing the following information:
  - That the servicer has not received the third-party documents or information that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower;
  - The specific documents or information that the servicer lacks;
  - That the servicer has requested such documents or information; and
  - That the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the documents or information.

**Denial of loan modification options (12 CFR 1024.41(d))**

124. If the institution denied the borrower's complete application for any trial or permanent loan modification



option available to the borrower, determine whether the notice provided to the borrower pursuant to 12 CFR 1024.41(c)(1)(ii) 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)). Specifically:

- If the institution denied an application for a loan modification option due to a failure to meet investor guidelines, 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).*

- If the institution denied the application due to a net present value calculation, determine whether the institution disclosed the inputs used in that calculation (12 CFR Part 1024, Supp. I., Comment 41(d)-2).
- 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, 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. (12 CFR Part 1024, Supp. I., Comment 41(d)-4).

*Note: 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).*

### **Borrower response (12 CFR 1024.41(e))**

125.If institution received the complete application at least 90 days before a foreclosure sale and offered a loss mitigation option, 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)(1)).

*Note: If no foreclosure sale was scheduled when the servicer received the application, the application is considered to have been received more than 90 days before any foreclosure sale. (12 CFR Part 1024, Supp. I., Comment 41(b)(3)-1). The acceptance period can be extended if, within 14 days, the borrower makes an appeal of a denial of any loan modification option pursuant to 12 CFR 1024.41(h). (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. (12 CFR 1024.41(e)(2)(iii)).*

126.If institution received the complete application fewer than 90 days before a foreclosure sale but more than 37 days before the sale and offered a loss mitigation option, 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)).

127.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)), 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)).

### **Prohibition on foreclosure referral and sale (12 CFR 1024.41(f) and 1024.41(g))**

128.Determine whether the institution made the first judicial or non-judicial foreclosure notice or filing 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 or superior lienholder (12 CFR 1024.41(f)(1)). (Note that this requirement as applicable to small servicers is addressed below.)

129.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, 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)).

130. If the institution received a complete loss mitigation application after the institution made the first foreclosure notice or filing required under applicable law but more than 37 days before a foreclosure sale, determine whether the institution improperly conducted a foreclosure sale or moved for foreclosure judgment or order of 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)).

*NOTE: A servicer must instruct foreclosure counsel promptly not to make a dispositive motion for foreclosure judgment or order of sale; where such a dispositive motion is pending, to avoid a ruling on the motion or issuance of an order of sale; and, where a sale is scheduled, to prevent conduct of a foreclosure sale, unless one of the conditions in 12 CFR 1024.41(g)(1) through (3) is met. (12 CFR Part 1024, Supp. I., Comment 41(g)-3). A servicer is not relieved of its obligations because foreclosure counsel's actions or inaction caused a violation. Absent one of the specified circumstances, conduct of the sale violates the regulation, even if a person other than the servicer administers or conducts the foreclosure sale proceedings.*

#### **Appeal Process (12 CFR 1024.41(h))**

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.

131. 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)).
132. 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)).

133. 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)).

#### **Duplicative Requests (12 CFR 1024.41(i))**

134. Determine whether the institution complied with the loss mitigation procedures for all loss mitigation applications, unless the servicer previously complied for a complete loss mitigation application from a borrower and the borrower has been delinquent at all times since submitting the prior complete application.

#### **Small Servicers (12 CFR 1024.41(j))**

135. 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 or superior lienholder's foreclosure action (12 CFR 1024.41(j)).

136. 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)).

#### **Servicing Transfers – (12 CFR 1024.41(k))**

137. If the transferee (new) servicer acquired the servicing of a mortgage loan with a pending loss mitigation application as of the transfer date, determine whether the transferee servicer complied with the requirements of the loss mitigation procedures within the applicable timeframes. (The transfer date is defined for these provisions as the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of servicing pursuant to 12 CFR 1024.33(b)(4)(iv). (12 CFR 1024.41(k)(1)(ii)).)

*NOTE: In general, subject to the modifications below, the institution must comply within the timeframes that were applicable to the transferor (previous) servicer based on the date the transferor servicer received the loss mitigation application. A borrower continues to retain the rights and protections under 12 CFR 1024.41(c) through (h) to which a borrower was entitled before the servicing was transferred. (12 CFR 1024.41(k)(1)(i)). A loss mitigation application is considered pending if the application is subject to the loss mitigation rules but was not fully resolved prior to*

## V. Lending — RESPA

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*the transfer date. (12 CFR Part 1024, Supp. I., Comment 41(k)-1).*

- a. If a transferee servicer acquired the servicing of a mortgage loan for which the period to provide the acknowledgement notice required by 12 CFR 1024.41(b)(2)(i)(B) had not expired as of the transfer date and the transferor did not provide the acknowledgement notice, determine whether the transferee servicer provided the acknowledgment notice within 10 days (excluding legal public holidays, Saturdays, and Sundays) of the transfer date. (12 CFR 1024.41(k)(2)(i)).
- b. If a transferee servicer was required to provide the acknowledgment notice as discussed in the previous question:
  - i. Determine that the servicer did not make the first notice or filing for any judicial or non-judicial foreclosure process prior to the reasonable date disclosed in the acknowledgment notice to submit documents and information necessary to complete the application, notwithstanding the exceptions contained in 12 CFR 1024.41(f)(1). (12 CFR 1024.41(k)(2)(ii)(A)).
  - ii. And the borrower submitted a complete loss mitigation application to the transferee or transferor servicer 37 or fewer days before the foreclosure sale but on or before the reasonable date disclosed in the acknowledgment notice, determine whether the servicer complied with the requirements regarding the evaluation of the loss mitigation application (12 CFR 1024.41(c)); denial of loan modification options (12 CFR 1024.41(d), and prohibition on foreclosure sale (1024.41(g)). (12 CFR 1024.41(k)(2)(ii)(B)).
- c. For pending complete loss mitigation applications as of the transfer date, determine whether the transferee servicer complied with the applicable requirements regarding complete loss mitigation applications (12 CFR 1024.41(c)(1)) and information not in the borrower's control (12 CFR 1024.41(c)(4)) within 30 days of the transfer date. (12 CFR 1024.41(k)(3)).
- d. For applications subject to the appeal process, if a transferee servicer acquired the servicing of a mortgage loan for which an appeal of a transferor servicer's determination pursuant to 12 CFR 1024.41(h) had not been resolved by the transferor servicer as of the transfer date or was timely filed after the transfer date, determine whether:
  - i. The transferee servicer made a determination on the appeal, if it was able to do so, and provided the required appeal determination notice under 12 CFR 1024.41(h)(4) within 30 days of the transfer date or 30 days of the date the borrower made the appeal, whichever is later. (12 CFR 1024.41(k)(4)(i)).
  - e. If a transferee servicer was unable to make a determination on an application subject to the appeal process, determine whether the servicer complied with the loss mitigation provisions, including evaluating the borrower for all loss mitigation options available to the borrower from the transferee servicer. (12 CFR 1024.41(k)(4)(ii)).
  - f. Determine whether the transferee servicer allowed the borrower to accept or reject a pending loss mitigation offer during the unexpired balance of the applicable time period as required by 12 CFR 1024.41(k)(5).

### **Applications Received from Successors in Interest** (Effective April 19, 2018)

138. If the servicer receives a loss mitigation application from a confirmed successor in interest, determine whether the servicer is treating a confirmed successor in interest as a borrower for purposes of the loss mitigation procedures and complying with the relevant requirements. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)-1.i).

139. If the servicer receives a loss mitigation application from a potential successor in interest and elects not to review and evaluate the loss mitigation application before confirming the person's identity and ownership interest in the property:

- Determine whether the servicer has preserved the loss mitigation application and all documents submitted in connection with the application. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)-1.ii).
- Upon confirmation of the successor in interest's status, determine whether the servicer has reviewed and evaluated the loss mitigation application in accordance with the procedures set forth in 12 CFR 1024.41 if the property is the confirmed successor in interest's principal residence and the loss mitigation procedures are otherwise applicable. (12 CFR Part 1024, Supp. I., Comment 1024.41(b)-1.ii).

NOTE: For purposes of 12 CFR 1024.41, the servicer must treat the loss mitigation application as if it had been received on the date that the servicer confirmed the successor in interest's status. If the loss mitigation application is incomplete at the time of confirmation because documents submitted by the successor in interest became stale or invalid after

they were submitted and confirmation is 45 days or more before a foreclosure sale, the servicer must identify the stale or invalid documents that need to be updated in a notice pursuant to 12 CFR 1024.41(b)(2). (12 CFR Part 1024, Supp. I., Comment 1024.41(b)-1.ii).

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## 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.*

[\*TILA-RESPA Integrated Disclosure Rule – Compliance Guide\*](#)

[\*TILA-RESPA Integrated Disclosure Rule – Guide to Forms\*](#)