



## IV. What are Some of the Challenges Facing Servicers in Meeting the Mortgage Servicing Rules' Requirements?

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# Challenge – 120-Day Pause Rule / Dual Tracking

Counting days of delinquency --

What does delinquency mean for this Rule?

❖ **CFPB informal oral guidance:**

**Servicers should look to “common principles of statutory interpretation for defining undefined terms.” This includes “looking to state law or contracts law and industry standards for a definition of delinquency.”**

# Challenge – Preemption

Do the RESPA servicing rules preempt state servicing laws?

**The Rule states that State laws on transfer of servicing notices and disclosures are preempted and generally preempts State laws that are inconsistent with RESPA.**

- ❖ **The RESPA and the Servicing Rules do NOT preempt the ENTIRE field of regulation of the practices covered by RESPA or Regulation X or that are not in conflict with the Rules.**
- ❖ **Greater consumer protections are not inconsistent or preempted**  
*§ 1024.5(c) and Commentary .5(c)(1)-1; § 1024.33(d)*

# Challenge – ARM Loans and Step-Feature Loans

Not Subject to the ARM Loan Disclosure Requirements, if Fixed-rate Loan With a Rate Increase Not Based on an Index or Formula:

- ❖ **Graduated-payment mortgages**
- ❖ **Step-rate transactions**
- ❖ **Renewable balloon-payment instruments**
- ❖ **Shared equity loans**

*Commentary 1026.20(c)(1)(ii)-3*

# Challenge – Agent Error Notices & Information Requests

Servicers Must Treat an Error Notice or Information Request Submitted by an Agent of the Borrower as Though it Came Directly From the Borrower

## ***Commentary--1024.35(a)-1:***

- ❖ **A creditor, assignee or servicer may take “reasonable measures” to verify the identity of the consumer’s agent or representative.**
- ❖ **The response period does not begin until a request is received from a “verified party.”**
- ❖ **A verified request sent by a borrower’s attorney or other representative typically will include an authorization signed by the borrower.**

# Challenge – Actions of Sub-Servicers

Servicers are generally responsible for actions of sub-servicers

- ❖ **Must oversee and ensure sub-servicers' compliance with applicable laws and regulations**
- ❖ **Number of loans serviced by a sub-servicer can affect Servicer's status as a Small Servicer**

*§ 1026.41 – Comment .41(e)(4)(ii) –3; See also, FDIC FIL 44-2008 “Guidance for Managing Third-Party Risk”*

# Challenge – Flood Insurance

**Servicing Rules apply to hazard insurance, excluding:**

- 1. Hazard insurance required by the Flood Disaster Protection Act of 1973**
- 2. Hazard insurance obtained by a borrower but renewed by the borrower's servicer as described in the rules**
- 3. Hazard insurance obtained by a borrower but renewed by the borrower's servicer at its discretion, if the borrower agrees**

*§ 1024.37(a)(2)*

# Challenge – Error Notices and Information Requests in Writing

## Rule:

- ❖ **Error notices and requests for information do not have to be in writing\***
- ❖ **They can be taken orally or over the phone**
- ❖ **Servicers are only required to comply with the formal rule requirements for written notices and requests**  
*§ 1024.35 and § 1024.36*

***\*Note: Large servicers' policies, procedures and requirements must contain procedures for informing consumers how to submit written notices of errors and written information requests.***



# Challenge – Fair Debt Collection Practices Act (FDCPA)

A servicer will have no liability under the FDCPA if it complies with rules regarding:

Error resolution	Loss mitigation rules
Requests for information	Initial ARM interest rate adjustment disclosure
Force-placed insurance rules	Furnishing of periodic statements

A servicer debt collector under FDCPA receiving a written cease-communication request is exempt from complying with requirements for:

Early intervention	Notice of interest rate change for ARMs with corresponding payment change
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# Challenge – HELOCs and Rural Property

- Servicing Rule That Applies to HELOCs:
  - **Providing payoff statements §1026.36(c)(3)**
- Rural:
  - **No rural exemption in the Servicing Rules**
  - **Geographic location of the bank or of the secured property does not matter when determining whether a servicer qualifies for the Small Servicer exemption.**