No. B075

SUBJECT: Reg. X & Reg. Z: Mortgage Servicing Rule

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INTRODUCTION

This release applies to all credit unions, both state and federal. It describes the federal Mortgage Servicing Rule – a set of Consumer Financial Protection Bureau (CFPB) regulations that address the duties of mortgage loan servicers.

EXECUTIVE SUMMARY

Reg. X relief during COVID-19 pandemic: The Consumer Financial Protection Bureau (CFPB) issued an *interim final rule* that amends parts of *Regulation X* as of July 1, 2020. It created a temporary exception in Subpart C to Reg. X for certain COVID-19-related loss mitigation options. Under this rule, a loan mortgage servicer may offer a borrower a loss mitigation option based on its evaluation of limited information collected from a borrower, if certain criteria (described in the rule) are met. The exception permits credit unions and their affiliates to align their loss mitigation programs with the criteria of the FHFA COVID-19 payment deferral or other comparable programs. For more information, please see *NCUA Regulatory Alert 20-RA-06 / July 2020*.

Truth in Lending Act regulations (Reg. Z) and Real Estate Settlement Procedures Act (RESPA) regulations (Reg. X) impose various requirements on credit unions (and others) that service mortgage loans. Collectively, these regulations are known as the Mortgage Servicing Rule. The rule addresses several aspects of mortgage servicing.

The Reg. X provisions address:

- Error resolution and information requests (§§ 1024.35 and 1024.36).
- Force-placed insurance (§§ 1024.17 and 1024.37).
- General servicing policies, procedures, and requirements (§ 1024.38).
- Early intervention with delinquent borrowers (§ 1024.39).
- Continuity of contact with delinquent borrowers (§ 1024.40).
- Loss mitigation (§ 1024.41).

The Reg. Z provisions address:

- Interest rate adjustment notices for ARMs (§ 1026.20).
- Prompt crediting of mortgage payments and responses to requests for payoff amounts (§ 1026.36(c)).
- Periodic statements for mortgage loans (§ 1026.41).
- Small servicers (§ 1026.41(e)(4)).

Rather than independently summarizing the Mortgage Servicing Rule, we have attached to this release a copy of the CFPB's current *"Small Entity Compliance Guide*" on Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Rules. The guide effectively summarizes the Mortgage Servicing Rule, highlighting issues that credit unions, and those that work with them, should find useful.

The guide is not a substitute for the regulations themselves. Only the Reg. X and Reg. Z provisions and their Official Interpretations (also known as Commentary) can provide complete and definitive information. To read the Mortgage

Servicing Rule, including the Commentary, and for other guidance materials, visit the CFPB's *Mortgage Servicing Rule implementation page.*

The Mortgage Servicing Rule generally applies to mortgage loans, but each provision covers specific types of loans. Some apply to closed-end loans, and some to open-end home equity lines of credit (HELOCs). Some apply to loan secured by a principal residence, and some apply to mortgage loans even if not secured by a principal residence. Each section of the guide discusses the scope of each part of the rule.

WISCONSIN LAW & RELATED II RELEASES

The attached guide summarizes the federal Mortgage Servicing Rule, but it does not address various state laws that may impact mortgage loan servicing. In addition, The League wants to point out that we have various ii Releases that cover other laws affecting mortgage servicing. As you consult the guide, keep the following issues in mind:

"Small Servicers" vs. "Small Creditors"

"Small servicers" are exempt from certain parts of the Mortgage Servicing Rule but not from all of them. A credit union is a "small servicer" if it, together with any affiliates, services 5,000 or fewer mortgage loans, and the credit union (or an affiliate) is the creditor or assignee for all of them. Credit unions should carefully determine whether they qualify as small servicers. Small servicers' policies and procedures should address the parts of the rule that apply to them.

A "small servicer" is *not* the same as a "small creditor." Under Reg. Z, "small creditors" are exempt from various mortgage lending rules, including:

- The requirement to establish an escrow account for first-lien higher priced mortgage loans (see The League's *ii Release No. B068*);
- The bar on balloon terms in high-cost mortgages under HOEPA (see The League's *ii Release No. B062*); and
- The bar on balloon terms in qualified mortgages (see The League's *ii Release No. B074*).

Interest Rate Adjustment Notices for ARMs

For closed-end ARMs, secured by the consumer's principal dwelling, with a term of one year or more, the Mortgage Servicing Rule requires two types of rate adjustment notices:

- An initial interest rate adjustment notice is required only for the first time the interest rate adjusts. It must be provided to a consumer 210 to 240 days before the first payment at the new rate is due.
- An ongoing interest rate adjustment notice must be provided to a consumer 60 to 120 days before the first payment at the new rate is due each time an interest rate adjustment results in a payment change.

However, the Wisconsin Consumer Act and Section 138.056 of the Wisconsin Statutes *also* impose different notification requirements for interest rate changes on variable rate loans. The League's *ii Release No. B001* explains which loans are subject to the Consumer Act and to Section 138.056. The League's *ii Release No. B002* outlines the various ARM adjustment notice requirements under Wisconsin law and under Reg. Z. State-chartered credit unions must look at the requirements found under each outline that applies for a given loan. Then they must comply with the stricter requirement on any point where the outlines differ. Federal credit unions need only comply with the Reg. Z requirements.

Periodic Statements

The periodic statement provisions in Reg. Z §1026.41 apply only to closed-end mortgages. Open-end transactions have separate periodic statement requirements found in Reg. Z §1026.7. See *ii Release No. B064* for information on HELOCs.

The guide explains that periodic statements can be sent electronically if the consumer consents. The credit union does not need to follow the full verification procedures required by the federal Electronic Signatures in Global and National Commerce Act (or E-SIGN) before providing a statement electronically under these rules. If the credit union wishes to follow the E-SIGN procedures to obtain consumer consent, it may, but it can also get consent through a simpler process.

Ordinarily, E-SIGN requires the consumer to voluntarily consent to electronic delivery after receiving certain E-SIGN notices. For details on E-SIGN's consent and notice requirements, see The League's *ii Release No. 0175*. While the Mortgage Servicing Rules does not require E-SIGN consent for periodic statements on covered closed-end consumer mortgages, be aware that other regulations – such as Reg. E and the NCUA Truth in Savings rules – do require E-SIGN consent for electronic statements.

Payoff Statements

Under the Mortgage Servicing Rule, creditors, assignees, and servicers must provide an accurate statement of the total outstanding balance that would be required to pay the consumer's obligation in full as of a specified date. It applies to open or closed-end credit, secured by a dwelling – not just real estate and not just principal dwellings. For example, the rule applies to a mobile home loan even if it is not real estate under state law. The statement must be sent within a reasonable time, but in no case more than seven business days, after receiving a written request from the consumer or any person acting on behalf of the consumer. For a high-cost mortgage subject to the HOEPA rules, a payoff statement must be provided by a creditor or servicer within five business days after receiving a request for such statement by a consumer or a person authorized by the consumer to obtain such statement.

Wisconsin has a state law that *also* covers mortgage payoff requests and payoff statements. If the property securing the loan is 1- to 4-family residential real estate used for personal, family or household purposes, the lender must issue a payoff statement within seven business days of the "effective date" of a notice requesting it. Otherwise, the lender must issue the payoff statement within a "reasonable longer time," which is not defined. For details, see The League's *ii Release No. B078.*

Forced-Placed Insurance

The guide explains the Mortgage Servicing Rule provisions for force-placing insurance. The Wisconsin Consumer Act has its own requirements for force-placing insurance. The Consumer Act generally applies to any loan made in Wisconsin for a personal, family, or household purpose subject to certain exceptions, as explained in The League's *ii Release No. B001*. For example, the Consumer Act does not apply to loans secured by a first mortgage or "equivalent" security interest.

While most of the Reg. Z force-placed insurance requirements described in the attached guide do not apply to HELOCs, the Wisconsin Consumer Act rules can apply.

If a loan is subject to the Consumer Act and to the Mortgage Servicing Rule provisions on force-placing insurance, state-chartered credit unions must look at the requirements for each and comply with the stricter requirement on any point where they differ. Federal credit unions need only comply with the Reg. Z requirements.

Under Wis. Stats. §422.207, if a member fails to insure collateral as required by his/her agreement, the credit union can pay for insurance. The amount paid may be added to the unpaid balance of the customer's obligation "if, in the absence of performance, [it] has made all expenditures on behalf of the customer in good faith and in a commercially reasonable manner and [it] has given the customer written notice of the nonperformance and reasonable opportunity after such notice to so perform."

Within a "reasonable time" after paying the premiums, the credit union must notify the consumer in writing (by personal delivery or mail) of the following:

- The amount of the sums advanced;
- Any charges with respect to this amount and any revised payment schedule and;
- A brief description of the insurance paid for including the type and amount of coverages.

The consumer must be given a "reasonable time" to perform (that is, to obtain his/her own insurance or provide evidence that insurance has been in place). Under Consumer Act regulations DFI-WCA §1.30, a consumer is presumed to have been given a "reasonable time" to pay if he/she is given 10 days after the notice is provided.

The attached guide also explains that the provisions on "force-placed insurance" do not apply to flood insurance that may be required because the consumer's property is in a special hazard flood zone. Separate federal rules cover force-placed flood insurance. For information on the flood insurance rules, including details on force-placing flood insurance, see The League's *ii Release No. B003.*

Record Retention

Under the Mortgage Servicing Rule, a credit union must retain records that document its actions with respect to a consumer's loan until one year after the date it has discharged the mortgage or transferred the servicing. The guide explains that this does not mean the credit union has to keep actual paper copies of documents. Reg. X says that the credit union can retain the records using any method that accurately reproduces them (including computer programs) and that ensures easy access to the records (including a contractual right to access records possessed by another entity).

The League's *ii Release No. 0149* has information on proper disposal of paper or electronic records. The Wisconsin Office of Credit Unions advises that the credit union may want to keep certain "high priority" items like loan agreements in the original format for a time in case the credit union needs to rely on them.

"Federally Related Mortgage Loans"

Certain parts of the Mortgage Servicing Rule apply to "federally-related mortgage loans," a term that includes most real estate transactions involving 1- to 4-family residential structures. For details on the definition of that term, see The League's *ii Release No. B014*, which explains the types of loans RESPA and Reg. X apply to.

Adverse Action Notices

The attached guide discusses federal provisions that apply when a consumer applies for a servicer's "loss mitigation" options. The Mortgage Servicing Rule requires special notices if an application for a loan modification is denied, and the guide explains that a servicer can combine this notice with other legally required notices – such as an Equal Credit Opportunity Act / Reg. B adverse action notice or a Fair Credit Reporting Act adverse action notice – unless otherwise prohibited by applicable law. For information on Reg. B, see The League's *ii Release No. B041*. For information on the Fair Credit Reporting Act, see The League's *ii Release No. 0126*. Both releases discuss the separate adverse action notice requirements found in those laws.

CFPB RESOURCES

The CFPB's *Mortgage Servicing Rule implementation website* has links to a number of resources on the TILA-RESPA Integrated Disclosure Rule that credit unions may find helpful:

- *Executive Summary of the 2016 Mortgage Servicing Rule*.
- *Small Servicers and Key Provisions of the 2016 Mortgage Servicing Rule*.
- *Factsheet on Delinquency and the 2016 Mortgage Servicing Rule*.
- *Frequently Asked Questions* about mortgage servicing and bankruptcy-related topics.

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League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that The League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local or (800) 242-0833. For specific legal advice, please consult your credit union's attorney.

Legal Affairs Department

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EXHIBITS

A. CFPB *Mortgage Servicing Rule, Small Entity Compliance Guide* (August 4, 2021).

EXHIBIT A – CFPB MORTGAGE SERVICING RULE, SMALL ENTITY COMPLIANCE GUIDE (AUGUST 4, 2021).

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- *Use this mini- Table of Contents to see the overall organization of the CFPB publication, including the section numbers.* Since it is only an image of the bookmarks in the publication, you cannot click below to navigate.

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Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Rules

Small entity compliance guide

Consumer Financial Protection Bureau

Version log

The Bureau updates this guide on a periodic basis to reflect finalized amendments and clarifications to the rule that impacts guide content, as well as administrative updates. Below is a version log noting the history of this document and its updates:

Date	Version	Changes
August 4, 2021	4	On June 28, 2021, the Bureau issued a final rule adding certain provisions related to the COVID-19 pandemic. This rule: ▪ *Loss mitigation foreclosure protections:* Added temporary procedural safeguards to the loss mitigation requirements. ▪ *Loss mitigation incomplete application requirements:* Revised reasonable diligence timing requirements for borrowers in a short-term forbearance program related to COVID-19. It also added the ability to temporarily provide certain COVID-19-related streamlined loan modifications to borrowers based on the evaluation of an incomplete application. ▪ *Early intervention live contact:* Added additional information servicers must temporarily provide certain borrowers promptly after establishing living contact. On June 23, 2020, the Bureau issued an interim final rule to temporarily permit mortgage servicers to offer certain loss mitigation options (e.g., payment deferral and partial claim programs) to borrowers affected by the COVID-19 pandemic based on the evaluation of an incomplete loss mitigation application.

		These revisions for these two rules are generally discussed in *Appendix B*. Separately, based on frequently asked questions, this version also clarifies certain guidance related to the servicing file and use of multiple electronic systems. (*See "Servicing file"* in Section 10.5.2.) Miscellaneous Administrative Changes.
August 6, 2019	3.2.1	Corrected typo on header of *Early Invention with Delinquent Borrowers* in Section 11.
March 22, 2019	3.2	Correction of citations in the Modified Periodic Statement Requirements table. (*See* "*Content and layout requirements for modified periodic statements and coupon books*" in Section 5.10.2)
March 29, 2018	3.1	On March 8, 2018, the Bureau issued a final rule amending the 2016 Mortgage Servicing Rules. This rule replaces the single-billing-cycle exemption for periodic statements and coupon books with a single-statement exemption when servicers transition to providing modified or unmodified periodic statements and coupon books to consumers entering or exiting bankruptcy. This final rule provides a single-statement exemption for the next periodic statement or coupon book that a servicer would otherwise have to provide, regardless of when in the billing cycle the triggering event occurs. (*See "Periodic statement and coupon book exemption for borrowers in bankruptcy* (§ 1026.41(e)(5)) in Section 5.10.6) Provisions of the mortgage servicing rules in effect prior to April 19, 2018, which are no longer in effect on or after April 19, 2018, have been removed.

		Miscellaneous formatting changes.
October 18, 2017	3.0	In October 2017, the Bureau issued an interim final rule amending certain mortgage servicing rules. This guide refers to the October 2017 interim final rule as the October 2017 Interim Final Rule. ▪ *Early intervention*: The October 2017 Interim Final Rule clarifies the obligations for servicers to provide the early intervention written notice if the borrower has invoked the cease communication protection under the Fair Debt Collection Practices Act (FDCPA). (See "How often must I provide a written notice to a borrower who has invoked the cease communication right under the FDCPA? (§ 1024.39(d)(3)(iii)) in Section 11.8.8) In July 2017, the Bureau published a final rule making technical corrections to the 2016 Mortgage Servicing Rule (July 2017 Final Rule). The July 2017 Final Rule clarifies the effective date for modifications to the sample notices provided in appendix H-30 and for commentary relating to periodic statements for certain borrowers in bankruptcy. (See *"5.6.3 Note on modifying sample periodic statements"* in Section 5.6.3 and "*When do I have to start following these rules?*" in Section 2.2) Miscellaneous Administrative Changes.
November 30, 2016	3.0	In August 2016, the Bureau published a final rule amending certain mortgage servicing rules. This guide refers to the August 2016 final rule as the 2016 Mortgage Servicing Rule. ▪ *Small servicer*: The small servicer exemption generally applies to servicers who service 5,000 or fewer mortgage loans for all of which the servicer

		is the creditor or assignee. The 2016 Mortgage Servicing Rule excludes certain seller-financed transactions and mortgage loans voluntarily serviced for a non-affiliate, even if the non-affiliate is not a creditor or assignee, from being counted toward the 5,000-loan limit. (See *"Small Servicer Exemption"* in Section 3.) ▪ *Successors in interest*: The 2016 Mortgage Servicing Rule adds definitions of "successor in interest" to subpart C of Regulation X and to Regulation Z. In addition, it includes provisions related to how a servicer confirms a successor in interest's identity and ownership interest in a property. It also generally provides that the mortgage servicing rules apply to successors in interest once a servicer confirms the successor in interest's status. (See *"Successors in Interest"* in Section 4.) ▪ *Periodic statements*: The 2016 Mortgage Servicing Rule clarifies certain periodic statement disclosure requirements relating to mortgage loans and requires servicers to provide certain borrowers in bankruptcy a modified periodic statement or coupon book. In addition, in certain circumstances, servicers generally are exempt from the periodic statement requirement for charged-off mortgage loans. (See *"Periodic Statements"* in Section 5.) ▪ *Force-placed insurance*: The 2016 Mortgage Servicing Rule amends the force-placed insurance disclosures and model forms to account for instances when the borrower has insufficient coverage on the property, and it gives servicers the

		option to omit a borrower's mortgage loan account number on certain required notices. (See *"Force-Placed Insurance"* in Section 8.) ▪ *Early intervention*: The 2016 Mortgage Servicing Rule clarifies the obligations for servicers to establish or make good faith efforts to establish live contact with delinquent borrowers. In addition, the rule revises the exemption from early intervention for borrowers who are in bankruptcy or who have invoked cease communication protection under the Fair Debt Collection Practices Act (FDCPA). (See *"Early Intervention with Delinquent Borrowers"* in Section 11.) ▪ *The definition of delinquency*: The 2016 Mortgage Servicing Rule adopts a general definition of delinquency that applies to all servicing provisions of Regulation X and periodic statements for mortgage loans in Regulation Z. For more information on when a borrower is delinquent, see the Bureau's factsheet on Delinquency. ▪ *Loss mitigation*: The 2016 Mortgage Servicing Rule amends and modifies several sections of the loss mitigation rule. (See *"Loss Mitigation Procedures"* in Section 13). The final rule: ▫ Requires servicers to meet the loss mitigation requirements more than once in the life of a loan for borrowers who become current on payments at any time between the borrower's prior complete loss mitigation application and a subsequent loss mitigation application;

		▫ Modifies an existing exception to the 120-day prohibition on foreclosure filing to allow a servicer to join the foreclosure action of a superior or subordinate lienholder; ▫ Clarifies how servicers select the reasonable date by which a borrower should return documents and information to complete an application; ▫ Makes clear that servicers cannot move for foreclosure judgment or order of sale, or conduct a foreclosure sale, in certain circumstances; ▫ Requires that servicers provide a written notice to a borrower within five days (excluding Saturdays, Sundays, or legal holidays) after they receive a complete loss mitigation application and requires certain information to be included in the notice; ▫ Sets forth how servicers must attempt to obtain information not in the borrower's control and evaluate a loss mitigation application while waiting for third party information; ▫ Permits servicers to offer a short-term repayment plan based upon an evaluation of an incomplete loss mitigation application; ▫ Eases document collection requirements in connection with some loss mitigation applications; and ▫ Addresses and clarifies how loss mitigation procedures and timelines apply when a

		transferee servicer receives a mortgage loan for which there is a loss mitigation application pending at the time of a servicing transfer. ▪ Other amendments and technical corrections or clarifications to the mortgage servicing rules not listed above. The mortgage servicing rules address the servicing of mortgage loans, and are implemented in both Regulation X and Regulation Z. Regulation X uses the term "borrower," and Regulation Z uses the term "consumer." Previous versions of the Mortgage Servicing Guide used the term "consumer" for ease of reading. This version replaced the term "consumer" throughout the guide with the term "borrower." A nonprofit servicer section was added to the Small Servicer Exemption section. Miscellaneous Administrative Changes.
November 3, 2014	2.2	The Bureau published a final rule amending certain mortgage rules to: ▪ Provide a small servicer definition for nonprofit entities that meet certain requirements. (See *"Small Servicer Exemption"* in Section 3.)
January 7, 2014	2.1	Miscellaneous Administrative Changes.
November 27, 2013	2.0	▪ *Servicer activities prohibited during the first 120 days of delinquency:* The Bureau's servicing rule prohibits servicers from making the "first notice or filing" under state law during the first 120 days of the borrower's delinquency. The October 2013 Final Rule clarifies how the rule works across

		different states with different foreclosure laws, and adopts a narrower definition of "first notice of filing" that closely tracks FHA's "first legal" standard, which is familiar to industry. Also under the final rule, servicers will be allowed to send early notices that may provide beneficial information to borrowers about legal aid, counseling, or other resources. ▪ *Procedures for obtaining follow-up information on loss-mitigation applications:* According to the Bureau's servicing rule, within five days of receipt of a loss mitigation application, a servicer must acknowledge receipt of the application and inform the borrower whether it deems the application complete or incomplete. If incomplete, the servicer must identify for the borrower what is needed to complete it. The October 2013 Final rule makes two changes to these provisions: ▫ First, it outlines procedures for servicers to follow if, after conducting an initial review and sending the notice to the borrower, they discover that they do not have the information needed to complete an assessment or failed to identify needed documents or information in the initial notice. The changes clarify that servicers are required to seek the additional information from the borrower if they cannot complete the assessment without it. ▫ Second, it provides borrowers who submit "facially complete" applications—i.e., they respond to the initial notice by providing all of the documents or information identified by the servicer at that time—with rights and protections under the rule. This includes

		prohibiting servicers form proceeding with a foreclosure until the borrower has been notified that additional documents or information is needed and been given a reasonable time to those documents or information. ▪ *Short-term forbearance:* The October 2013 Final Rule provides servicers more flexibility in providing short-term forbearance plans for delinquent borrowers who need only temporary relief without going through a full loss mitigation evaluation process. ▪ *Interplay between the servicing rules, bankruptcy law, and Fair Debt Collection Practices Act (FDCPA):* The October 2013 Interim Final Rule and CFPB Bulletin 2013-12 provide clarifications that certain notices and communications mandated by the servicing rules and the Dodd-Frank Wall Street Reform and Consumer Protection Act are still required even when delinquent borrowers have instructed servicers who are debt collectors under the FDCPA to cease communications. However, such will not be required to provide early intervention contacts or certain notices of interest rate adjustments. The October 2013 Interim Final Rule also exempts servicers from being required to provide periodic statements and early intervention contacts with borrowers in bankruptcy.
June 7, 2013	1.0	*Original Document*

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1. Introduction

1.1 What are the RESPA & TILA Mortgage Servicing Rules?

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) amended the Real Estate Settlement Procedures Act (RESPA) of 1974, which is implemented by Regulation X, and the Truth in Lending Act (TILA), which is implemented by Regulation Z, with regard to the servicing of certain residential mortgage loans. The Consumer Financial Protection Bureau (Bureau) issued rules in January 2013 to implement these Dodd-Frank Act amendments to RESPA and TILA. The Bureau also issued several amendments to these rules in 2013 and 2014. This guide refers to all of these rules collectively as the 2013 Mortgage Servicing Rules. Most of the 2013 Mortgage Servicing Rules became effective on January 10, 2014.

In August 2016, the Bureau issued a final rule that clarified, revised, and amended several provisions in the 2013 Mortgage Servicing Rules.[1] These provisions include requirements regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation under Regulation X's servicing provisions; and prompt crediting and periodic statements under Regulation Z's servicing provisions. The final rule also addressed certain servicing requirements when a person is a potential or confirmed successor in interest, is a debtor in bankruptcy, or has sent a cease communication request under the Fair Debt Collection Practices Act (FDCPA). This guide refers to the August 2016 final rule as the 2016 Mortgage Servicing Rule. Most provisions of the 2016 Mortgage Servicing Rule became effective on October 19, 2017. The provisions relating to successors in interest and bankruptcy periodic statements became effective on April 19, 2018.

To assist borrowers affected by the COVID-19 emergency, the Bureau issued two rules amending Regulation X. In June 2020, the Bureau issued an interim final rule (2020 Mortgage Servicing COVID-19 Interim Final Rule) to temporarily permit mortgage servicers to offer certain loss

[1] The Bureau issued the final rule on August 4, 2016. The rule was published in the Federal Register on October 19, 2016. 81 Fed. Reg. 72160 (October 19, 2016).

mitigation options, such as certain payment deferral and partial claim programs, to borrowers affected by the COVID-19 pandemic based on the evaluation of an incomplete loss mitigation application. These amendments were effective on July 1, 2020. Additionally, in June 2021, the Bureau issued a final rule that amended several provisions to assist borrowers during the COVID-19 pandemic (2021 Mortgage Servicing COVID-19 Rule). The final rule included provisions to establish temporary procedural safeguards that servicers must ensure are met before you can make the first notice or filing required for foreclosure on certain mortgages. In addition, the provisions temporarily permit mortgage servicers to offer certain COVID-19-related streamlined loan modifications based on the evaluation of an incomplete application and added temporary early intervention and loss mitigation reasonable diligence obligations. These provisions are effective on August 31, 2021.

The 2013 and 2016 Mortgage Servicing Rules, the 2020 Mortgage Servicing COVID-19 Interim Final Rule, and the 2021 Mortgage Servicing COVID-19 Rule are collectively referred to in this guide as the "Mortgage Servicing Rules." This guide provides a summary of those rules. The guide highlights issues that small creditors, and those that work with them, might find helpful to consider when implementing the rules. Appendix B of this Guide specifies deviations from the 2013 and 2016 Mortgage Servicing Rules that are applicable in the limited and temporary circumstances of the 2020 Mortgage Servicing COVID-19 Interim Final Rule and the 2021 Mortgage Servicing COVID-19 Rule. References to Appendix B are placed in the applicable sections of this Guide where relevant to compliance with the 2013 and 2016 Mortgage Servicing Rules. The content of this guide does not include any rules, bulletins, guidance, or other interpretations of the Mortgage Servicing Rules, Regulation X, or Regulation Z issued or released after the date on the guide's cover page.

The Mortgage Servicing Rules can be found in the Federal Register:

- Regulation X at 78 FR 10695 (February 14, 2013), as amended by 78 FR 44685 (July 24, 2013), 78 FR 60381 (October 1, 2013), 78 FR 62993 (October 23, 2013) (Interim Final Rule), 81 FR 72160 (October 19, 2016), 85 FR 39055 (June 30, 2020) (Interim Final Rule), and 86 FR 34848 (June 30, 2021).
- Regulation Z at 78 FR 10901 (February 14, 2013), as amended by 78 FR 44685 (July 24, 2013), 78 FR 60381 (October 1, 2013), 78 FR 62993 (October 23, 2013) (Interim Final Rule), 79 FR 65299 (November 3, 2014), and 81 FR 72160 (October 19, 2016).

The Bureau has also issued several other rules and documents related to the Mortgage Servicing Rules. These documents include:

- A supervisory bulletin CFPB Bulletin 2013-12;
- Two interpretive rules relating to the Mortgage Servicing Rules: 79 FR 41631 (July 17, 2014) and 81 FR 71977 (October 19, 2016);
- Policy guidance on supervisory and enforcement priorities for early compliance with the 2016 Mortgage Servicing Rules, 82 FR 29713 (June 30, 2017) (June 2017 Policy Guidance);
- A final rule making technical corrections to the 2016 Mortgage Servicing Final Rule, 82 FR 30947 (July 5, 2017) (July 2017 Final Rule);
- An interim final rule, 82 FR 47953 (October 16, 2017) (October 2017 Interim Final Rule); and
- A final rule which revised the timing requirements adopted in the 2016 Mortgage Servicing Final Rule for servicers transitioning between modified or unmodified periodic statements and coupon books when consumers enter or exit bankruptcy, 83 FR 1053 (March 12, 2018).

The Dodd-Frank Act required disclosures for certain adjustable-rate mortgages (ARMs) and force-placed insurance as well as periodic statements for consumers' mortgage loans. It also required prompt crediting of mortgage payments and providing payoff statements to consumers. The Dodd-Frank Act further required servicers to take action to correct certain errors asserted by consumers regarding their mortgages and to respond to requests for certain information from consumers regarding their mortgages. The Dodd-Frank Act, TILA, and RESPA authorized the Bureau to implement these requirements and to issue additional consumer protection regulations. The Mortgage Servicing Rules issued by the Bureau under this (and other) authority require servicers to establish certain policies, procedures, and requirements—including regarding the designation of personnel to assist consumers who fall behind in their mortgage payments—and to contact consumers soon after delinquency and work with them to be considered for applicable loss mitigation options.

The Mortgage Servicing Rules set forth ***minimum requirements*** for compliance. The Mortgage Servicing Rules do not foreclose other entities, such as owners and assignees of mortgage loans, from setting higher servicing standards that are not in conflict with the requirements set forth in the Mortgage Servicing Rules. An applicable servicing requirement is not in conflict with the Mortgage Servicing Rules solely because it imposes additional requirements. For example, if owner or assignee guidelines prescribe exactly how frequently

servicers must call borrowers until right party contact is made, those requirements may exceed the general requirement of good faith efforts under the Mortgage Servicing Rules so long as the guidelines are not in conflict with the requirements of the Mortgage Servicing Rules.

Note that, subsequent to the publication of this guide, the Bureau may update or amend provisions of the Mortgage Servicing Rules and intends to provide guidance updates to reflect any such future changes. Changes to this Small Entity Compliance Guide are noted in the guide's Version Log.

1.2 What is the purpose of this guide?

This guide provides a summary of the Mortgage Servicing Rules. This guide also highlights issues that small creditors, and those that work with them, might find helpful to consider when implementing the Mortgage Servicing Rules.

This guide also meets the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, which requires the Bureau to issue a small entity compliance guide to help small businesses comply with the regulations, and is a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on Compliance Aids, available at www.consumerfinance.gov/policy-compliance/rulemaking/finalrules/policy-statement-compliance-aids/, that explains the Bureau's approach to Compliance Aids.

Users of this guide should review the Mortgage Servicing Rules as well. The Mortgage Servicing Rules are available at www.consumerfinance.gov/rules-policy/final-rules/mortgage-servicing-rules-under-real-estate-settlement-procedures-act-and-truth-lending-act/.

Servicers may want to review their policies, processes, software, contracts, or other aspects of their business operations in order to identify any changes needed to comply with the Mortgage Servicing Rules. Changes related to the Mortgage Servicing Rules may take careful planning, time, or resources to implement. This guide will help you identify and plan for any necessary changes.

Except when specifically needed to explain the Rule, this guide does not discuss other laws, regulations, or regulatory guidance that may apply. The content of this guide does not include

any rules, bulletins, guidance, or other interpretations issued or released after the date on the guide's cover page.

At the end of this guide, there is more information about where to find some additional resources.

1.3 Who should read this guide?

Creditors, assignees, and servicers of mortgage loans may find this guide useful. This guide may also be helpful to companies that serve as business partners to creditors, assignees, and servicers.

This guide may be useful in helping you determine whether these rules regulate the loans you service, and, if so, what your compliance obligations are under the rules.

1.4 Where can I find additional resources that will help me understand the Mortgage Servicing Rules?

Resources to help you understand and comply with the Dodd-Frank Act mortgage reforms and the Bureau's regulations, including downloadable compliance guides, are available through the Bureau's website at www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/mortserv/. On this website, we also offer the ability to sign up for an email distribution list through which we announce additional resources and tools as they become available. The Bureau's website also provides a link to our interactive regulations tool, which is available at www.consumerfinance.gov/rules-policy/regulations/. The interactive regulations tool includes an unofficial version of Regulation X (12 CFR Part 1024) and Regulation Z (12 CFR part 1026), in which the Mortgage Servicing Rules are codified. The tool provides versions of the regulatory text and commentary that are currently in effect in a single location.

If after reviewing these materials, as well as the regulation and official commentary, you have a specific regulatory interpretation question about the Mortgage Servicing Rules, you can submit it to us on our website at https://reginquiries.consumerfinance.gov/. Please understand that

the responses we provide are not official interpretations of the Bureau and are not a substitute for formal legal counsel or other compliance advice.

Email comments about this guide to CFPB_RegulatoryImplementation@cfpb.gov. Your feedback is crucial to making this guide as helpful as possible. The Bureau welcomes your suggestions for improvements and your thoughts on its usefulness and readability.

The Bureau is particularly interested in feedback relating to:

- How useful you found this guide for understanding the rules
- How useful you found this guide for implementing the rules at your business
- Suggestions you have for improving the guide, such as additional implementation tips

2. Overview of the Mortgage Servicing Rules

2.1 What are the Mortgage Servicing Rules about?

The Mortgage Servicing Rules address the servicing of mortgage loans and are set forth in both Regulation X and Regulation Z. Regulation X uses the term "borrower," and Regulation Z uses the term "consumer." Unless otherwise noted, this guide uses the term "borrower" throughout.

The Regulation X rule addresses:

- Successors in interest (§ 1024.17 and Subpart C of Regulation X)
- Error resolution and information requests (§§ 1024.35 and 1024.36)
- Force-placed insurance (§§ 1024.17 and 1024.37)
- General servicing policies, procedures, and requirements (§ 1024.38)
- Early intervention with delinquent borrowers (§ 1024.39)
- Continuity of contact with delinquent borrowers (§ 1024.40)
- Loss mitigation (§ 1024.41)

The Regulation Z rule addresses:

- Successors in interest (§§ 1026.2(a)(11) and (a)(27), 1026.20(c) through (e), 1026.36(c), 1026.39(f), and 1026.41(g))
- Interest rate adjustment notices for ARMs (§ 1026.20)
- Prompt crediting of mortgage payments and responses to requests for payoff amounts (§ 1026.36(c))
- Periodic statements for mortgage loans (§ 1026.41)

- Small servicers (§ 1026.41(e)(4))

2.2 When do I have to start following these rules?

The 2013 Mortgage Servicing Rules generally took effect on January 10, 2014. The 2016 Mortgage Servicing Rule took effect on October 19, 2017 for all provisions, except as noted below.[2]

- Bankruptcy periodic statement exemption and bankruptcy modified periodic statements took effect on April 19, 2018. The relevant provisions are §§ 1026.41(e)(5) and (f) and related commentary.
- Successor in interest provisions took effect on April 19, 2018. The relevant provisions are in both Regulation X and Regulation Z.
  - Under Regulation X, these provisions are § 1024.30(d) and related comments 30(d)-1 through -3; the definitions of successor in interest and confirmed successor in interest under § 1024.31 and related comments 31 (Successor in interest)-1 and -2; § 1024.32(c) and related comments 32(c)(1)-1, 32(c)(2)-1 and -2, and 32(c)(4)-1; § 1024.35(e)(5); § 1024.36(d)(3) and (i) and related comments 36(i)-1 through -3; § 1024.38(b)(1)(vi) and related comments 38(b)(1)(vi)-1 through -5; comment 41(b)-1; and comment appendix MS to part 1024-2.
  - Under Regulation Z, these provisions are § 1026.2(a)(11) and (a)(27) and related comments 2(a)(11)-4 and 2(a)(27)(i)-1 and -2; comment 20(e)(4)-3; § 1026.20(f); comment 36(c)(1)(iii)-2; § 1026.39(f); comment 41(c)-5; and § 1026.41(g).

The 2020 Mortgage Servicing COVID-19 Interim Final Rule took effective on July 1, 2020. The 2021 Mortgage Servicing COVID-19 Rule took effect on August 31, 2021.

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[2] In June 2017, the Bureau issued policy guidance on its supervisory and enforcement priorities regarding early compliance with the 2016 Mortgage Servicing Rule. 81 FR 7260, 72350 (Oct. 19, 2016); 82 FR 29713 (June 30, 2017). The Bureau indicated in the guidance that it does not intend to take supervisory or enforcement action for violations of Regulation X or Regulation Z resulting from a servicer's compliance with the 2016 Mortgage Servicing Rule occurring up to three days before the applicable effective dates. 82 FR 29713.

The Bureau may—from time to time—issue rule updates that have different effective dates.

2.3 What loans do the Mortgage Servicing Rules cover?

These rules generally apply to consumer mortgage loans and entities that service these loans. Servicers should note that certain aspects of the rules exempt particular types of consumer mortgage loans. For example, reverse mortgages transactions and timeshare plans are exempt from the periodic statement requirements. In addition, not all servicers are required to comply with all rules. For example, small servicers are exempt from the majority of the loss mitigation requirements. To help readers, this guide includes a scope and small servicer exemption discussion for each section of the rules.

3. Small Servicer Exemption

3.1 Who is considered a small servicer? (§ 1026.41(e)(4))

Servicers that qualify as small servicers are exempt from certain parts of the Mortgage Servicing Rules. You are a small servicer if you meet one of these criteria:

- You, together with any affiliates, service 5,000 or fewer mortgage loans, and you (or an affiliate) are the creditor or assignee for all of them. See *"What loans should be considered?"* in Section 3.2 for more information about what loans count toward the 5,000 mortgage loan threshold.
- You are a nonprofit small servicer, meaning you are designated as a nonprofit organization under section 501(c)(3) of the Internal Revenue Code of 1986, you service 5,000 or fewer mortgage loans (including any mortgage loans serviced on behalf of associated nonprofit entities), and you (or an associated nonprofit entity) are the creditor for all of those loans. See § 1026.41(e)(4)(ii)(C)(2) for a definition of "associated nonprofit entities" and *"What loans should be considered?"* in Section 3.2 for more information.
- You are a Housing Finance Agency, as defined in 24 CFR § 266.5.

(§ 1026.41(e)(4)(ii))

3.1.1 Servicers that service 5,000 or fewer mortgage loans (§ 1026.41(e)(4)(ii)(A))

To qualify for the small servicer exemption under § 1026.41(e)(4)(ii)(A), you must meet a two-part test. First, you must (together with any affiliates) service 5,000 or less mortgage loans per year. Second, you must service only mortgage loans for which you (or your affiliate) are the creditor or assignee. (Comment 41(e)(4)(ii)-2)

For example, if you service 3,000 loans—2,900 of which you own or originated and 100 of which neither you nor any affiliate own or originated—you do not qualify as a small servicer because

you service loans for which you (or an affiliate) are not the creditor or assignee, notwithstanding that you service fewer than 5,000 loans. (Comment 41(e)(4)(ii)-2.ii)

3.1.2 Nonprofit servicer (§ 1026.41(e)(4)(ii)(C))

To qualify for the nonprofit small servicer exemption pursuant to § 1026.41(e)(4)(ii)(B), you must be designated a "nonprofit entity." A "nonprofit entity" is defined as an entity having a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code. (§ 1026.41(e)(4)(ii)(C))

In addition to meeting the definition of a nonprofit entity, you must meet a two-part test. First, you must service 5,000 or fewer mortgages loans, including those serviced on behalf of associated nonprofit entities. The term "associated nonprofit entities" is defined as nonprofit entities that by agreement operate using a common name, trademark, or servicemark to further and support a common charitable mission or purpose. Second, you must service only mortgage loans that you or an associated nonprofit entity originated. (Comment 41(e)(4)(ii)-4)

For example, if you service 4,400 loans—3,400 of which you originated and 1000 of which your associated nonprofit originated, and 500 loans neither you nor your associated nonprofit entity originated, you do not qualify as a small servicer because you service loans that you or your associated nonprofit entity **did not** originate. (Comment 41(e)(4)(ii)-4.ii)

3.1.3 Note on loans acquired through merger or acquisition

Any mortgage loan you or your affiliates obtain as part of a merger or acquisition, or as part of the acquisition of all of the assets or liabilities of a branch office of a creditor counts as a loan for which you (or an affiliate) are the creditor or assignee.

A branch office means either an office of a depository institution that is approved as a branch by a federal or state supervisory agency or an office of a for-profit mortgage lending institution (other than a depository institution) that takes applications from the public for mortgage loans. (Comment 41(e)(4)(iii)-1)

3.1.4 Note on master/subservicer

Where a loan is subserviced, the master servicer does not lose its small servicer status if it retains a subservicer (see § 1024.31 for the definition of those terms). The subservicer can gain

the benefit of the small servicer exemption only if both the master servicer and the subservicer are small servicers. The subservicer generally will not be a small servicer because it does not own and did not originate the loans it subservices—unless it is an affiliate of a master servicer that qualifies as a small servicer. (Comment 41(e)(4)(ii)-3)

3.2 What loans should be considered? (§ 1026.41(a) and (e))

Only consider mortgage loans that you service. "Mortgage loan" is defined in § 1026.41(a)(1) to mean a closed-end consumer credit transaction secured by a dwelling. Use this definition to identify the pool of loans from which to determine your small servicer status. **Do not** include mortgage loans that are:

- Voluntarily serviced by you for a non-affiliate and for which the you do not receive any compensation or fees;
- Reverse mortgages;
- Timeshare plans in the pool of loans; or
- Transactions serviced by you for a "seller financer" that meet all of the criteria identified in § 1026.36(a)(5). See *"Who is considered a 'seller financer'?"* in Section 3.2.1 for more information.

This same pool of loans determines your status as a small servicer whether you are looking at the small servicer exemption with regard to provisions in Regulation X or Z.

3.2.1 Who is considered a "seller financer"? (§ 1026.36(a)(5))

To be considered a "seller financer," you must meet three criteria. First, a "seller financer" must be a natural person, estate, or trust that provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural person, estate, or trust and serves as security for the financing. (§ 1026.36(a)(5)(i))

Second, the "seller financer" cannot have constructed, or acted as a contractor for the construction of, a residence on the property in its ordinary course of business. (§ 1026.36(a)(5)(ii))

Third, the financing must have a repayment schedule that does not result in negative amortization and must have a fixed rate or an adjustable rate subject to certain limitations. If the financing has an adjustable rate, it must not adjust until after five or more years (*i.e.*, 5/1 or 7/7 ARMs); the rate must be determined by the addition of a margin to an index rate, based on a widely available index such as indices for U.S. Treasury securities or the London Interbank Offered Rate; and the rate must be subject to reasonable annual and lifetime rate adjustment limitations. (§ 1026.36(a)(5)(iii))

3.2.2 What happens if I no longer qualify for the small servicer exemption? (§ 1026.41(e)(4)(iii))

The small servicer exemption is determined each calendar year based on the loans you and your affiliates service as of January 1 of that calendar year.

If you cease to qualify for the exemption, you have 6 months or until the next January 1 (whichever is later) to comply with any requirements that you were previously exempt from because you qualified as a small servicer.

The following examples demonstrate when a servicer either is considered, or is no longer considered, a small servicer:

- A servicer that begins servicing more than 5,000 mortgage loans on October 1, and services more than 5,000 mortgage loans as of January 1 of the following year, would no longer be considered a small servicer on April 1 (six months after the previous October) of that following year.
- A servicer that begins servicing more than 5,000 mortgage loans on February 1, and services more than 5,000 mortgage loans as of the following January 1 of the following year, would no longer be considered a small servicer as of that January 1.
- A servicer that begins servicing more than 5,000 mortgage loans on February 1, but services less than 5,000 mortgage loans as of the following January 1, is considered a small servicer for that following year. (Comment 41(e)(4)(iii)-2)

3.3 From what provisions are small servicers exempt?

Small servicers are exempt from the following provisions of the Mortgage Servicing Rules:

- The periodic statement provisions. (§ 1026.41) (See Section 5 for more on periodic statements.)
- The prohibition on purchasing force-placed insurance where a servicer could continue the borrower's existing hazard insurance coverage by advancing funds to escrow under certain circumstances (when the cost of force-placed insurance is less than the cost of advancing for hazard insurance). (§ 1024.17(k)(5)) (*See* Section 8 for more on force-placed insurance.)
- The general servicing policies, procedures, and requirements provisions. (§ 1024.38) (*See* Section 10 for general servicing policies, procedures, and requirements.)
- The early intervention provisions. (§ 1024.39) (*See* Section 11 for more on early intervention.)
- The continuity of contact provisions. (§ 1024.40) (*See* Section 12 for more on continuity of contact.)
- Some of the loss mitigation provisions. (§ 1024.41) (*See* Section 13 for more on loss mitigation.)

Small servicers must comply with certain provisions of the Mortgage Servicing Rules regardless of servicers' status as small servicers, including for example:

- The provision relating to written requests from a person that indicate that the person may be a successor in interest. (§ 1024.36(i)) (*See* Section 4.6 for more information.)
- The ARM disclosure provisions. (§ 1026.20(c) and (d)) (*See* Section 6 for more on interest rate adjustment notices.)
- The prompt crediting and payoff statement provisions. (§ 1026.36(c)) (*See* Section 7 for more on prompt crediting and payoff statements.)
- The force-placed insurance provisions. (§ 1024.37) (See Section 8 for more on force-placed insurance.)

- The error resolution and information request provisions. (§§ 1024.35 and 1024.36) (See Section 9 for more on error resolution and information requests.)
- Some of the loss mitigation provisions. (§ 1024.41(j)) (See Section 13 for more on loss mitigation.)

4. Successors in Interest

4.1 What do the successor in interest rules require?

Successors in interest under the Mortgage Servicing Rules are certain persons who receive an ownership interest in a property from a borrower by means of one of five types of transfers. See *"Who are successors in interest?* (§§ 1024.31 and 1026.2(a)(27))*"* in Section 4.5.

Unless an exemption applies, the rule requires you to maintain policies and procedures reasonably designed to ensure that you can:

1. Promptly facilitate communication with any potential or confirmed successors in interest regarding a property securing a mortgage loan upon receiving notice of the death of a borrower or of any transfer of the property;
2. Promptly determine what documents you reasonably require to confirm the person's identity and ownership interest in the property, and promptly provide the person with a description of those documents and how to submit a written request for information regarding the documents required for confirmation; and
3. Promptly notify the person, upon the receipt of such documents, that you have
    a. confirmed the person's status as a successor in interest, or
    b. determined that additional documents are required (and what those documents are), or
    c. determined that the person is not a successor in interest. (See "*Do I need to adopt policies and procedures for communicating with potential successors in interest?* (§ 1024.38(b)(1)(vi)) in Section 4.6.1.)

The rule also requires you to respond to certain written requests indicating a person may be a successor in interest by providing that person with a written description of the documents that are required to confirm the person's identity and ownership interest in the property. This requirement includes responding to a written request from an agent of a successor in interest.

See *"What are my responsibilities to a potential successor in interest?* (§§ 1024.36(i) and 38(b)(1)(vi))*"* in Section 4.6 for more information.

You are required to treat a confirmed successor in interest as a borrower for the purposes of Regulation X's Mortgage Servicing Rules and a consumer for the purposes of Regulation Z's Mortgage Servicing Rules. These provisions generally apply to confirmed successors in interest in the same way that they would apply to another borrower or consumer. If a servicer, such as a small servicer, is otherwise exempt from a requirement, such as the early intervention requirement, it does not need to comply with that requirement with regard to a confirmed successor in interest.

4.2 What is the scope of the successor in interest rules?

The successor in interest rules in Regulation X generally apply to federally related mortgage loans (as defined in § 1024.2 subject to the exemptions in § 1024.5(b), but not including open-end lines of credit). The successor in interest rules in Regulation Z generally apply to closed-end consumer credit transactions secured by a dwelling (as defined in § 1026.2(a)(19)).

4.3 Is there a small servicer exemption from the successor in interest requirements?

There is no general exemption from the successor in interest requirements for small servicers, but small servicers have the same exemptions with respect to confirmed successors in interest that they have with respect to other borrowers and consumers. For example, small servicers are exempt from § 1024.38, which generally requires servicers to adopt servicing policies, procedures, and requirements. (§ 1024.30(b)). However, small servicers are required to respond to certain written requests from potential successors in interest pursuant to § 1024.36(i), as there is no small servicer exemption for information requests.

4.4 When do I have to start complying with the successor in interest rules?

The successor in interest provisions of the 2016 Mortgage Servicing Rule became effective April 19, 2018. For example, as of the April 19, 2018, effective date servicers must:

- Maintain policies and procedures with respect to potential successors in interest as defined in the 2016 Mortgage Servicing Rules;
- Provide a written response in accordance with § 1024.36(i) to certain written requests received on or after the effective date from a person indicating that a person may be a successor in interest as defined in the 2016 Mortgage Servicing Rules; and
- Generally treat confirmed successors in interest as defined in the 2016 Mortgage Servicing Rules as borrowers for the purposes of Regulation X's mortgage servicing rules and consumers for the purposes of Regulation Z's mortgage servicing rules.

For more information on the requirements of the successor in interest provisions of the 2016 Mortgage Servicing Rules, see *What are my responsibilities to a potential successor in interest?* in Section 4.6 and *What are my responsibilities to a confirmed successor in interest?* in Section 4.7.

For more information on effective dates, see *"When do I have to start following these rules?"* in Section 2.2.

4.5 Who are successors in interest? (§§ 1024.31 and 1026.2(a)(27))

Successors in interest are certain persons who inherit or otherwise receive an ownership interest in property, from a spouse, parent, or other relative, or upon the death of a joint tenant, when there is an outstanding mortgage loan on the property. Successors in interest can include persons who acquire their interest in the property upon death of a borrower or in a divorce, as well as transfers from a spouse or from a parent to a child.

Regulations X and Z contain similar definitions of "successor in interest." The two definitions vary slightly to account for the different terms and scope restrictions of the two regulations. For example, Regulation X uses the term "borrower," and Regulation Z uses the term "consumer."

Under Regulation X, a person is a successor in interest if a borrower transfers an ownership interest in a property securing a mortgage loan to the person by means of one of the five categories of transfers listed below:

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;
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.

For example, assume that Person A, the borrower on a mortgage loan, dies and that a relative Person B becomes the sole owner as a result of Person A's death. Person B is a successor in interest on Person A's mortgage loan under the Regulation X definition. Once you confirm Person B's identity and ownership interest in the property, using documents appropriate under state law for the specific type of transfer, Person B would be considered a "confirmed successor in interest." (§ 1024.31)

A "confirmed successor in interest" must be treated as a borrower for purposes of the Mortgage Servicing Rules in Regulation X and a consumer for purposes of the Mortgage Servicing Rules in Regulation Z. (§§ 1024.30(d); 1026.2(a)(11)). For example, if you receive a loss mitigation application from a confirmed successor in interest, you must review and evaluate the application and notify the confirmed successor in interest in accordance with the procedures set forth in § 1024.41 if the property is the confirmed successor in interest's principal residence and the procedures set forth in § 1024.41 are otherwise applicable. (Comment 30(d)-1 of Regulation X)

4.6 What are my responsibilities to a potential successor in interest? (§§ 1024.36(i) and 38(b)(1)(vi))

Unless you are exempt from the requirements of § 1024.38, you must develop policies and procedures relating to potential successors in interest. See *"Do I need to adopt policies and procedures for communicating with potential successors in interest?"* in Section 4.6.1. You must respond to requests from a person indicating that a person may be a successor in interest. See *"If I receive an oral request indicating a person may be a successor in interest, how must I respond?"* in Section 4.6.3 and *"If I receive a written request indicating a person may be a successor in interest, how do I respond?"* in Section 4.6.4. This includes situations where the potential successor in interest contacts you without using the term "successor in interest," as the potential successor in interest does not need to use a particular phrase to alert you of their status. (See Comments 36(i)-1 and 38(b)(1)(vi)-1)

For example, you may be notified of the existence of a potential successor in interest when:

- You receive notice that a transfer of ownership or of an ownership interest in the property has taken place;
- A person notifies you that a borrower has been divorced, legally separated, or died; or
- A person other than a borrower submits a loss mitigation application.

4.6.1 Do I need to adopt policies and procedures for communicating with potential successors in interest? (§ 1024.38(b)(1)(vi))

Servicers that are not exempt from the requirements of § 1024.38 must develop policies and procedures relating to potential successors in interest. Specifically, these servicers must maintain policies and procedures reasonably designed to ensure that the servicer can:

- Promptly facilitate communication with any potential successors in interest regarding the property upon receiving notice of the death of a borrower or of any transfer of the property securing a mortgage loan;

- Promptly determine what documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property, and promptly provide a description of those documents to the person and how the person may submit a written request for a description of the documents required for confirmation (including the appropriate address); and
- Upon the receipt of such documents, promptly make a confirmation determination and notify the person that the servicer has:
  - Confirmed the person's status;
  - Determined that additional documents are required (and what those documents are); or
  - Determined that the person is not a successor in interest.

The Mortgage Servicing Rules do not specifically define the term "prompt" for purposes of § 1024.38(b)(1)(vi). Generally, whether an action is prompt will depend on the facts and circumstances of the potential successor in interest's request. Notification that a potential successor in interest has been confirmed is not prompt if it unreasonably interferes with a successor in interest's ability to apply for loss mitigation options according to the procedures provided in § 1024.41. (Comment 38(b)(1)(vi)-5)

In many circumstances, providing information promptly may require a servicer to respond more quickly than the time limits established in § 1024.36(d)(2) for responding to a request for information under § 1024.36(i). For example, if a non-borrowing spouse indicates that the borrowing spouse has died and that the borrowing spouse and non-borrowing spouse owned the property jointly as tenants by the entirety, the Bureau expects that a prompt response to the non-borrowing spouse would occur within a significantly shorter period than 30 days.

4.6.2 What documents may I require to confirm a potential successor in interest's identity and ownership interest? (Comments 38(b)(1)(vi)-2 and -3)

The documents you require to confirm a potential successor in interest's identity and ownership interest must be reasonable in light of the laws of the relevant jurisdiction, the specific situation of the potential successor in interest, and the documents already in your possession. For example, assume that a potential successor in interest indicates that an ownership interest in the

property transferred to the potential successor in interest from a spouse who is a borrower as a result of a property agreement incident to a divorce proceeding. Assume further that the applicable law of the relevant jurisdiction does not require a deed conveying the interest in the property, but accepts a final divorce decree and accompanying separation agreement executed by both spouses to evidence transfer of title. Under these circumstances, it would be reasonable for you to require the potential successor in interest to provide documentation of the final divorce decree and an executed separation agreement. Because the applicable law of the relevant jurisdiction does not require a deed, it generally would not be reasonable for you to require a deed. (Comment 38(b)(1)(vi)-3.iii)

Where appropriate, the documents you require from a potential successor in interest may include, for example, a death certificate, an executed will, or a court order. You may also require any documents that you reasonably believe are necessary to prevent fraud (for example, if you have reason to believe a document presented is forged). (Comment 38(b)(1)(vi)-2)

4.6.3 If I receive an oral request indicating a person may be a successor in interest, how must I respond? (§ 1024.38(b)(1)(vi))

Servicers subject to § 1024.38(b)(1)(vi) must maintain policies and procedures reasonably designed to ensure that the servicer can promptly facilitate communication with any potential successors in interest regarding the property upon receiving notice of the death of a borrower or any transfer of the property. They must also promptly determine the documents they reasonably require to confirm that person's identity and ownership interest in the property and promptly provide to the potential successor in interest a description of those documents and how the person may submit a written request under § 1024.36(i) (including the appropriate address). This includes situations when a servicer receives actual notice of the existence of a successor in interest through oral notification. (§ 1024.38(b)(1)(vi) and comment 38(b)(1)(iv)-1)

4.6.4 If I receive a written request indicating a person may be a successor in interest, how do I respond? (§§ 1024.36(i) and 38)

Servicers subject to § 1024.38(b)(1)(vi) must maintain policies and procedures reasonably designed to ensure that the servicer can promptly facilitate communication with any potential successors in interest regarding the property upon receiving notice of the death of a borrower or

any transfer of the property. They must also promptly determine the documents they reasonably require to confirm that person's identity and ownership interest in the property and promptly provide to the potential successor in interest a description of those documents and how the person may submit a written request under § 1024.36(i) (including the appropriate address).

In addition, all servicers must provide a written response in accordance with § 1024.36(i) to certain written requests from a person indicating that a person may be a successor in interest. Specifically, when you receive a written request from a person that (1) indicates they may be a successor in interest, (2) includes the name of the borrower from whom the person received an ownership interest, and (3) provides information that enables you to identify the mortgage loan account, you must generally do the following:

- Within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the request, provide a written acknowledgment that you have received the request. (§ 1024.36(c))
- Within thirty-days (excluding legal public holidays, Saturdays, and Sundays) of receiving the written request, provide a written description of the documents you reasonably require to confirm the person's identity and ownership interest in the property and contact information, which must include a telephone number, that the person may use for further assistance.
    - If you are subject to § 1024.38(b)(1)(vi), your policies and procedures require you to provide information promptly, which depending on the facts and circumstances may require a faster response to a potential successor in interest than the time limits established in § 1024.36(d)(2). (§ 1024.38(b)(1)(vi))

You may combine these two notices so long as you provide the combined notice within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the written request. (§ 1024.36(e))

If the written request does not provide sufficient information for you to identify the documents reasonably required to confirm the person's identity and ownership interest, you may send the potential successor in interest a modified version of the second notice required in § 1024.36(i)(1), described above. In lieu of providing a written description of the documents you require to confirm the person's identity and ownership interest in the property, you may provide a response that:

> You may also choose to contact the potential successor in interest informally to clarify the request and obtain additional relevant information that is needed to respond to the request. Through such contacts, you may be able to obtain any missing information that you need to respond fully within the time limits.

- Includes examples of documents typically accepted to establish identity and ownership interest in a property;
- Indicates that the person may obtain a more individualized description of required documents by providing additional information;
- Specifies what additional information is required to enable the servicer to identify the required documents; and
- Provides contact information, including a telephone number, for further assistance.

(§ 1024.36(i)(2))

When the potential successor in interest provides orally or in writing the additional required information that you specified, you must treat the newly acquired information, together with the original request, as a new non-duplicative request under § 1024.36(i)(1). Therefore, you must comply with § 1024.36(i)(1) and respond to the potential successor in interest by providing a written description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property and contact information, including a telephone number, for further assistance. For timing purposes, you will consider the request received as of the date the required information was acquired.

4.6.5 Must I respond to a written request from a person that claims to be an agent of a potential successor in interest? (Comment 36(i)-3)

An information request pursuant to § 1024.36(i) is considered to be submitted by a potential successor in interest if the information request is submitted by an agent of the potential successor in interest. If you receive a written notice from a person that claims to be an agent of a potential successor in interest, you may undertake reasonable procedures to determine if that person has authority from the potential successor in interest to act on the potential successor in interest's behalf. You may establish procedures to determine if a person that claims to be an agent of a potential successor in interest has authority from the potential successor in interest to act on the potential successor in interest's behalf, for example, by requiring that the person provide documentation from the potential successor in interest stating that the purported agent is acting on the potential successor in interest's behalf. Upon receipt of such documentation, you must treat the request for information as having been submitted by the potential successor in interest. (Comment 36(i)-3)

4.6.6 Can I require that potential successors in interest use a specific address to submit information requests? (§ 1024.36(i)(4))

If you have established an address that a borrower must use to request information pursuant to § 1024.36(b) and the potential successor in interest does not use that address, you are not required to treat that request as a request for information under § 1024.36(i)(4). See "*Can I designate addresses for notices of error or requests for information?*" in Section 9.8 for more information.

Unless you are a small servicer, however, you may be required to respond to a written request sent to an address that is not the address you have established for requests. Servicers subject to § 1024.38(b)(1)(vi) must have policies and procedures that are reasonably designed to ensure they are able to respond promptly with information upon receiving notice of the existence of a potential successor in interest. This applies to requests received at an address that is not the address a servicer has established for requests under § 1024.36(b).

4.6.7 Can I require that a person assume a mortgage loan before confirming that the person is a successor in interest? (Comments 30(d)-1 and -2 of Regulation X; Comment 2(a)(11)-4.i of Regulation Z)

No. You may not require a person to assume a mortgage loan to be considered a successor in interest. If, however, a person assumes the mortgage loan obligation under state law or is otherwise liable on it, the protections that the successor in interest enjoys under Regulations X and Z are not limited to the protections that apply to a confirmed successor in interest under § 1024.30(d) and § 1026.2(a)(11).

4.6.8 Am I required to search for potential successors in interest?

The Mortgage Servicing Rules do not require you to conduct a search for potential successors in interest if you have not received actual notice of their existence. (Comment 38(b)(1)(vi)-1)

4.6.9 If I receive a loss mitigation application from a potential successor in interest, do I review and evaluate the application in accordance with loss mitigation procedures?

See "*Potential successors in interest* (Comments 41(b)-1.i and 41(b)-1.ii)" in the Loss Mitigation Procedures section in Section 13.4.12.

4.7 What are my responsibilities to a confirmed successor in interest?

Generally, you are required to treat a confirmed successor in interest as a borrower for the purposes of Regulation X's mortgage servicing rules and a consumer for the purposes of Regulation Z's mortgage servicing rules. Confirmed successors in interest are treated as borrowers or consumers for purposes of the following provisions:

- Escrow Accounts (§ 1024.17);

- Subpart C of Regulation X;
- Disclosure Requirements Regarding Post-Consummation Events (§ 1026.20);
- Prompt Payment Crediting and Payoff Statements (§ 1026.36(c));
- Mortgage Transfer Disclosures (§ 1026.39); and
- Periodic Statement Requirements (§ 1026.41).

Note that the early intervention, continuity of contact, and loss mitigation requirements (§§ 1024.39 through 1024.41), only apply to a confirmed successor in interest when the property is the confirmed successor in interest's principal residence. (§ 1024.30(c)(2)). Determining a borrower's principal residence 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)

4.7.1 Do I need to adopt policies and procedures for communicating with confirmed successors in interest? (§ 1024.38(b)(1)(vi))

Servicers that are not otherwise exempt from the requirements of § 1024.38 must develop policies and procedures reasonably designed to ensure that they promptly facilitate communication with confirmed successors in interest when they receive notice of the death of a borrower or any transfer of the property securing a mortgage loan. (§ 1024.38(b)(1)(vi))

4.7.2 What information must I share with a confirmed successor in interest?

You must send confirmed successors in interest disclosures and provide other information under various mortgage servicing rules that relate to:

- Escrow accounts, payments, and account balances (§§ 1024.17 and 1024.34);
- Mortgage servicing transfers and mortgage transfers (§§ 1024.33 and 1026.39);
- Error resolution (§ 1024.35);
- Information requests (§ 1024.36);

- Force-placed insurance (§ 1024.37);
- Early intervention (§ 1024.39);
- Loss mitigation (§ 1024.41);
- Post-consummation events (§ 1026.20);
- Payoff statements (§ 1026.36(c)); and
- Periodic statements (§ 1026.41).

Note that the information request and error resolution provisions allow you to limit the information that confirmed successors in interest may obtain about other borrowers and that all borrowers may obtain about potential and confirmed successors in interest in response to information requests and notices of error requests for documentation. See *"May I omit borrower information from documents that are shared with a confirmed successor in interest in responding to an information request or a notice of error request for documentation?"* in Section 4.7.9 for more information

You are generally not required to send a Mortgage Servicing Rule notice to a confirmed successor in interest when you are sending that same specific notice to another borrower or consumer on the account. See *"Do I need to send a confirmed successor in interest a notice if I send another confirmed successor in interest that notice?"* in Section 4.7.8 for more information.

Similarly, if you send an optional written notice and acknowledgment form that complies with the requirements in § 1024.32(c) to a confirmed successor in interest who has not assumed the mortgage loan obligation under state law, and the confirmed successor in interest does not execute the acknowledgment form indicating a desire to receive the notices, you are not required to provide the confirmed successor in interest any written disclosures required by §§ 1024.17, 1024.33, 1024.34, 1024.37, 1024.39, 1026.20(c) through (e), 1026.39(b), 1026.41 or to comply with the live contact requirements in § 1024.39(a), as to that confirmed successor in interest. However, the confirmed successor in interest may request copies of notices sent to other borrowers or consumers through a request for information.

4.7.3 What can I do to ensure that sending required notices to confirmed successors in interest who have not

assumed the mortgage loan obligation under state law won't confuse or mislead them about their liability?

The servicing notices provide important information that can assist confirmed successors in interest in preserving their ownership interests in their properties. Some language appearing in the model and sample form notices in Regulations X and Z, however, could suggest that the recipient of the notice is liable on the mortgage loan obligation. It is possible that this language, without modification, could confuse confirmed successors in interest who have not assumed the mortgage loan obligation under state law and are not otherwise liable on the mortgage loan obligation. For example, some of these forms state: "your loan" or "[y]ou are late on your mortgage payments."

The Mortgage Servicing Rules do not require servicers to use any particular method to ensure that notices required by the Mortgage Servicing Rules do not confuse or mislead confirmed successors in interest who are not liable for the loan and have not assumed the mortgage loan obligation under state law. However, Regulations X and Z provide several different options that you can use as you deem appropriate to ensure clarity in your communications with confirmed successors in interest.

One option is to adjust the language in the notices to replace terminology that might suggest liability. For example, you can modify certain model and sample forms for ARM disclosures to remove language regarding personal liability to accommodate particular consumer circumstances or transactions not addressed by the forms. (Comments 20(c)(3)(i)-1, 20(d)(3)(i)-1)

A second option is to add an affirmative disclosure that clarifies a confirmed successor in interest has no personal liability and has not assumed the mortgage loan obligation under state law. For some of the required servicing notices, this type of disclosure could be added into the notice, while for other types of notices it could be provided in an explanatory cover letter in the same transmittal.

A third possibility is to send an optional notice and acknowledgment form, as described under § 1024.32(c), to confirmed successors in interest who have not assumed the mortgage loan obligation and are not otherwise liable on the mortgage loan under state law. The notice explains that the confirmed successor in interest is not liable until that person assumes the mortgage loan obligation under state law. The notice also indicates that the confirmed

successor in interest must return the acknowledgment form to receive servicing notices under the Mortgage Servicing Rules.

See also "*Note on modifying sample periodic statements*" in Section 5.6.3 for more information on modifying sample periodic statements.

4.7.4 Why might I choose to send a confirmed successor in interest the optional notice and acknowledgment form described in § 1024.32(c)?

If upon confirmation you send a confirmed successor in interest the optional notice and acknowledgment form, as described under § 1024.32(c), the Mortgage Servicing Rules relieve you of the obligations to provide Mortgage Servicing Rule notices and to engage in live contacts with the confirmed successor in interest until the confirmed successor in interest either provides you an executed acknowledgment indicating a desire to receive the notices or assumes the mortgage loan obligation under state law.

Note that if a confirmed successor in interest assumes a mortgage loan obligation under state law, the information in the optional notice and acknowledgment form is no longer applicable, and you become obligated to provide any notices required by the Mortgage Servicing Rules.

4.7.5 What are the content requirements for the optional notice and acknowledgment form? (§ 1024.32(c)(1))

An optional written notice and acknowledgment form will not relieve you of the obligation to send other servicing notices unless it conforms to the requirements listed in § 1024.32(c) and the other conditions are met. The requirements listed can be broken down into two sections: (1) the notice itself, and (2) the acknowledgment form that is sent with the notice.

The optional notice you provide must clearly and conspicuously explain the following five points:

- You have confirmed the successor in interest's identity and ownership interest in the property.
- Unless the confirmed successor in interest assumes the mortgage loan under state law, the successor in interest is not liable for the mortgage debt and cannot be required to use the successor in interest's own assets to pay the mortgage debt, except that the lender

retains a security interest in the property and a right to foreclose on the property, when permitted by law and authorized under the mortgage loan contract.

- The confirmed successor in interest may be entitled to receive certain notices and communications about the mortgage loan if you are not providing them to another confirmed successor in interest or borrower on the account. You may identify examples of the types of notices and communications (e.g., periodic statements or mortgage transfer notices) the confirmed successor in interest may receive if the acknowledgment form is executed.
- To receive such notices and communications, the confirmed successor in interest must provide you with an executed acknowledgment form. As discussed below, specific information must be incorporated into the acknowledgment form.
- Whether or not the confirmed successor in interest executes the acknowledgment form, the confirmed successor interest is entitled to submit notices of error, requests for information, and requests for a payoff statement. You must include a brief description and explanation of these rights and how to exercise them, including appropriate address information.

Included in the optional notice is a separate acknowledgment form that the confirmed successor in interest can execute and return. You must provide an acknowledgment form that clearly and conspicuously explains that the confirmed successor in interest:

- Requests notices and communications about the mortgage loan, if you are not providing them to another confirmed successor in interest or borrower on the account.
- Indicates that the successor in interest understands that such notices do not make the successor in interest liable for the mortgage debt and that the successor in interest is only liable for the mortgage debt if the successor in interest assumes the mortgage loan obligation under state law.
- Informs the successor in interest that there is no time limit to return an executed acknowledgment, but you will not begin sending notices and communications until the executed acknowledgment is returned.

4.7.6 Must a successor in interest execute an acknowledgment form within a certain time period? (§ 1024.32(c)(3) and comment 32(c)(2)-1)

There is no time limit to return an executed acknowledgment. A confirmed successor in interest may provide an executed acknowledgment to you at any time after confirmation. In addition, you must provide additional copies of the written notice and acknowledgment to the confirmed successor in interest upon written or oral request. (§ 1024.32(c)(3) and comment 32(c)(2)-1)

4.7.7 What happens if the successor in interest fails to provide an executed acknowledgment form or revokes an executed acknowledgment? (§ 1024.32(c)(2) and comment 32(c)(2)-2)

If, upon confirmation, you provide a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice and acknowledgment form in accordance with § 1024.32(c)(1), you will be relieved of the obligation to provide any written disclosures required by §§ 1024.17, 1024.33, 1024.34, 1024.37, 1024.39, 1026.20(c) through (e), 1026.39(b), or 1026.41; or to comply with the live contact requirements in § 1024.39(a).

Similarly, when a confirmed successor in interest who is not liable on the mortgage loan executes and later revokes an executed acknowledgment, pursuant to § 1024.32(c)(1)(iv), you are not required to provide that confirmed successor in interest with written notices stated above, as of the date the revocation is received.

In either scenario, you will not be required to provide notices until the confirmed successor in interest either assumes the mortgage loan obligation under state law or executes and provides you an acknowledgment form.

4.7.8 Do I need to send a confirmed successor in interest a notice if I send another confirmed successor in interest that notice? (Comment 2(a)(11)-4.iv to Regulation Z and comment 32(c)(4)-1 to Regulation X)

Generally, you are not required to send a confirmed successor in interest a required notice under the Mortgage Servicing Rules if you are already providing that same notice to another borrower or consumer on the account.

For example, if you are providing a periodic statement to a consumer who is obligated on the mortgage loan, you are not required to send the same periodic statement to a confirmed successor in interest. (Comments 2(a)(11)-4.iv and 41(a)-1 in Regulation Z). Similarly, you are not required to provide a force-placed insurance notice required under § 1024.37 to a confirmed successor in interest if you are providing the same force-placed insurance notice to another confirmed successor in interest or other borrower on the account. (Comment 32(c)(4)-1 to Regulation X)

However, confirmed successors in interest who are not receiving servicing communications because they are being provided to another borrower or consumer can request copies of servicing notices and other information through the information request process. (See "*Error Resolution and Information Requests*" in Section 9. for more information)

4.7.9 May I omit borrower information from documents that are shared with a confirmed successor in interest in responding to an information request or a notice of error request for documentation? (§§ 1024.35(e)(5) and 36(d)(3))

In responding to a request for information, under§ 1024.36(d), or documentation relating to a notice of error, under (§ 1024.35(e), from a confirmed successor in interest, you may omit from your response location, contact, and personal financial information (*e.g.*, a borrower's Social Security number) that pertains to a borrower who is not the requester. Similarly, if a borrower requests information or documentation, and a responsive document includes location, contact, or personal financial information of a potential or confirmed successor in interest that is not the requester, you may also omit that information. In either scenario, however, you may never omit information about the terms, status, and payment history of the mortgage loan.
(§§ 1024.35(e)(5) and 36(d)(3))

For example, assume a confirmed successor in interest requests information about the mortgage loan. In collecting the information for the confirmed successor in interest, you notice that the information contains contact information for the borrower that transferred the property to the confirmed successor in interest. You may omit the contact information for the transferor borrower before sending your response to the confirmed successor in interest.

4.8 Is there a private right of action for potential successors in interest under RESPA or a privately enforceable notice of error requirement related to successorship determinations?

The Mortgage Servicing Rules do not provide a potential successor in interest a private right of action or a notice of error procedure for claims that a servicer made an inaccurate determination about successorship status or failed to comply with §§ 1024.36(i) or 1024.38(b)(1)(vi). The Mortgage Servicing Rules also do not provide a safe harbor from other claims relating to confirmation determinations, such as claims of unfair, deceptive, or abusive acts or practices.

Confirmed successors in interest are considered borrowers for purposes of Subpart C of Regulation X and escrow account requirements (§ 1024.17) and consumers for purposes of the periodic statement requirements (§ 1026.41), disclosure requirements regarding post-consummation events (§ 1026.20), and mortgage transfer disclosure requirements (§ 1026.39). Therefore, confirmed successors in interest have the same private rights of action to enforce the Mortgage Servicing Rules as other borrowers and consumers.

5. Periodic Statements

5.1 What does the rule on periodic statements require? (§ 1026.41)

For loans subject to the periodic statement rule *(See "What is the scope of the periodic statements rule?* (§ 1026.41(a)(1))*"* in Section 5.2*)*, you must provide borrowers with a statement each billing cycle. The statement must show (among other things) information on the payment due and the application of past payments.

The periodic billing statement must meet certain timing, form, and content requirements. (See *"How often must I send a periodic statement?* (§ 1026.41(a)(2))*"* in Section 5.5, *"What information must be on the periodic statement, and how must I arrange it?"* in Section 5.6, and *"Coupon books for borrowers in bankruptcy"* in Section 5.10.3.)

In addition, under certain circumstances, you must provide periodic statements or coupon books when a borrower is in bankruptcy. See "*Must I provide a borrower in bankruptcy a periodic statement or coupon book?*" in Section 5.10 for more information. This section discusses how the periodic statement rule applies to borrowers who are not in bankruptcy unless otherwise specified.

5.2 What is the scope of the periodic statements rule? (§ 1026.41(a)(1))

The periodic statement requirement applies to any closed-end consumer credit transaction secured by a dwelling, unless an exemption listed in § 1026.41(e) applies.

As Table 1 below illustrates, periodic statements are not required for open-end transactions, reverse mortgages, timeshare loans, and in other circumstances.

TABLE 1: LOANS NOT COVERED BY THE PERIODIC STATEMENT PROVISION IN § 1026.41

Periodic statements not required for:	Notes	Citation
Open-end lines of credit and Home-Equity Lines of Credit (HELOCs)	The periodic statement provisions in § 1026.41 apply only to closed-end transactions. Note that open-end transactions have separate periodic statement requirements found in § 1026.7.	§ 1026.41(a)(1)
Reverse mortgages	Reverse mortgages are exempt from the periodic statement requirement. Reverse mortgages are defined in § 1026.33(a).	§ 1026.41(e)(1)
Timeshare loans	Timeshare loans are exempt from the periodic statement requirement. Timeshare loans are defined in 11 U.S.C. 101(53D).	§ 1026.41(e)(2)
Fixed-rate loans that have coupon books and certain information made available	See *"How can I use coupon books instead of periodic statements?"* in Section 5.7.	§ 1026.41(e)(3)
Loans serviced by small servicers	See *"Who is considered a small servicer?"* in Section 3.1.	§ 1026.41(e)(4)
Loans while the borrower is a debtor in bankruptcy in certain circumstances	Servicers may be exempt from the periodic statement requirement while the borrower is a debtor in bankruptcy. See "*Periodic statement and coupon book exemption for borrowers in bankruptcy*" in Section 5.10.6.	§ 1026.41(e)(5)
Loans that have been charged off	Servicers may be exempt from the periodic statement requirement when a loan has been charged-off. See "*Must I continue to provide periodic statements or coupon books after a mortgage loan is charged off?*" in Section 5.9.	§ 1026.41(e)(6)

5.3 Is there a small servicer exemption to the periodic statement rule?

Yes. Small servicers are exempt from all requirements of the periodic statement rule. (§ 1026.41(e)(4)) (See page 27 for details of the small servicer exemption.)

5.4 Who is responsible for sending a periodic statement? (§ 1026.41(a)(2) and comment 41(a)-3)

Creditors, assignees, and servicers. Note they do not each need to send a separate statement; a borrower needs to receive only one statement each billing cycle.

Creditors or assignees that do not currently own the mortgage loan or the mortgage servicing rights do not have to provide a periodic statement. (§ 1026.41(a)(2))

5.5 How often must I send a periodic statement? (§ 1026.41(a)(2))

You must send a periodic statement each billing cycle. A billing cycle corresponds to the frequency of payments. Thus, if a loan requires the borrower to make monthly payments, that borrower will have a monthly billing cycle. Likewise, if a borrower makes quarterly payments (4 payments a year), that borrower will have a quarterly billing cycle.

You need not send a periodic statement more frequently than once a month. If a mortgage loan has a billing cycle shorter than 31 days (for example, a biweekly billing cycle), you may send a periodic statement covering an entire month. (§ 1026.41(a)(2)). You may combine information from more than one cycle in a single billing statement to create your explanation of the amount due or the past payment breakdown. (Comment 41(a)-2). For example, if you have a biweekly mortgage that was paid on March 6 and 20, you may send a single statement showing both biweekly payments.

5.5.1 Statement timing (§ 1026.41(b))

You must deliver or mail the periodic statement within a "reasonably prompt" time after the payment due date or the end of any courtesy period provided for the previous billing cycle.

"Reasonably prompt" generally means delivering, emailing, or placing the periodic statement in the mail within 4 days of the close of the courtesy period of the previous billing cycle. (Comment 41(b)-1)

The "courtesy period" is the period in which you do not impose a late fee. The meaning of "courtesy period" is explained in Comment 7(b)(11)-1.

If there is no courtesy period, you must send the periodic statement no later than 4 days after the payment due date.

5.5.2 Stopping periodic statements

You do not have to send periodic statements when:

- You transfer the loan to another servicer.
- The loan is fully paid or paid off through a refinance or sale of the house.
- The loan is discharged in a foreclosure sale. The loan is charged-off, you decline to charge additional fees and interest, and you provide the borrower with a copy of the "Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records" periodic statement. See "*Must I continue to provide periodic statements or coupon books after a mortgage loan is charged off?* (§ 1026.41(e)(6))" in Section 5.9 for more information.
- In certain circumstances, a borrower on the mortgage loan becomes a debtor in bankruptcy. See "*Must I provide a borrower in bankruptcy a periodic statement or coupon book?"* in Section 5.10 for more information.

You will have to send periodic statements if the bankruptcy case is dismissed or closed or if the borrower receives a discharge. However, you do not have to send the periodic statement if the borrower discharges personal liability for the mortgage debt, unless the borrower reaffirms personal liability. If the bankruptcy case is revived, the periodic statement exception may still apply. (Comment 41(e)(5)-4)

You must continue to send periodic statements even when borrowers are delinquent or if you are a debt collector under the FDCPA to whom a borrower has sent a written cease communication request. (See CFPB Bulletin 2013-12 for additional details.)

5.6 What information must be on the periodic statement, and how must I arrange it?

The periodic statement rule requires certain groupings of information, and has different requirements for where on the statement you must place these grouping. This information is summarized in Table 2 below. In addition, you can also see how this information would look in the sample forms provided in appendix H-30 of Regulation Z (see "*Note on modifying sample periodic statements*" in Section 5.6.3 for more information).

The information provided in Table 2 may also apply to periodic statements sent to borrowers in bankruptcy, with certain modifications as provided under § 1026.41(f). For information on the content and layout requirements for modified periodic statements, see "*Must I provide a borrower in bankruptcy a periodic statement or coupon book?*" in Section 5.10.

TABLE 2: PERIODIC STATEMENT GROUPING AND PRESENTATION REQUIREMENTS

Grouping	Information required	Presentation requirements	Citation
Amount due	(i) Payment due date (ii) Amount of late fee if payment is late (iii) Amount due	Grouped together in close proximity and located at the ***top*** of the first page	§ 1026.41(d)(1)
Explanation of amount due	(i) Monthly payment amount and breakdown of how that will be applied to principal, interest, and escrow (ii) Total of fees imposed (iii) Past amount due	Grouped together in close proximity and located on the first page	§ 1026.41(d)(2)

Grouping	Information required	Presentation requirements	Citation
Past payment breakdown	(i) Total of all payments since the last statement and application to principal, interest, escrow, fees, and suspense account (ii) Total of all payments since the beginning of the calendar year and application to principal, interest, escrow, and fees as well as total amount in the suspense account	Grouped together in close proximity and located on the first page	§ 1026.41(d)(3)
Transaction activity	List of all the transaction activity since the last statement	All activity must be listed together, but the list can be located anywhere on the statement	§ 1026.41(d)(4)
Partial payment information	***Only if funds are held in a suspense account***, information on what must be done for the funds to be applied	Can be on the first page, a separate page, or in a separate letter	§ 1026.41(d)(5)
Contact information	A toll-free number and email address (if applicable) where borrowers may obtain information about their account	Must be on the first page	§ 1026.41(d)(6)
Account information	(i) Outstanding principal balance (ii) Current interest rate (iii) Date when that interest rate may change (iv) Existence of any prepayment penalty (v) Housing counselor information	Can be anywhere on the statement; these items do not need to be grouped together	§ 1026.41(d)(7)
Delinquency information	***Only if the borrower is 45 days or more delinquent***, see below for a list of information required	Can be on the first page, a separate page, or in a separate letter	§ 1026.41(d)(8)

5.6.1 Housing counselor information

Housing counselor information, including links to HUD-approved housing counselors and state housing finance agencies can be found here: www.consumerfinance.gov/mortgagehelp/.

5.6.2 Delinquency information

This information is only required if the borrower is 45 days or more delinquent. This information could be on the first page of the statement, on a separate page in the statement, or sent in a separate letter:

- The length of the borrower's delinquency (as of the date of the periodic statement). Delinquency is a period of time during which a borrower and the 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. For example, assume a borrower's mortgage loan requires a borrower to make periodic payments of principal, interest, and escrow by the first of each month. Borrower does not make the payment that is due on January 1. On January 2, Borrower is one day delinquent. (Comment 41(d)(8)-1)
- A notification of possible risks and expenses (for example, foreclosure or legal fees) that the borrowers could face if the delinquency is not cured.
- An account history showing, for the previous six months or the period since the last time the account was current, whichever is shorter, the amount remaining past due from each billing cycle or, if any such payment was fully paid, the date on which it was credited as fully paid.
- A notice showing any loss mitigation program the borrower has agreed to, if applicable.
- A notice that you have made the first notice or filing required to start a foreclosure, if applicable.
- The total payment the borrower would have to make to bring the account current.
- A reference to the homeownership counselor information you include elsewhere in your periodic statement. (§ 1026.41(d)(7)(v))

5.6.3 Note on modifying sample periodic statements[3]

Appendix H-30 of Regulation Z contains sample periodic statements. Some elements of the sample periodic statements are not required by the Mortgage Servicing Rules. For example, the tear-off coupon or use of legal-size paper is not required when sending a periodic statement. These elements were included in the sample periodic statements to provide context. While they show one way you could comply with the Mortgage Servicing Rules, these elements are not required.

In addition, you do not have to use the exact terms or layout used in the sample periodic statements found in appendix H-30. You may use terms borrowers in your area commonly understand. For example, servicers in different parts of the country use the terms "escrow account" and "impound account" to describe the account in which servicers collect funds to pay borrowers' tax and insurance bills.

You may also modify the samples to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable. For example, in the case of a confirmed successor in interest who has not assumed the mortgage loan obligation under state law and is not otherwise liable on the mortgage loan, you may modify the forms to:

- Use "this mortgage" or "the mortgage" instead of "your mortgage."
- Use "The payments on this mortgage are late" instead of "You are late on your mortgage payments."
- Use "This is the amount needed to bring the loan current" instead of "You must pay this amount to bring your loan current."

See also "*What can I do to ensure that sending required notices to confirmed successors in interest who have not assumed the mortgage loan obligation under state law won't confuse or mislead them about their liability?*" in Section 4.7.3 for more information on sending notices to successors in interest.

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[3] The allowed modifications to the sample periodic statements provided in Appendix H-30 are effective April 19, 2018. The effective dates were discussed in the 2016 Mortgage Servicing Rule, as well as the technical corrections in the July 2017 Final Rule. The July 2017 Final Rule is *available at* www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/amendments-2013-mortgage-rules-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z-correction/.

For information about modifying periodic statements in context of bankruptcy, see "*Model modified periodic statements for borrowers in bankruptcy*" in Section 5.10.4.

5.6.4 Amount Due

Under the Mortgage Servicing Rules, you are required to disclose and explain a modified "amount due" when (1) the mortgage loan has been accelerated and you accept a lower amount to reinstate the loan, (2) the mortgage loan is subject to a temporary loss mitigation program, or (3) the mortgage loan contract has been permanently modified. (Comments 41(d)(1)-1 and -2 and 41(d)(2)-1 and -2)

When the balance of a mortgage loan has been accelerated but you accept a lesser amount to reinstate the loan, you must disclose the lesser amount that will be accepted to reinstate the loan as the "amount due." If you are only accepting the lesser amount for a specified period of time, you must indicate that the amount is accurate for the designated period of time. For example, you may state that the reinstatement amount will be accepted to reinstate the loan through the "as of [date]" or "good through [date]." The explanation of the "amount due" for an accelerated mortgage, however, must list both the reinstatement amount that is disclosed and the accelerated amount, which is the amount that the borrower technically owes under the loan contract. (Comments 41(d)(1)-1 and 41(d)(2)-1)

When the borrower has agreed to a temporary loss mitigation program, you may disclose either the payment due under the temporary loss mitigation program or the amount due according to the loan contract as the "amount due." The explanation of "amount due," however, must include both the amount due according to the loan contract and the payment due under the temporary loss mitigation program if the servicer provided the temporary loss mitigation payment as the amount due. (Comments 41(d)(1)-2 and 41(d)(2)-2)

When the loan contract has been permanently modified, you must disclose amount due under the modified loan contract as the "amount due." Under a permanently modified loan contract, you are required to explain the "amount due" as normally explained under § 1026.41(d)(2). (Comment 41(d)(1)-3)

If any information necessary for an accurate disclosure is unknown, you must make the "amount due" disclosure based on the best information reasonably available at the time the disclosure is provided and must state clearly that the disclosure is an estimate.

5.7 How can I use coupon books instead of periodic statements? (§ 1026.41(e)(3) and comments 41(e)(3)-1 to -4)

A coupon book is a book with a page for each billing cycle during a set period (often covering one year). The borrower tears off the page or a portion of the page and returns it to you with a payment for each billing cycle.

You may send a coupon book instead of a periodic statement as long as:

- The borrower has a fixed-rate loan. You must send periodic statements to all borrowers who have ARMs, even if you give them a coupon book. (See § 1026.18(s)(7)(iii) and its commentary for guidance on the meaning of "fixed rate.")
- Your coupon book includes certain information. (See "*Information required in a coupon book*" in Section 5.7.1.)
- You make certain information available to the borrower upon request. (See "*Making additional information available*" in Section 5.7.2.)
- You provide certain information to borrowers who are 45 days or more delinquent. (See "*Coupon books for delinquent borrowers*" in Section 5.7.3.)

If a borrower is a debtor in bankruptcy or has discharged or discharged personal liability for the mortgage loan through bankruptcy pursuant to chapters 7, 11, 12, or 13 of the Bankruptcy Code, you may be exempt from providing coupon books. See "*Periodic statement and coupon book exemption for borrowers in bankruptcy*" in Section 5.10.6. If this exemption does not apply, as explained in Section 5.10.2, certain modifications may apply to the coupon book.

5.7.1 Information required in a coupon book (§ 1026.41(e)(3)(i) and (ii) and comments 41(e)(3)-2 and -4)

Your coupon book must include 2 types of information:

1. Information that must appear on every coupon
2. Information that can appear anywhere in the coupon book

Each coupon in your book must have this information:

- The payment due date
- The amount of any late payment fee and the date on which you will charge a late fee if you don't receive the payment
- The amount due

You must include other information in your coupon book, but it does **not** have to be included on each coupon:

- The outstanding principal balance at the beginning of the time period covered by the coupon book
- The current interest rate
- The existence of any prepayment penalty (as defined in § 1026.32(b)(6)(i))
- HUD's toll-free telephone number ((800) 569-4287) to access contact information for homeownership counselors or counseling organizations and the website address for either the Bureau's information section on homeownership counselors (http://www.consumerfinance.gov/mortgagehelp/) or HUD's list of homeownership counselors and counseling organizations (http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm)

You may include other information about the loan on any of the coupon book's pages. (Comment 41(e)(3)-2)

Contact information on where borrowers can get more information about their loans. (See "*Making additional information available*" in Section 5.7.2.)

You can put the above information on the inside of the front or back cover of the coupon book or on filler pages. (Comment 41(e)(3)-3)

5.7.2 Making additional information available (§ 1026.41(e)(3)(iii))

If you opt to use a coupon book, you must make additional information available to borrowers. This information could be made available via telephone, in writing, in person, or electronically (if the borrower consents). Upon request, you must provide any of these items as requested by the borrower:

1. An explanation of the amount due including:

- The periodic payment amount (including a breakdown showing how you will apply the payment to principal, interest, and escrow)
- The total fees or charges you imposed since the last statement
- Any payment amount past due

2. A breakdown of past payments, including:

- The total of all payments you received since the previous statement, including a breakdown showing the amount, if any, you applied to principal, interest, escrow, fees and charges, and the amount, if any, you sent to a suspense or unapplied funds account
- The total of all payments you received since the beginning of the calendar year, including a breakdown showing the amount, if any, you applied to principal, interest, escrow, fees and charges, and the amount, if any, you are currently holding in a suspense or unapplied funds account

3. A list of the transaction activity that occurred since the last statement. "Transaction activity" means any activity that causes a credit or debit to the amount currently due.

- Include the date, a brief description, and the amount for each transaction on the list.

4. If you are currently holding any funds in a suspense or unapplied funds account, include information explaining what the borrower must do for the funds to be applied.

5.7.3 Coupon books for delinquent borrowers

When a borrower becomes 45 days or more delinquent, you must provide this additional information in writing for each billing cycle during the delinquency:

- The length of the borrower's delinquency (measured as of the date of the written notice).
- A notification of possible risks and expenses (for example, foreclosure or legal fees) that the borrowers could face if the delinquency is not cured.
- An account history showing the previous 6 months or the period since the last time the account was current, whichever is shorter, the amount remaining past due from each

billing cycle, or if the borrower made a full payment, the date you credited the account for the full payment.

- A notice showing any loss mitigation program the borrower has agreed to, if applicable.
- A notice that you have made the first notice or filing required to start a foreclosure, if applicable.
- The total payment the borrower would have to make to bring the account current.
- A reference to the homeownership counselor information you include in your coupon book. (§ 1026.41(d)(7)(v))

(§ 1026.41(e)(3)(iv))

5.7.4 Coupon books for borrowers who are debtors in bankruptcy

See "*Content and layout requirements for modified periodic statements and coupon books*" in Section 5.10.2 and "*Coupon books for borrowers in bankruptcy*" in Section 5.10.3.

5.8 How must I deliver the information in periodic statements?

5.8.1 Borrower opt-out

Generally, borrowers may not opt-out of receiving periodic statements (except in the bankruptcy context, as discussed below). However, if a borrower chooses to receive statements electronically, that borrower may opt-out of electronic notification that statements are ready to access online, if they demonstrate the ability to access statements online.

Such ability may be demonstrated, for example, by the borrower receiving notification that the statements are available, going to the website where the information is available, viewing the information about their account, and selecting a link or option there to indicate they no longer would like to receive notifications when new statements are available. (Comment 41(a)-4)

5.8.2 Clear and conspicuous

Make the information clear and conspicuous. The "clear and conspicuous" standard generally requires that disclosures be presented in a reasonably understandable form. (Comment 41(c)-1)

5.8.3 Additional information

You may add information to the disclosures and combine disclosures, as long as:

- The added information does not overwhelm or obscure the required disclosures. (Comment 41(c)-1)
- The combination is not prohibited by these Mortgage Servicing Rules or other applicable law. (Comment 41(c)-2)

For example, the Mortgage Servicing Rules do not require you to include certain information about the borrower's escrow account (such as the account balance). You could put escrow information in the periodic statement or coupon book if you wanted to as long as the placement of that information didn't break up a group of disclosures you are required to put together.

Similarly, you could combine the periodic statement with statements from a checking account or other account so long as you meet all the requirements of the periodic statement disclosure, and combining the statements is not prohibited by regulations governing the other account.

5.8.4 Close proximity

The periodic statement rule requires you to put several disclosures in close proximity to one another. To meet this requirement, group the items together and set them off from other groupings.

> If a disclosure is not applicable, you don't have to include it. For example, if you don't charge a prepayment penalty, you do not need to include the prepayment penalty disclosures in your periodic statements. (Comment 41(d)-2)

You could, for example, present the information in boxes, or arrange items in groups and then put spaces between the groups. Items in close proximity may not have any unrelated text between them. Text is unrelated if it does not explain or expand upon the required disclosures. (Comment 41(d)-1)

5.8.5 Acceptable forms (§ 1026.41(c))

You can send paper statements by mail or provide them in person.

If the borrower gives you affirmative consent, you may send periodic statements electronically. If you send electronic statements, they must be in a form the borrower can print or download.

If you are sending the statement electronically, instead of sending the statement itself, you may send borrowers a link to an online site where they can securely access their statements. (Comment 41(c)-3)

If you are currently sending a borrower electronic disclosure for any account (for example, a mortgage or checking account), you do not have to seek affirmative consent again. (Comment 41(c)-4)

> Be sure you distinguish between borrowers who have agreed to receive disclosures and statements electronically and those who opt to pay electronically, for example, via automatic debit. Choosing automatic electronic payment does not equal affirmative consent to receive electronic statements.

You do not need to follow the full E-Sign Act verification procedures before providing a statement electronically. If you wish to follow the E-Sign Act procedures to obtain borrower consent, you may, but you can also obtain affirmative consent through a simpler process. (Comment 41(c)-4)

5.9 Must I continue to provide periodic statements or coupon books after a mortgage loan is charged off? (§ 1026.41(e)(6))

You are exempt from the periodic statement or coupon book requirements for charged-off mortgage loans if two conditions apply. First, you have charged off the loan in accordance with your institution's loan-loss provisions and will not charge any additional fees or interest on the account.

Second, within 30 days of the charge-off or the most recent periodic statement, you must provide a periodic statement clearly and conspicuously labeled "Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records." This periodic statement must clearly and conspicuously explain, as applicable:

- The mortgage loan has been charged off and you will not charge any additional fees or interest on the account;
- You will no longer provide the borrower a periodic statement for each billing cycle;
- The lien on the property remains in place and the borrower remains liable for the mortgage loan obligation and any obligations arising from or related to the property, which may include property taxes;
- The borrower may be required to pay the balance on the account in the future, for example, upon sale of the property;
- The balance on the account is not being canceled or forgiven; and
- The loan may be purchased, assigned, or transferred.

You do not need to include any of the above-listed disclosures when the disclosures do not apply to a particular borrower. For example, if a borrower has discharged personal liability for the mortgage loan through bankruptcy, you do not need to include an explanation that the borrower remains liable for the mortgage loan obligation.

The clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the borrower. The standard, however, does not impose a minimum type size or other technical requirements. (§ 1026.41(e)(6)(ii) and comment 41(e)(6)(i)(B)-1)

If you fail at any time to treat the mortgage loan as charged off, or if you charge any additional fees or interest on a charged-off loan, your obligation to provide the borrower with periodic statement or coupon book resumes. (§ 1026.41(e)(6)(ii))

5.10 Must I provide a borrower in bankruptcy a periodic statement or coupon book?

Unless you are exempt from sending a periodic statement or coupon book due to a borrower's bankruptcy, you must provide periodic statements or coupon books when a borrower is in bankruptcy. The periodic statements or coupon books must be modified for bankruptcy. Certain modifications apply for chapter 7 or chapter 11 bankruptcy, and additional modifications apply for chapters 12 or 13. See *"Content and layout requirements for modified periodic statements and coupon books"* in Section 5.10.2.

If a borrower is a debtor in bankruptcy or has discharged personal liability for the mortgage loan through bankruptcy pursuant to chapters 7, 11, 12, or 13 of the Bankruptcy Code, you may be **exempt** from providing periodic statements or coupon books. See "*Periodic statement and coupon book exemption for borrowers in bankruptcy* (§ 1026.41(e)(5))" in Section 5.10.6.

5.10.1 Effective date for bankruptcy periodic statement and coupon book provisions

The bankruptcy periodic statement and coupon book provisions of the 2016 Mortgage Servicing Rule became effective on April 19, 2018. For more information on effective dates, see *"When do I have to start following these rules?"* in Section 2.2.

5.10.2 Content and layout requirements for modified periodic statements and coupon books

With some exceptions, periodic statements or coupon books for borrowers in bankruptcy must contain the same categories of disclosures as are provided to borrowers who are not in bankruptcy. See "*What information must be on the periodic statement, and how must I arrange it?*" in Section 5.6 for information on the disclosures required for borrowers who are not in bankruptcy. When a borrower is in bankruptcy (or has discharged personal liability for the loan through bankruptcy), however, certain modifications apply to the periodic statement or coupon book, as explained below. Table 3 below highlights how various requirements differ between periodic statements and coupon books that are (1) unmodified; (2) modified for chapter 7, 11, 12 and 13 bankruptcy or discharge of personal liability through bankruptcy; and (3) further modified for only chapter 12 and 13 bankruptcy.

TABLE 3: MODIFIED PERIODIC STATEMENT REQUIREMENTS

Disclosures	Periodic Statement for Borrowers Not in Bankruptcy	Modifications for Chapter 7 or 11 Bankruptcy (or Discharge of Personal Liability)	Modifications for Chapter 12 or 13 Bankruptcy
Amount Due, as required under § 1026.41(d)(1)(iii)	Required	Modifications permitted. See below for more information. § 1026.41(f)(1)	Modifications permitted. See below for more information. § 1026.41(f)(3)(ii)
Explanation of Amount Due, as required under § 1026.41(d)(2)(iii)	Required	Required	Modifications permitted. See below for more information. § 1026.41(f)(3)(ii)
Late Payment Fee, as required under § 1026.41(d)(1)(ii)	Required	May be omitted § 1026.41(f)(1)	May be omitted § 1026.41(f)(1)
Transaction activity, as required under § 1026.41(d)(4).	Required	Required	Modifications permitted. See below for more information. § 1026.41(f)(3)(iv)
Length of Delinquency, as required under § 1026.41(d)(8)(i).	Required	May be omitted § 1026.41(f)(1)	May be omitted § 1026.41(f)(1)
Notification of Possible Risks if Delinquency is Not Cured, as required under § 1026.41(d)(8)(ii)	Required	May be omitted § 1026.41(f)(1)	May be omitted § 1026.41(f)(1)
Account History, as required under § 1026.41(d)(8)(iii)	Required	Required	May be omitted § 1026.41(f)(3)(i)
Loss Mitigation Program Information, if applicable, as required under § 1026.41(d)(8)(iv)	Required	Required	May be omitted § 1026.41(f)(3)(i)
First Notice or Filing for Any Foreclosure Process Information, if applicable, as required under § 1026.41(d)(8)(v)	Required	May be omitted § 1026.41(f)(1)	May be omitted § 1026.41(f)(1)

Disclosures	Periodic Statement for Borrowers Not in Bankruptcy	Modifications for Chapter 7 or 11 Bankruptcy (or Discharge of Personal Liability)	Modifications for Chapter 12 or 13 Bankruptcy
Total Payment Amount Needed to Bring the Account Current, as required under § 1026.41(d)(8)(vi)	Required	Required	May be omitted § 1026.41(f)(3)(i)
Homeownership Counselor Information, as required under § 1026.41(d)(8)(vii)	Required	Required	May be omitted § 1026.41(f)(3)(i)
Bankruptcy Notice Statements for Chapters 7, 11, 12, and 13 Borrowers, as required under § 1026.41(f)(2)	Not Included	Required § 1026.41(f)(2)	Required § 1026.41(f)(2)
Pre-petition Arrearage Disclosures, as required under § 1026.41(f)(3)(v)	Not Included	Not Included	Required, if applicable. See below for more information. § 1026.41(f)(3)(v)
Additional Disclosures for Chapters 12 and 13 Borrowers, as required under § 1026.41(f)(3)(vi)	Not Included	Not Included	Required, if applicable. § 1026.41(f)(3)(vi)

Modified amount due for borrowers in bankruptcy

Generally, when providing a periodic statement or coupon book that has not been modified due to a bankruptcy, you are required to ensure that the "amount due" is shown more prominently than other disclosures on the page. (§ 1026.41(d)(1)(iii)). When sending the modified periodic statement or coupon book, however, the requirement to show the "amount due" more prominently than other disclosures on the page does not apply. (§ 1026.41(f)(1))

When sending a periodic statement or coupon book to a borrower in chapter 12 or 13 bankruptcy, the amount due information may be limited to the date and amount of the post-

petition payments due and any post-petition fees and charges imposed by the servicer. (§ 1026.41(f)(3)(ii))

In addition, when a periodic statement or coupon book is provided to borrowers in chapter 12 or 13 bankruptcy, the explanation of the amount due disclosed under § 1026.41(d)(2) may be limited to:

- The monthly post-petition payment amount, including a breakdown showing how much, if any, will be applied to principal, interest, and escrow;
- The total sum of any post-petition fees or charges imposed since the last statement; and
- Any post-petition payment amount past due.

(§ 1026.41(f)(3)(iii))

Definitions
(Comments 41(f)(3)-1 and -2)

- Post-petition fees and charges are defined as fees and charges imposed after the bankruptcy case is filed.
- Pre-petition payments are defined as payments made to cure the borrower's pre-bankruptcy defaults.
- Post-petition payments are defined as payments made to satisfy the mortgage loan's periodic payments as they come due after the bankruptcy case is filed.

Modified transaction activity for borrowers in chapter 12 or chapter 13 bankruptcy (§ 1026.41(f)(3)(iv))

The transaction activity information set forth in § 1026.41(d)(4) must include all payments you received since the last statement, including all post-petition and pre-petition payments and payments of post-petition fees and charges, and all post-petition fees and charges the servicer has imposed since the last statement. The brief description of the activity need not identify the source of any payments. (§ 1026.41(f)(3)(iv))

Pre-petition arrearage modifications for borrowers in chapter 12 or chapter 13 bankruptcy (§ 1026.41(f)(3)(v))

If applicable, you must disclose the following information on a periodic statement or coupon book for borrowers in chapter 12 or chapter 13 bankruptcy:

- The total of all pre-petition payments received since the last statement;

- The total of all pre-petition payments received since the beginning of the consumer's bankruptcy case; and
- The current balance of the consumer's pre-petition arrearage.

These pre-petition arrearage disclosures, disclosed as applicable, must be grouped in close proximity to each other and located on the first page of the statement or, alternatively, on a separate page enclosed with the periodic statement or in a separate letter. (§ 1026.41(f)(3)(v))

If a borrower's pre-petition arrearage is subject to dispute, or you have not yet determined it, you can include on the periodic statement a statement acknowledging the unresolved amount. You may omit this information from the periodic statement or coupon book until you have had a reasonable opportunity to determine the amount of the pre-petition arrearage. You may not, however, omit that information from the periodic statement or coupon book after the date that the bankruptcy court has fixed for filing proofs of claim in the consumer's bankruptcy case. (Comment 41(f)(3)(v)-1)

To the extent that the court overseeing the borrower's bankruptcy case requires post-petition fees and charges to be included as an amendment to your proof of claim, you may include such fees and charges in the balance of the pre-petition arrearage under § 1026.41(f)(3)(v)(C) rather than treating them as post-petition fees and charges for purposes of § 1026.41(f)(3). (Comment 41(f)(3)-2)

5.10.3 Coupon books for borrowers in bankruptcy

A coupon book, while any borrower on the loan is in bankruptcy, must include the same bankruptcy disclosures as a periodic statement for a borrower in bankruptcy. These disclosures include the bankruptcy notices required under § 1026.41(f)(2) in the context of chapters 7, 11, 12, and 13 bankruptcy or a discharge of personal liability, as well as the additional disclosures that apply only when a borrower is in chapters 12 and 13 bankruptcy, as required under § 1026.41(f)(3)(vi). You may include these disclosures anywhere in the coupon book provided to the consumer or on a separate page enclosed with the coupon book. See "*Coupon books for borrowers in bankruptcy*" in Section 5.10.3 for more information.

Furthermore, bankruptcy-specific modifications to the delinquency information and other account information (for example, account history, amount due, explanation of amount due, and transaction activity) apply to coupon books." (§§ 1026.41(f)(1); 1026.41(f)(3)(i) through (iv), 1026.41(f)(3)(vi), 1026.41(f)(5))

In addition to the requirements listed in Section 5.10.3, you must make available, upon a borrower's request, the pre-petition arrearage information set forth in § 1026.41(f)(3)(v) to the borrower by telephone, in writing, in person, or electronically. (§ 1026.41(f)(5))

For more information on using a coupon book in lieu of a periodic statement, see *"How can I use coupon books instead of periodic statements?"* in Section 5.7.

5.10.4 Model modified periodic statements for borrowers in bankruptcy

Appendix H-30 contains sample forms of modified periodic statements for borrowers in bankruptcy (e.g., sample forms H-30(E) and H-30(F)). You may use terminology other than that found on the sample periodic statements in appendix H-30, so long as the new terminology is commonly understood. (Comment 41(f)-2)

You may modify a periodic statement or coupon book as necessary to facilitate compliance with title 11 of the United States Code, the Federal Rules of Bankruptcy Procedure, court orders, and local rules, guidelines, and standing orders. (Comment 41(f)-4)

For information about modifying periodic statements outside of the context of bankruptcy, see "*Note on modifying sample periodic statements*" in Section 5.6.3.

5.10.5 Multiple borrowers primarily obligated on the mortgage loan (§ 1026.41(f)(4) and comments 41(f)(4)-1 and -2)

When more than one borrower is primarily obligated on a mortgage loan and you are required to provide a modified periodic statement or coupon book under § 1026.41(f) because one of the borrowers is a debtor in bankruptcy or has discharged personal liability pursuant to chapter 7, 11, 12, or 13, you may provide the modified periodic statement or coupon book to any or all of the borrowers primarily obligated on a mortgage loan, even if a borrower to whom you provide the modified statement is not a debtor in bankruptcy. (§ 1026.41(f)(4))

You may, but need not, include the required modifications under § 1026.41(f)(3) (modifications that relate exclusively to chapter 12 or chapter 13 bankruptcy) when two or more borrowers who are primarily obligated on a mortgage loan are debtors under different chapters of bankruptcy and only one is subject to chapter 12 or 13. For example, assume one borrower is a debtor in a case under chapter 7 and another borrower is a debtor in a case under chapter 13, and you are

not exempt from the periodic statement or coupon book requirement. Further assume that both borrowers are joint obligors on a mortgage loan. The periodic statement and coupon book you provide is subject to the modifications set forth in § 1026.41(f)(1) and (f)(2), but you may determine whether it is appropriate to include the modifications set forth in § 1026.41(f)(3). (Comment 41(f)(4)-2)

5.10.6 Periodic statement and coupon book exemption for borrowers in bankruptcy (§ 1026.41(e)(5))

You are exempt from providing periodic statements or coupon books to a borrower in bankruptcy when two requirements are satisfied.

First, any borrower on the mortgage loan must be a debtor in bankruptcy or discharged personal liability for the mortgage loan through bankruptcy pursuant to chapters 7, 11, 12, or 13 of the Bankruptcy Code. (§ 1026.41(e)(5)(i)(A)). When two or more borrowers are joint obligors on a mortgage loan, the first requirement applies if any one of the borrowers meets the criteria listed above. (Comment 41(e)(5)(i))

Second, one of the following conditions must apply to a borrower on the mortgage loan:

- A borrower "opts-out" by sending you a written request that the servicer cease providing a periodic statement or coupon book.

> When borrower's bankruptcy counsel submits a request that you cease or continue providing a periodic statement, you must treat this request as if it were submitted by the borrower. (Comment 41(e)(5)-1)

- A borrower's most recently filed bankruptcy plan provides that the borrower will surrender the dwelling securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy arrearage or the maintenance of payments due under the mortgage loan. For purposes of this condition, the borrower's most recently filed bankruptcy plan applies, regardless of whether the court overseeing the borrower's bankruptcy case has confirmed or approved the plan.
- A court enters an order in the bankruptcy case providing for the avoidance of the lien securing the mortgage loan, lifting the automatic stay pursuant to 11 U.S.C. 362 with regard to the dwelling securing the mortgage loan, or requiring you to cease providing a periodic statement.

- A borrower files with the court a statement of intention pursuant to 11 U.S.C. 521(a), which identifies the borrower's intent to surrender the dwelling securing the mortgage loan, and a borrower has not made any partial or periodic payment on the mortgage loan after the commencement of the borrower's bankruptcy case.

(§ 1026.41(e)(5)(i)(B))

For example, assume that two spouses jointly own a home and are primary obligors on the mortgage loan. One spouse files for chapter 13 bankruptcy and has a bankruptcy plan that provides for surrendering the dwelling that secures the mortgage loan. In this scenario, you are exempt from providing a periodic statement with regard to that mortgage loan, unless one of the spouses requests in writing that the servicer provide a periodic statement or coupon book. (The written request for the servicer to provide a periodic statement or coupon book is one of the reasons you would be required to resume compliance, as explained in "*Modified transaction activity for borrowers in chapter 12 or chapter 13 bankruptcy*" in Section 5.10.2.) (Comment 41(e)(5)(i)-1)

The exemption no longer applies if the borrower reaffirms personal liability for the loan. Similarly, you no longer qualify for the exemption when any borrower on the mortgage loan "opts-in" by submitting a written request that you provide a periodic statement or coupon book, unless a court enters an order in the bankruptcy case requiring the servicer to cease providing a periodic statement or coupon book. (Comment 41(e)(5)(ii)-2)

Establishing an exclusive address for "opt-ins" and "opt-outs." (§ 1026.41(e)(5)(iii))

Regarding the bankruptcy exemption provisions, you are allowed to establish an exclusive address that a borrower must use to submit a written request to opt into or out of receiving periodic statements. If you designate an exclusive address for either opt-ins or opt-outs, you must designate the same address for both, and you must notify borrowers of the address in a manner that is reasonably designed to inform the borrower of the address. For example, you may be able to satisfy this notification requirement by including the address on your website or on a borrower's periodic statement (assuming they are receiving a periodic statement). If a borrower calls requesting a periodic statement, you may inform the borrower of the address in that phone call.

Transitioning between a modified or an unmodified periodic statement or coupon book for borrowers in bankruptcy (§ 1026.41(e)(5)(iv) and associated comments)

When one of three events listed below occurs, you must transition to providing a modified or an unmodified periodic statement or coupon book, as applicable:

1. A mortgage loan **becomes** subject to the requirement to provide a modified periodic statement. For example, any borrower who is on the mortgage loan becomes a debtor in bankruptcy or discharges personal liability for the mortgage loan. (Comment 41(e)(5)(iv)(A)-1)

2. A mortgage loan **ceases** to be subject to the requirement to provide a modified periodic statement. For example, the borrower in bankruptcy reaffirms personal liability for a mortgage loan or the borrower's bankruptcy case is closed or dismissed without the borrower having discharged personal liability. (Comment 41(e)(5)(iv)(A)-1)

3. You **cease** to qualify for an exemption pursuant to a § 1026.41(e)(5)(i) with respect to a mortgage loan. For example:

    - The borrower's bankruptcy case is dismissed or closed without the borrower having discharged personal liability for the mortgage loan;

    - The borrower files an amended bankruptcy plan or statement of intention that provides, as applicable, for the maintenance of payments due under the mortgage loan and the payment of pre-petition arrearage or that the borrower will retain the dwelling securing the mortgage loan;

    - A borrower makes a partial or periodic payment on the mortgage loan despite the borrower in bankruptcy having filed a statement of intention identifying an intent to surrender the dwelling securing the mortgage loan (thereby making § 1026.41(e)(5)(i)(B)(*4*) inapplicable);

    - The borrower in bankruptcy reaffirms personal liability for the mortgage loan; or

    - The borrower submits a written request pursuant to §1026.41(e)(ii) that you resume providing a periodic statement or coupon book.

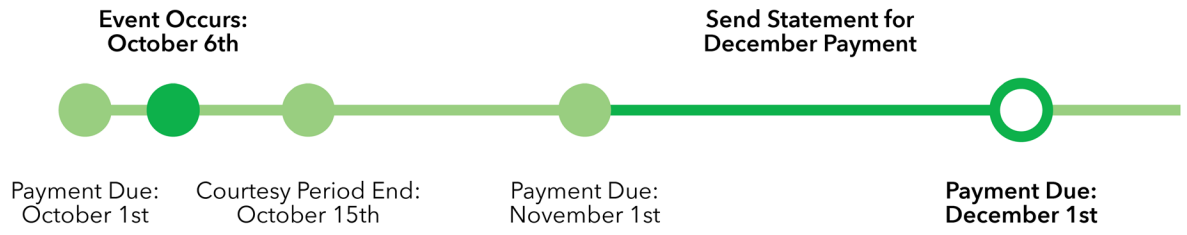
(§ 1026.41(e)(5)(iv)(A) and associated comments)

Single-statement exemption (§ 1026.41(e)(5)(iv)(B) and associated comments)

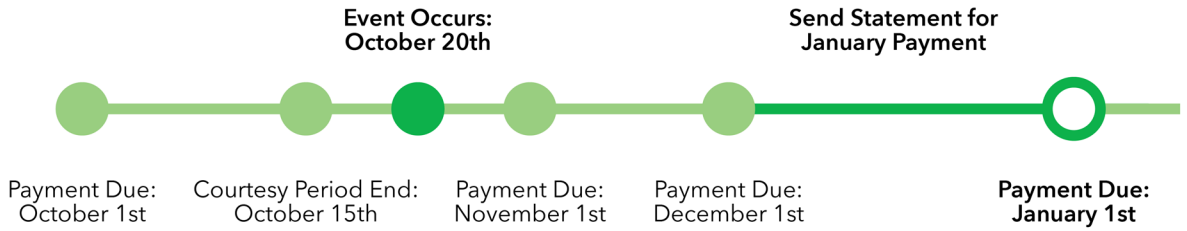
When one of three events listed above occurs, you are exempt from providing modified or unmodified periodic statements or coupon books for the next periodic statement or coupon book that would otherwise be required. After the single-statement exemption, you must begin providing the modified or unmodified periodic statements or coupon books. (§ 1026.41(e)(5)(iv)(B))

For example, assume that a mortgage loan has a monthly billing cycle, each payment due date is on the first day of the month following its respective billing cycle, and each payment due date has a 15-day courtesy period.

In this scenario:



1. If one of the three events listed above occurs on October 6 (before the end of the 15-day courtesy period) and the servicer has not yet provided a periodic statement or coupon book for the billing cycle with a November 1 payment due date, the servicer is exempt from providing a periodic statement or coupon book for that billing cycle. The servicer is required to resume providing modified or unmodified periodic statements or coupon books that comply with the requirements of § 1026.41 for the billing cycle with a December 1 payment due date within a reasonably prompt time after November 1 or the end of the 15-day courtesy period provided for the November 1 payment due date. (See § 1026.41(b) and comment 41(e)(5)(iv)(B)-1.i.).



2. If one of the three events listed above occurs on October 20 (after the end of the 15-day courtesy period) and the servicer timely provided a periodic statement or coupon book for the billing cycle with the November 1 payment due date, the servicer is not required to correct the periodic statement or coupon book already provided and is exempt from providing the next periodic statement or coupon book, which is the one that would otherwise be required for the billing cycle with a December 1 payment due date. The servicer is required thereafter to resume providing periodic statements or coupon books that comply with the requirements of § 1026.41 by providing a modified or unmodified periodic statement or coupon book for the billing cycle with a January 1 payment due date within a reasonably prompt time after December 1 or the end of the 15-day courtesy period provided for the December 1 payment due date. (*See* § 1026.41(b) and comment 41(e)(5)(iv)(B)-1.ii.).

This single-statement exemption might apply more than once over the life of a loan. For example, assume the exemption applies beginning on April 14 because the consumer files for bankruptcy on that date and the bankruptcy plan provides that the consumer will surrender the dwelling, such that the mortgage loan becomes subject to the requirements of § 1026.41(f). (See § 1026.41(e)(5)(iv)(A)(*1*)). If the consumer later exits bankruptcy on November 2 and has not discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, such that the mortgage loan ceases to be subject to the requirements of § 1026.41(f), the single-statement exemption would apply again beginning on November 2. (See § 1026.41(e)(5)(iv)(A)(*2*) and comment 41(e)(5)(iv)(B)-3).

If you provide a coupon book instead of a periodic statement, you are only required to provide a new coupon book after one of the three triggering events to the extent that you have not previously provided the consumer with a coupon book that covers the upcoming billing cycle. For example, if you provided a 12-month coupon book to a borrower in January and the borrower filed for bankruptcy in March, the servicer would not need to issue a new, modified coupon book accompanied by § 1026.41(f)(1) and (f)(3)(vi) disclosures until the following January. (See Comment 41(e)(5)(iv)(B)-2).

6. Interest Rate Adjustment Notices (§ 1026.20(c) and (d))

6.1 What does the rule on interest rate adjustment notices require? (§ 1026.20(c) and (d))

You must make disclosures in connection with the initial reset of an adjustable-rate mortgage (ARM) and each time an interest rate adjustment results in a payment change.

The rule contains model forms as guides to developing your own notices and sample forms to provide examples of what actual ARM notices might look like.

There are 2 types of notices, which are summarized in Table 4 on page 82.

- The § 1026.20(d) initial interest rate adjustment notice is required only for the first time the interest rate adjusts. It must be provided to a borrower between 210 days and 240 days before the first payment at the new rate is due.
- The § 1026.20(c) ongoing interest rate adjustment notice must be provided to a borrower between 60 and 120 days before the first payment at the new rate is due each time an interest rate adjustment results in a payment change.

6.2 What is the scope of the interest rate adjustment notice rule?

You must provide these notices for ARMs secured by the borrower's principal dwelling. For the purposes of this rule, an ARM is a closed-end borrower credit transaction in which the annual percentage rate may increase after consummation. (§ 1026.20(c)(1)(i) and (d)(1)(i))

ARMs with a term of 1 year or less are exempt from both initial and ongoing disclosures (§ 1026.20(c)(1)(ii)(A) and (d)(1)(ii)). In some circumstances, certain ARMs may be subject to different timing rules. (§ 1026.20(c)(2) and (d))

In addition, a § 1026.20(c) ongoing interest rate adjustment disclosure is not required the first time the ARM adjusts if the first payment at the adjusted level is due within 210 days after consummation and the new interest rate you disclosed in the § 1026.20(d) notice at consummation was not an estimate. (§ 1026.20(c)(1)(ii)(B))

The § 1026.20(c) ongoing interest rate adjustment notice also is not required if the creditor, assignee or servicer is a debt collector under the FDCPA to whom the borrower has sent a written cease communication request. However, such servicers must still provide the § 1026.20(d) initial interest rate adjustment notice. (See CFPB Bulletin 2013-12 for additional details.)

6.3 Is there a small servicer exemption to the interest rate adjustment notices rule?

No, there is no small servicer exemption to the interest rate adjustment notice requirements.

6.4 Who is responsible for sending the ARM notices? (§ 1026.20(c) and (d))

The creditor, assignee, or servicer is responsible. Note they do not each need to send a separate notice; the borrower needs to receive only one notice each time it is required. A creditor or assignee that no longer owns the loan is not required to send ARM notices.

6.5 When must I send these notices? (§ 1026.20(c)(2) and (d)(2))

In general, you must send the § 1026.20(d) initial interest rate adjustment disclosure (§ 1026.20(d)) *at least 210 days, but no more than 240 days*, before the first payment at the adjusted level is due.

- If the first payment at the adjusted level is due within the first 210 days after consummation, provide the disclosures at consummation.

In general, you must send the § 1026.20(c) ongoing interest rate adjustment notice disclosing an interest rate adjustment causing a payment change at least 60 days, but no more than 120 days, before the first payment at the adjusted level is due.

The rules also provide special timing requirements to address frequently-adjusting ARMs, ARMs with short look-back periods, and ARMs adjusting soon after consummation:

- If an ARM has regularly scheduled interest rate adjustments occurring every 60 days or more frequently, provide the disclosures at least 25 days, but no more than 120 days, before the first payment at the adjusted level is due.
- If an ARM was originated prior to January 10, 2015, and the adjusted interest rate and payment are calculated based on an index figure available less than 45 days prior to the adjustment date, provide the § 1026.20(c) disclosures at least 25 days, but no more than 120 days, before the first payment at the adjusted level is due.
- If the first adjustment to an ARM is to occur within 60 days of consummation and the § 1026.20(d) notice you provided at consummation contained an estimated adjusted interest rate, provide the § 1026.20(c) disclosure as soon as practicable, but not less than 25 days before the first payment at the adjusted level is due.

6.6 What information must be included in the initial and ongoing interest rate adjustment notices?

The notices must have the content and format specified in the rule and demonstrated in the model and sample forms.

Proper use of the forms will comply with both the content and format requirements of this rule. (See Table 4 below for the content requirement and Table 5 on page 85 for an overview of ARM disclosure presentation). The model forms may be filled out and used, while the sample forms demonstrate an example of the proper way to fill out the forms.

TABLE 4: CONTENT OF THE ARM DISCLOSURES

Item	Details	Required in § 1026.20(d)	Required in § 1026.20(c)
Date	The date of the disclosure	§ 1026.20(d)(2)(i)	n/a
A statement including:	(i) An explanation that under the terms of the loan, the interest rate may change (ii) The effective date of the adjustment and future adjustments (iii) Any other changes to loan terms, features, or options on the same date	§ 1026.20(d)(2)(ii)	§ 1026.20(c)(2)(i)
A table containing:	(i) The current and new rates (ii) The current and new payments and the date the first payment is due (iii) For interest-only or negatively-amortizing payments, allocation and other information	§ 1026.20(d)(2)(iii)	§ 1026.20(c)(2)(ii)

Item	Details	Required in § 1026.20(d)	Required in § 1026.20(c)
An explanation of how the rate is determined, including:	(i) The specific index or formula used in making the adjustment, and a source of information about that index or formula (ii) The type and amount of any adjustment to the index, including any margin and information on the margin	§ 1026.20(d)(2)(iv)	§ 1026.20(c)(2)(iii)
Any limits on the interest rate or payment increases	Including the extent to which such limits result in foregone increase to the interest rate, and the earliest date such increases may apply in the future	§ 1026.20(d)(2)(v)	§ 1026.20(c)(2)(iv)
An explanation of how the new payment is determined, including:	(i) The index or formula used (ii) Any adjustment to the index or formula, such as a margin (iii) The loan balance expected on the date of the adjustment (iv) The length of the remaining loan term and (v) If the new rate or payment is an estimate (see below for more information), a statement that actual information will be coming 2 to 4 months before the adjustment	§ 1026.20(d)(2)(vi)	§ 1026.20(c)(2)(v)
If applicable, a statement that the new payment will be interest only, or will result in negative amortization	See the regulation text for details of the statement.	§ 1026.20(d)(2)(vii)	§ 1026.20(c)(2)(vi)
The circumstances under which a prepayment penalty may be imposed	A prepayment penalty is defined in § 1026.32(b)(6)(i).	§ 1026.20(d)(2)(viii)	§ 1026.20(c)(2)(vii)

Item	Details	Required in § 1026.20(d)	Required in § 1026.20(c)
The telephone number of the servicer	The number for borrowers to call if they anticipate not being able to make payments	§ 1026.20(d)(2)(ix)	n/a
Alternatives to paying at the new rate	Include a brief explanation of (i) Refinancing the loan (ii) Selling the property (iii) Modifying the terms of the loan (iv) Arranging payment forbearance	§ 1026.20(d)(2)(x)	n/a
Housing counseling information	See below for details on the housing counseling information.	§ 1026.20(d)(2)(xi)	n/a

6.6.1 Estimates

For the initial interest rate notice, if the new interest rate (or the new payment calculated from the new interest rate) is not known as of the date of the disclosure, you must use an estimate and label it as such. This estimate must be based on the index as reported within 15 business days prior to the date of the disclosure. (§ 1026.20(d)(2))

6.6.2 Housing counseling information

The following housing counselor information must be provided in the § 1026.20(d) initial interest rate adjustment notice:

- The website to access either the Bureau list or the HUD list of homeownership counselors and counseling organizations (http://www.consumerfinance.gov/mortgagehelp/)
- The HUD toll-free number to access the HUD list of homeownership counselors and counseling organizations ((800) 569-4287)
- The Bureau website to access contact information for state housing finance authorities (http://www.consumerfinance.gov/mortgagehelp/)

(§ 1026.20(d)(2)(xi))

TABLE 5: AT A GLANCE: ARM DISCLOSURE PRESENTATION

Item	Required by **§ 1026.20(d)**	Required by **§ 1026.20(c)**
Required when	The first time the interest rate adjusts	Every time an interest rate adjustment results in a corresponding change in the payment amount. An annual notice (if there is no payment change during the year) is no longer required.
Timing	210 to 240 days before the first payment at the new rate is due	60 to 120 days before the first payment at the new rate is due
Estimate	You may use estimated information.	Use the exact information
Formatting	§ 1026.20(d)(3)	§ 1026.20(c)(3)
Sample form	Appendix H-4(D)(4)	Appendix H-4(D)(2)
Model form	Appendix H-4(D)(3)	Appendix H-4(D)(1)
Delivery	Must be a separate document from all other written materials (but may be provided in same envelope with other notices)	Must be segregated from other information (but may be provided in same envelope with other notices)

6.6.3 How must I arrange the information in the notices?

You must provide the information in the form of a table, substantially similar to the forms in appendix H.

6.6.4 How must the notices be sent?

The § 1026.20(d) initial interest rate adjustment disclosure must be a separate document. (§§ 1026.17(a) and20(d)) The § 1026.20(c) ongoing interest rate adjustment disclosure must be segregated from other information but may be on the same document as other information. Both ARM disclosures may be sent in the same envelope with other disclosures, such as the periodic statement.

7. Prompt Payment Crediting and Payoff Statements (§ 1026.36(c))

7.1 What do the prompt crediting and payoff statements rules require?

Periodic payments must be promptly credited as of the day of receipt. A periodic payment consists of the amount necessary to cover principal, interest, and escrow (if applicable).

If you receive a payment that is less than the amount due for a periodic payment, you may place the payment in a suspense account. When the amount in the suspense account covers a periodic payment, you must treat the accumulated amount as a periodic payment and promptly credit it to the borrower's account.

In addition, creditors, assignees, and servicers must provide an accurate payoff balance to a borrower no later than 7 business days after receipt of a written request from the borrower for that information.

7.2 What is the scope of the prompt crediting and payoff statement rules? (§ 1026.36(c)(1) and (c)(3))

The prompt crediting and payoff statement provisions apply to certain types of mortgage loans. Additionally, different parties are responsible for the different provisions. This information is set out in Table 6 below.

A creditor or assignee that does not currently own the mortgage loan or servicing rights is not subject to the requirement to provide a payoff statement.

TABLE 6: PROMPT CREDITING AND PAYOFF STATEMENTS: APPLICATION AND RESPONSIBLE PARTIES

Provision	Responsible party	Open / closed-end loans?	Principal / all dwellings?
Prompt crediting	Servicer	Closed-end loans	Principal only
Payoff statements	Creditor, assignee, or servicer	Both	All dwellings

7.3 Is there a small servicer exemption to the prompt crediting and payoff statement rules?

No, there is no small servicer exemption to the prompt crediting and payoff statement provisions.

7.4 What is a periodic payment, and how must I handle it? (§ 1026.36(c)(1)(i))

A periodic payment is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle. A payment qualifies as a periodic payment even if it does not include amounts required to cover late fees, other fees, or non-escrow payments you advanced on a borrower's behalf. You must credit a periodic payment to the borrower's account as of the day of receipt, except when a delay in crediting does not result in any charge to the borrower, or in the reporting of negative information to a consumer reporting agency.

In cases where you specified in advance and in writing requirements for the borrower to follow when making payments and then accept a payment that does not conform to your requirements, you may wait up to 5 days after receipt to credit the payment. Any requirements you set must be reasonable. (See *"What is a non-conforming payment, and how must I handle it?"* in Section 7.6).

Note that the legal obligation between the creditor and the borrower, subject to the applicable law, is what determines the method for crediting payments. (Comment 36(c)(1)(i)-2)

7.4.1 Partial payments under temporary loss mitigation programs (Comments 36(c)(1)(i)-4 and 36(c)(1)(i)-5)

When the loan contract has **not** been permanently modified and a borrower makes payments under a temporary loss mitigation program, such as a repayment or trial modification plan, you should generally treat the borrower's payment as a partial payment if the payment is less than the amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the loan contract (regardless of the payment due under the temporary program). Whether a payment is full or partial depends on the contractual obligation between the borrower and lender. (Comment 36(c)(1)(i)-4)

On the other hand, if the loss mitigation program has permanently modified the loan contract, and the borrower submits a payment sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the modified loan contract, you would treat that payment as a periodic payment and not as a partial payment. (Comment 36(c)(1)(i)-5)

7.5 What is a partial payment, and how must I handle it? (§ 1026.36(c)(1)(ii) and comment 36(c)(1)(ii)-1)

A partial payment is any payment that is less than a periodic payment. (See *"What is a periodic payment, and how must I handle it?"* in Section 7.4).

If you receive a partial payment, to the extent that you are not prohibited by applicable law or the legal obligation between the parties, you may:

- Credit the partial payment upon receipt
- Return the partial payment to the borrower
- Hold the payment in a suspense or unapplied funds account

If you opt to retain a partial payment in a suspense or unapplied funds account, you must:

- Disclose on the borrower's periodic statement the total amount of funds you are holding in the suspense or unapplied funds account—if you are required to send the borrower a

periodic statement. (See *"What information must be on the periodic statement, and how must I arrange it?" in Section* 5.6).

- Once you have accumulated sufficient funds to cover a periodic payment, you must credit them as you would a periodic payment

7.6 What is a non-conforming payment, and how must I handle it? (§ 1026.36(c)(1)(iii))

A non-conforming payment is a payment that does not meet any reasonable requirements that you set in advance in writing for making payments, such as:

- Requiring that payments be accompanied by the account number or payment coupon
- Setting a cutoff hour for payment to be received, or setting different hours for payment by mail and payments made in person
- Specifying that only checks or money orders should be sent by mail
- Accepting only U.S. dollars as payment
- Having one particular address for receiving payments, such as a post office box

Your payment requirements must be reasonable and cannot make it difficult for most borrowers to make conforming payments. For example, it would be reasonable to require a cutoff time of 5 p.m. for receipt of a mailed check at the address you specify for receiving payments. (Comment 36(c)(1)(iii)-2)

You may not require payment solely by preauthorized electronic funds transfer. (See Section 913 of the Electronic Fund Transfer Act, 15 U.S.C. 1693k for more information on this issue.)

In cases where you specify in writing requirements for making payments and then you accept a payment that does not conform to your requirements, you have up to 5 days after receipt to credit the payment.

If you do not set specific payment requirements, then you must allow payments by cash, money order, draft, or other similar instrument in properly negotiable form during regular business

hours at any location where you conduct business, or by electronic fund transfer, if you have agreed to accept electronic payments. (Comment 36(c)(1)(iii)-3). Under the general rule, such payments must be credited as of the day of receipt.

The partial payments you hold in a suspense or unapplied funds account, discussed above, would not be considered to have been "accepted," so they are not required to be applied within 5 days.

7.7 How must I respond to written requests for payoff statements? (§ 1026.36(c)(3))

If a borrower or any person acting on behalf of a borrower makes a written request for a payoff statement, a creditor, assignee, or servicer must provide the statement within 7 business days.

When a creditor, assignee, or servicer, as applicable, is not able to provide the statement within 7 business days because the loan is in bankruptcy or foreclosure, the loan is a reverse mortgage or shared appreciation mortgage, or because of natural disasters or other similar circumstances, the payoff statement must be provided within a reasonable time.

8. Force-Placed Insurance

8.1 What does the force-placed insurance rule require? (§ 1024.37)

This rule puts limits on charging the borrower for force-placed insurance. These limits include:

- You must have a reasonable basis to believe that a borrower has failed to maintain required hazard insurance before charging for force-placed insurance.
- You must send 2 notices to the borrower and not have received in response to these notices evidence that the borrower has had in place, continuously, required hazard insurance before you charge for force-placed insurance.
- You must notify the borrower and not have received in response to this notice evidence that the borrower has purchased required hazard insurance before you charge the borrower for renewing force-placed insurance.
- You must cancel force-placed insurance within 15 days of receiving evidence that the borrower has required hazard insurance in place and refund to the borrower any fees or charges for periods of overlapping coverage.
- Force-placed insurance charges imposed by a servicer on a borrower, beyond those subject to state regulation as insurance charges, must be bona fide and reasonable.

Additional rules apply for borrowers with escrow accounts, as described in § 1024.17. (See *"What additional rules apply for borrowers with escrow accounts for payment of hazard insurance?"* in Section 8.11.)

8.2 What is the scope of the force-placed insurance rule?

The rule applies to federally related mortgage loans (as defined in § 1024.2(b)) except for the exemptions in §§ 1024.5(b) and 17(k)(5)(iii), and open-end lines of credit.

For more information on § 1024.17(k)(5)(iii), see *"What is the small servicer exemption from the escrow provisions?"* in Section 8.12.

Servicers that are debt collectors under the FDCPA to whom a borrower has sent a written cease communication request must still send the § 1024.37 disclosures regarding the forced placement of hazard insurance. (See CFPB Bulletin 2013-12 for additional details.)

8.3 Is there a small servicer exemption to the force-placed insurance rule?

In general, there is no small servicer exemption to the force-placed insurance provisions. There is a limited small servicer exemption to the prohibition on the purchase of force-placed insurance for borrowers with escrow accounts in certain circumstances. (See "*What is the small servicer exemption from the escrow provisions?*" in Section 8.12.)

8.4 What is force-placed insurance?

"Force-placed insurance" is hazard insurance the servicer obtains on behalf of the owner or assignee. (§ 1024.37(a)(1))

The following insurance does not constitute "force-placed insurance" under this section:

- Flood insurance required because the borrower's property is in a special hazard flood zone. In these cases, the Flood Disaster Protection Act of 1973 (FDPA) rules covering force-placed flood insurance govern.
- Hazard insurance the borrower obtains and that you renew using escrow funds (including funds you advance to escrow) per the escrow account provisions in § 1024.17(k)(5) or by advancing your own funds at your discretion if the borrower agrees. (§ 1024.37(a)(2))

8.5 What must I do before I charge a borrower for force-placed insurance?

8.5.1 First notice and reminder notice

You must have a reasonable basis to believe that a borrower has failed to maintain required hazard insurance to charge for force-placed insurance. As part of having a reasonable basis, you must send 2 notices. You must deliver these notices to the borrower or place them in the mail. In response to these notices, you must not have received evidence that the borrower had in place, continuously, required hazard insurance.

The first notice must be sent at least 45 days before you charge the borrower for force-placed insurance.

If you do not receive evidence that the borrower has had hazard insurance that complies with the loan contract's requirements continuously in place, you must deliver or place in the mail to the borrower a written reminder notice at least 30 days after you sent the first notice. If you do not receive evidence that the borrower has had in place required hazard insurance continuously after the second notice, you may assess a force-placed insurance fee 15 days or more after sending the second notice.

8.6 May I charge a borrower for insurance placed before the notices have been sent?

You may charge a borrower for insurance coverage that was in place before the notices were sent if you do not receive evidence that the borrower had in place, continuously, required hazard insurance during these periods, but you may not impose that charge until after the notices have been sent and the notice periods specified in the rule have elapsed.

8.6.1 Renewal notice

Before each anniversary of your purchase of force-placed insurance, you must deliver or place in the mail to the borrower a written notice explaining the renewal and requesting the borrower to

provide evidence of having purchased hazard insurance on the property. You only have to provide this written renewal notice once a year. (§ 1024.37(e)(5)). In response to this notice, you must not have received evidence that the borrower purchased required hazard insurance. The written renewal notice generally must be delivered or mailed at least 45 days before assessing on a borrower a charge or fee related to the renewal. (§ 1024.37(e)(1)(i))

If you renewed or replaced an existing force-placed insurance policy and you receive evidence that the borrower lacked insurance coverage after the existing force-placed insurance expired (including during the 45-day notice period), you may immediately after receiving such evidence assess a premium charge or fee related to renewing or replacing the existing force-placed insurance for that period without coverage—as long as not prohibited by state or other applicable laws. (§ 1024.37(e)(1)(iii))

8.6.2 What class of postage must I use if I mail the notices? (§ 1024.37(f))

When you mail notices, you must use at least first-class mail.

8.7 What must be in the force-placed insurance notices?

The notices must have the content and format specified in the rule and demonstrated in the model and sample forms.

Proper use of the forms will comply with both the content and format requirements of this rule. (See Table 7 below for the content requirement and Table 8 on page 98 for the format requirement.) The model forms may be filled out and used, while the sample forms demonstrate the proper way to fill out the forms.

You may make certain changes to the format or content of the forms and clauses without losing protection from liability so long as those changes do not affect the substance, clarity, or meaningful sequence of the forms and clauses. (Comment appendix MS to part 1024-2)

For example, except as otherwise specifically required, acceptable changes include:

- Use of “borrower” and “servicer” instead of pronouns.

- Substitution of the words "lender" and "servicer" for each other.
- Addition of graphics or icons, such as the servicer's corporate logo.
- Modifications to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable. For example, in the case of a confirmed successor in interest who has not assumed mortgage loan obligation under state law and is not otherwise liable on the mortgage loan obligation, changes may include:
  - Use of "the mortgage loan" or "this mortgage loan" instead of "your mortgage loan" and "the monthly payments" instead of "your monthly payments."
  - Use of "Payments due on or after [Date] may be sent to" instead of "Send all payments due on or after [Date] to" in notices of transfer.
  - Use of "We will charge the loan account" instead of "You must pay us" in notices relating to force-placed insurance.

TABLE 7: CONTENT OF THE FORCE-PLACED INSURANCE DISCLOSURES

Content	First notice **(§ 1024.37(c)(2))**	Reminder notice **(§ 1024.37(d)(2))**	Renewal notice **(§ 1024.37(e)(2))**
The date of the notice	§ 1024.37(c)(2)(i)	§ 1024.37(d)(2)(i)(A) § 1024.37(d)(2)(ii)(A)	§ 1024.37(e)(2)(i)
A statement that this is the second and final notice		§ 1024.37(d)(2)(i)(B) § 1024.37(d)(2)(ii)(B)	
The servicer's name and mailing address	§ 1024.37(c)(2)(ii)	§ 1024.37(d)(2)(i)(C) § 1024.37(d)(2)(ii)(B)	§ 1024.37(e)(2)(ii)
The borrower's name and mailing address	§ 1024.37(c)(2)(iii)	§ 1024.37(d)(2)(i)(C) § 1024.37(d)(2)(ii)(B)	§ 1024.37(e)(2)(iii)
A request for the borrower to provide hazard insurance information for the property (and states the property's address)	§ 1024.37(c)(2)(iv)	§ 1024.37(d)(2)(i)(C) § 1024.37(d)(2)(ii)(B)	§ 1024.37(e)(2)(iv)

Content	First notice **(§ 1024.37(c)(2))**	Reminder notice **(§ 1024.37(d)(2))**	Renewal notice **(§ 1024.37(e)(2))**
A statement that the servicer previously purchased insurance, charged to the borrower, because the servicer did not have evidence that the borrower had required hazard insurance on the property			§ 1024.37(e)(2)(v)
A statement that, the insurance the servicer purchased previously has expired or is expiring, and because hazard insurance is required the servicer intends to maintain insurance by renewing or replacing the insurance it previously purchased			§ 1024.37(e)(2)(vi)
A statement that the hazard insurance is expiring, has expired, or provides insufficient coverage; a statement that the servicer does not have evidence of hazard insurance that provides sufficient coverage, as applicable; and, a statement that identifies the type of hazard insurance for which the servicer lacks evidence of coverage	§ 1024.37(c)(2)(v)	§ 1024.37(d)(2)(i)(C)	
A statement that hazard insurance is required and the servicer has purchased (will purchase) such insurance at the borrower's expense	§ 1024.37(c)(2)(vi)	§ 1024.37(d)(2)(i)(C)	

Content	First notice **(§ 1024.37(c)(2))**	Reminder notice **(§ 1024.37(d)(2))**	Renewal notice **(§ 1024.37(e)(2))**
A statement requesting the borrower to promptly provide the servicer with insurance information	§ 1024.37(c)(2)(vii)	§ 1024.37(d)(2)(i)(C)	§ 1024.37(e)(2)(viii)
A description of the requested insurance information, and how the borrower may provide such information	§ 1024.37(c)(2)(viii)	§ 1024.37(d)(2)(i)(C)	§ 1024.37(e)(2)(ix)
A statement that the insurance the servicer will (has) purchase(d): (i) may cost significantly more and (ii) may not provide as much coverage as hazard insurance purchased by the borrower	§ 1024.37(c)(2)(ix)	§ 1024.37(d)(2)(i)(C) § 1024.37(d)(2)(ii)(B)	§ 1024.37(e)(2)(vii)(A) to (B)
The servicer's telephone number for borrower inquiries	§ 1024.37(c)(2)(x)	§ 1024.37(d)(2)(i)(C) § 1024.37(d)(2)(ii)(B)	§ 1024.37(e)(2)(ii)(x)
If applicable, a statement advising the borrower to review additional information provided in the same transmittal	§ 1024.37(c)(2)(xi)	§ 1024.37(d)(2)(i)(C) § 1024.37(d)(2)(ii)(B)	§ 1024.37(e)(2)(xi)
The cost of the force-placed insurance, stated as an annual premium (or if the servicer does not know the cost, a reasonable estimate)		§ 1024.37(d)(2)(i)(D) § 1024.37(d)(2)(ii)(B)	§ 1024.37(e)(2)(vii)(C)

Content	First notice **(§ 1024.37(c)(2))**	Reminder notice **(§ 1024.37(d)(2))**	Renewal notice **(§ 1024.37(e)(2))**
If applicable, a statement that the information the borrower sent to the servicer is incomplete and the borrower must send the missing information to avoid charge for any period for which the servicer is unable to verify hazard insurance coverage		§ 1024.37(d)(2)(ii)(C) to (E)	

TABLE 8: AT A GLANCE: FORCE-PLACED INSURANCE DISCLOSURES PRESENTATION

Item	First notice **(§ 1024.37(c)(1))**	Reminder notice **(§ 1024.37(d)(1))**	Renewal notice **(§ 1024.37(e)(1))**
Timing	At least 45 days before you assess a force-placed insurance fee	At least 30 days after the first notice, at least 15 days before assessing a force-placed insurance fee	Before each anniversary of your purchase of force-placed insurance, and generally at least 45 days before assessing on a borrower fee related to the renewal, but not more than once annually
Content	§ 1024.37(c)(2)	§ 1024.37(d)(2)	§ 1024.37(e)(2)
Format	§ 1024.37(c)(3)	§ 1024.37(d)(3)	§ 1024.37(e)(3)
Forms	Appendix MS-3(A)	Appendix MS-3(B) to (C)	Appendix MS-3(D)

Item	First notice (§ 1024.37(c)(1))	Reminder notice (§ 1024.37(d)(1))	Renewal notice (§ 1024.37(e)(1))
Additional information	Except for the mortgage loan account number, you may not include any information other than the required information in the notice. If you want to include additional information, put it on a separate piece of paper in the same transmittal. (§ 1024.37(c)(4))	Except for the mortgage loan account number, you may not include any information other than the required information in the notice. If you want to include additional information, put it on a separate piece of paper in the same transmittal. (§ 1024.37(d)(4))	Except for the mortgage loan account number, you may not include any information other than the required information in the notice. If you want to include additional information, put it on a separate piece of paper in the same transmittal. (§ 1024.37(e)(4))
Note		If you receive new information about the borrower's hazard insurance after you put the reminder notice into production, you are not required to update the notice based on the new information provided the notice was put into production a reasonable time prior to mailing it to the borrower. A reasonable time is five days or less (excluding legal holidays, Saturdays, and Sundays). (§ 1024.37(d)(5) and comment 37(d)(5)-1)	You are not required to provide this notice more than once a year.

In assessing whether the borrower has had hazard insurance that complies with the loan's contract requirements continuously in place, check to make sure that applicable law, such as state law or the terms and conditions of the

The content of your reminder notice will vary based on the insurance information you receive from the borrower. See comment 37(d)(1)-1 for more information.

borrower's insurance policy, do not give the borrower a grace period or extension of time to pay the premium after the due date.

If there is a grace period and the borrower pays the premium during the extension and the insurance company accepts the payment with no lapse in insurance coverage, then that satisfies the requirement to have continuous hazard insurance coverage. (Comment 37(c)(1)(iii)-1)

8.7.1 Can I combine the notices required by these rules with the notices for flood insurance? (§ 1024.37(i))

You may include your notices for force-placed insurance in the same transmittal as your notices concerning flood insurance, as long as you use separate pieces of paper. (See also Section 102(e) of the Flood Disaster Protection Act of 1973.)

8.8 What evidence may I request from borrowers showing they have had continuous hazard insurance coverage? (Comment 37(c)(1)(iii)-2)

You may ask the borrower to supply a copy of:

- The borrower's hazard insurance policy declaration page
- The borrower's insurance certificate
- The borrower's insurance policy or similar forms of written confirmation of insurance

You may reject evidence of hazard insurance coverage submitted by the borrower if:

- Neither the borrower's insurance provider nor insurance agent provides confirmation of the information the borrower submitted.
- The terms and conditions of the borrower's hazard insurance policy do not comply with the requirements of the borrower's loan contract.

8.9 What do I do when the borrower responds?

8.9.1 If the borrower sends evidence that he or she has hazard insurance coverage

If the borrower sends evidence of **having hazard insurance coverage in place** that complies with the loan contract's requirements, within 15 days you must:

- Cancel any force-placed insurance you purchased for the borrower (§ 1024.37(g)(1))
- Refund to the borrower all force-placed insurance premium charges and related fees for any period of overlapping insurance coverage (§ 1024.37(g)(2))
- Remove from the borrower's account all force-placed insurance charges and related fees for the overlapping period (§ 1024.37(g)(2))

If the borrower **does not respond** or **does not provide evidence of having hazard insurance**, and you do not otherwise have such evidence, you may charge the borrower for force-placed insurance 15 days after sending the second notice.

8.10 What are the limitations on charges? (§ 1024.37(h)(1) and (h)(2))

Except for charges subject to state regulation as the business of insurance and charges authorized by the Flood Disaster Protection Act of 1973, all charges related to force-placed insurance assessed by or through the servicer must be "bona fide and reasonable."

A "bona fide and reasonable" charge is a charge for a service you actually perform that bears a reasonable relationship to your cost to provide the service, and is not otherwise prohibited by applicable law. (§ 1024.37(h)(2))

8.11 What additional rules apply for borrowers with escrow accounts for payment of hazard insurance? (§ 1024.17(k)(5))

If a borrower has an escrow account for payment of hazard insurance, you may not obtain force-placed insurance unless you are unable to maintain the borrower's existing hazard insurance coverage.

You are not considered unable to maintain the borrower's hazard insurance just because a borrower's mortgage loan obligation is overdue or the escrow account has insufficient funds. Therefore, generally, you will have to advance funds through escrow to maintain coverage. You can add this cost to the escrow balance or otherwise seek reimbursement from the borrower for the funds you advance.

You are considered unable to maintain the borrower's hazard insurance, and may therefore obtain force-placed insurance in accordance with the general rules rather than advance funds through escrow, if you have a reasonable basis to believe either that the hazard insurance provider has canceled the policy for reasons other than non-payment or that the property is vacant.

When a delinquent borrower's escrow account has insufficient funds to cover payment of the borrower's hazard insurance premium, generally, you will have to advance the funds through escrow to continue coverage.

8.12 What is the small servicer exemption from the escrow provisions? (§ 1024.17(k)(5)(iii))

A small servicer may purchase force-placed insurance for a borrower with an escrow account whose mortgage loan obligation is more than 30 days overdue, if the cost of the force-placed insurance to the borrower is less than the amount the small servicer would need to disburse from the borrower's escrow account to pay the borrower's hazard insurance premium.

9. Error Resolution and Information Requests

9.1 What do the error resolution and information request rules require?

The error resolution and information request provisions of the Mortgage Servicing Rules establish requirements for responding to written information requests and complaints of errors.

You must follow these requirements for complaints asserting specific errors, as well as any errors relating to servicing the borrower's mortgage loan and when responding to requests for information regarding a borrower's mortgage loan.

In general, when borrowers send a written request asking you to resolve an error or to send information about their account, you must:

- Within 5 days, acknowledge the request for information or notice of error.
- Within 30 to 45 days, correct the error and provide the borrower written notification of the correction, or conduct an investigation and provide the borrower written notification that no error occurred.
- Within 30 to 45 days, provide the information or conduct a reasonable search for the requested information and provide the borrower with a written notification explaining why the information is not available.

Note: Some information requests and error resolution types require a shorter response time. (See "*What is the timeline for responding to borrowers who send notices of errors?*" in Section 9.10 and *"What is the timeline for responding to borrowers who request information?"* in Section 9.12.)

9.2 What is the scope of the error resolution and information request rules?

The rule applies to federally related mortgage loans (as defined in § 1024.2(b)) except for the exemptions in § 1024.5(b) and open-end lines of credit.

Thus, these rules do not apply to HELOCs and open-end lines of credit.

Servicers that are debt collectors under the FDCPA to whom a borrower has sent a written cease communication request must still comply with the error resolution and information request rules, unless the borrower specifically withdraws the request for the error resolution or information. (See CFPB Bulletin 2013-12 for additional details.)

9.3 Is there a small servicer exemption to the error resolution and information request rules?

No, there is no small servicer exemption to the rules on error resolution or information requests.

9.4 How is this different from the requirements for Qualified Written Requests?

The error resolution and information request requirements expand on (and encompass) the qualified written request requirements.

9.5 What is a notice of error? (§ 1024.35(a))

The rules apply generally to any written notice from the borrower that asserts certain specified errors and includes:

- The name of the borrower
- Information that enables you to identify the borrower's mortgage loan account
- The error the borrower believes has occurred

A notice on a payment coupon or other payment form is not considered a notice of error.

A qualified written request that asserts an error relating to the servicing of a mortgage loan is a notice of error. (§ 1024.35(a))

The error resolution rules apply to the following categories of errors:

- Failure to accept a payment that conforms to any written requirements that the borrower must follow in making payments. (See *"What is a non-conforming payment, and how must I handle it?"* in Section 7.6.)
- Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law.
- Failure to credit a payment to a borrower's mortgage loan account as of the date of receipt, in violation of the prompt crediting provisions in § 1026.36(c)(1).
- Failure to pay taxes, insurance premiums, or other charges, including charges that the borrower has voluntarily agreed that you should collect and pay, in a timely manner as required by the escrow provisions (§ 1024.34(a)), or to refund an escrow account balance as required (§ 1024.34(b)).
- Imposition of a fee or charge that you lack a reasonable basis to impose upon the borrower, which includes, for example, a late fee for a payment that was not late, a charge you imposed for a service that was not provided, a default property-management fee for borrowers who are not in a delinquency status that would justify the charge, or a charge for force-placed insurance in a circumstance not permitted by the force-placed insurance provisions. (§ 1024.37). (See Section 8 for more on force-placed insurance.)
- Failure to provide an accurate payoff balance amount upon a borrower's request within 7 days in violation of § 1026.36(c)(3). (See Section 7 for more on prompt payment crediting and payoff statements.)

- Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure, as required by the early intervention provisions of this rule. (§ 1024.39). *(*See Section 11 for more on early intervention.)
- Failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer.
- Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process in violation of the loss mitigation procedures of this rule. (§ 1024.41(f) or (j)). (See Section 13 for more on loss mitigation.)
- Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of the loss mitigation procedures of this rule. (§ 1024.41(g) or (j)). (See Section 13 for more on loss mitigation.)
- Any other error relating to the servicing of a borrower's mortgage loan. Note that "servicing" is defined in § 1024.2(b).

(§ 1024.35(b))

You **do not** have to acknowledge or follow the response provisions of this rule for errors that are outside the scope of the above list, although you may want to do so as a matter of customer service. For example, the rule would not cover an error related to:

- The origination of a mortgage loan
- The underwriting of a mortgage loan
- A subsequent sale or securitization of a mortgage loan
- A determination to sell, assign, or transfer the servicing of a mortgage loan

(Comment 35(b)-1)

Note that an error relating to the failure to transfer accurate and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer is a covered error.

9.6 What is an information request? (§ 1024.36(a))

This rule applies generally to any written request for information from a borrower relating to the servicing of a mortgage loan that includes:

- The name of the borrower.
- Information that enables the servicer to identify the borrower's mortgage loan account.
- A statement of the information the borrower is requesting with respect to a mortgage loan.

A notice on a payment coupon or other payment form is not considered a request for information.

A request for a payoff balance is not considered a request for information.

A qualified written request that requests information relating to the servicing of the mortgage loan is a request for information subject to the provisions of this rule. "Servicing" is defined in § 1024.2(b).

9.6.1 Must I distinguish between an information request and an error notice?

Some borrowers will describe their communication as a request for information when they are asking you to correct a purported error or vice versa. You should not rely solely on their description of a submission to determine whether the submission constitutes a notice of error, an information request, or both.

For example, a borrower may submit a letter that claims to be a "notice of error" when the borrower is asking to receive the information set forth in an annual escrow account statement and also asserts that you made an error by failing to provide an annual escrow statement. This letter may constitute an information request that triggers an obligation for you to provide an annual escrow statement. You should not rely on the borrower's characterization of the letter as a "notice of error." Instead, you must evaluate whether the letter fulfills the substantive requirements of a notice of error, information request, or both. (Comment 35(a)-2)

9.7 Are there situations that do not trigger the error resolution or information request response procedures? (§§ 1024.35(g) and 36(f))

Yes, there are several situations that do not trigger the error resolution or information request procedures.

If you determine that for any of the reasons listed below, you are not required to comply with the error resolution or information request requirements, you must notify the borrower in writing of your determination no later than 5 days (excluding legal public holidays, Saturdays, and Sundays) after making your determination. The notice must explain the basis upon which you made the determination. (§§ 1024.35(g)(2) and 36(f)(2))

The following situations do not trigger the error resolution/information request procedures:

9.7.1 Duplicative notice of error or information requests (§§ 1024.35(g)(1)(i) and 36(f)(1)(i))

If the asserted error or information request is substantially the same as one the borrower previously asserted, and you have already complied with the requirements to respond to the earlier notice of error or request, the new notice of error or request does not trigger the error resolution or information request procedures.

However, if a resubmitted notice of error contains new and material information to support the asserted error, the exception for duplicative notices of error does not apply.

> The exemption for duplicative notices of error does not apply when a different borrower previously requested the information.

"New and material information" is information you did not review in your prior investigation of the same error and is reasonably likely to change your prior determination about the error. (§§ 1024.35(g)(1)(i) and 36(f)(1)(i))

A borrower's statement that the borrower disagrees with your determination does not constitute new or material information, nor do you have to re-open the dispute simply because the borrower disagrees. (Comment 35(g)(1)(i)-1)

9.7.2 Overbroad or unduly burdensome request for information (§ 1024.36(f)(1)(iv))

An information request is overbroad or unduly burdensome if:

The borrower asks you to provide an unreasonable volume of documents or information.

A diligent servicer could not respond to the request without exceeding the time limit to respond to information requests (See *"What is the timeline for responding to borrowers who request information?"* in Section 9.12) *or* incurring costs that would be unreasonable in light of the circumstances.

If you can identify a valid information request in a submission that is otherwise overbroad or unduly burdensome, you must respond in accordance with the rule with respect to that requested information.

9.7.3 Overbroad notice of error (§ 1024.35(g)(ii))

A notice of error is overbroad if you cannot reasonably determine the specific error that the borrower asserts has occurred.

To the extent you can reasonably identify a valid assertion of an error in a notice of error that is otherwise overbroad, you must follow the error resolution requirements with respect to that asserted error.

Examples of error assertions that are overbroad include:

- An assertion that you have made errors in all aspects of the loan including origination, servicing, and foreclosure, including errors relating to substantially every borrower payment and escrow account transaction
- Assertions in the form of a judicial action complaint, subpoena, or discovery request that purports to require you to respond to each numbered paragraph
- Incomprehensible requests that are not reasonably understandable
- Assertions that include voluminous tangential discussion or requests for so much information that you cannot reasonably identify from the notice any error that the notice of error provisions requires you to correct

(Comment 35(g)(1)(ii)-1)

9.7.4 Untimely notices of error or information requests (§§ 1024.35(g)(1)(iii) and 36(f)(1)(v))

A notice of error or information request is untimely if it is delivered to you more than one year after:

- You transfer the loan in question.
- The mortgage loan is "discharged," which means the debt and all corresponding liens have been extinguished or released.

9.7.5 Confidential, proprietary, or privileged information (§ 1024.36(f)(1)(ii))

You are not required to provide documents relied upon that constitute confidential, proprietary, or privileged information.

9.7.6 Irrelevant requests for information (§ 1024.36(f)(1)(iii))

You are not required to provide irrelevant information requested by a borrower. Information is irrelevant if it is not directly related to the borrower's mortgage loan account.

You must treat the error notice or information request submitted by an agent of the borrower as though it came directly from the borrower. You may find it useful to set up a procedure to verify that a borrower has authorized a person claiming to be an agent of the borrower to act on his or her behalf. (Comments 35(a)-1 and 36(a)-1)

9.8 Can I designate addresses for notices of error or requests for information?

You may set up an address for borrowers to use to submit notices of errors and requests for information, as long as you provide borrowers with written notice of the address. The notice

shall include a statement that the borrower must use the established address to assert an error or request information.

If you designate a specific address for receiving notices of error, you must use the same address for receiving information requests. Before you change the designated address, you must send a written notice to the borrower. You must post the designated address on any websites you maintain that contain your contact address. (§§ 1024.35(c),1024.36(b), and 1024.36(i)(4))

9.8.1 Exclusive, designated address not required

You are not required to designate a specific address that borrowers must use to assert an error or request information. If you do not designate a specific address, you must respond to a notice of error or an information request received by any of your offices. (Comments 35(c)-1 and 36(b)-1)

9.8.2 Notice of exclusive, designated address

You may send the notice establishing the designated address with a different disclosure, such as on a notice of transfer, periodic statement, or coupon book. The notice must be clear and conspicuous, in writing, and in a form the borrowers can keep. (§ 1024.32(a)(1)). You must include the designated address in the following contexts:

- The written notice you send designating the specific address
- Periodic statements or coupon books you send to borrowers
- Any website you maintain in connection with servicing the loan
- Any notice you are required to send under §§ 1024.39 or 1024.41 that includes contact information for assistance

(Comments 35(c)-2 and 36(b)-2)

9.8.3 Multiple offices

You may designate multiple office addresses for receiving notices of errors or requests for information. If you choose to do that, you must respond to all notices of error and requests for information that come to any of your multiple offices.

For example, suppose you designate a California address to receive notices of error or information requests for California borrowers and another address to receive notices of errors or information requests for Texas borrowers. If a Texas borrower sends an error notice or information request to your California address, you are considered to have received the notice of error or information request and must comply with the error resolution or information request provisions of the Mortgage Servicing Rules with respect to the notice or request, as applicable. (Comments 35(c)-3 and 36(b)-3)

9.8.4 Internet intake

If you wish, you may set up a process to receive notices of error or information requests through email, a website form, or other online intake methods. Even if you have an online intake process, you still have to offer borrowers the option of submitting notices of error and information requests by mail.

Whatever online process you establish will be considered your exclusive online process. You are not required to send a notice regarding the online process in order to establish it as your exclusive online process. (Comments 35(c)-4 and 36(b)-4)

9.9 What must I do if I receive a notice of error?

Generally, when you receive a written notice of error, you must provide the borrower a written response acknowledging receipt within 5 days (excluding legal public holidays, Saturdays, and Sundays). Then, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after receipt of the notice of error, either correct the errors and provide the borrower with written notice of the correction, or conduct a reasonable investigation and provide the borrower with written notice that no error occurred. (§ 1024.35(d) and (e))

9.9.1 Responding to borrowers

Generally, a servicer must share its response to a notice of error with the borrower within the time frame discussed in *"What is the timeline for responding to borrowers who send notices of errors?"* in Section 9.10.

If you correct an error, send the borrower a written notification explaining:

- The correction you made
- The effective date of the correction
- Your contact information, including a telephone number, for further assistance

If you determine after a reasonable investigation that no error occurred, send the borrower a written notification explaining:

- That no error occurred
- The reason or reasons for your determination
- A statement of the borrower's right to request the documents you relied upon to reach your determination and information regarding how the borrower can request such documents
- Your contact information, including a telephone number, for further assistance

9.9.2 What type of documents do I have to provide when I deny that an error occurred?

If a borrower requests the documents you relied upon to determine that no error occurred, you are required to respond to this request within 15 days. (§ 1024.35(e)(4)). You must provide only the documents you actually relied upon to determine that no error occurred, including documents reflecting information entered in your collection system. (Comment 35(e)(4)-1)

For example, if a borrower asserts you made a payment allocation error, you may provide a printed screen-capture showing amounts your servicing system credited to the borrower's account for principal, interest, escrow, or other charges.

In two specific scenarios, you may omit location, contact, and personal financial information (*e.g.*, a borrower's Social Security number) from the documents you actually relied upon to determine that no error occurred: (1) if the information pertains to a potential or confirmed successor in interest who is not the requester, or (2) if the requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester. (§ 1024.35(e)(5)). In either scenario, however, you may never omit information about the terms, status, and payment history of the mortgage loan. (§ 1024.35(e)(5))

See "*May I omit borrower information from documents that are shared with a confirmed successor in interest in responding to an information request or a notice of error request for documentation?*" in Section 4.7.9 for additional information.

9.9.3 What must I do when borrowers assert multiple errors or send multiple notices of errors or I discover more errors during my investigation?

When a borrower sends a notice that alleges multiple errors, you may send a single response or separate responses that address each asserted error. (Comment 35(e)(1)(i)-1)

If you discover different or additional errors, you must correct such errors and provide written notification of the correction to the borrower. You may provide this written notice either in the same notice you send in response to the initial notice of error or in a separate response. (Comment 35(e)(1)(ii)-1)

When notifying borrowers that you found a different or additional error during your investigation, include a description of:

- The errors you identified;
- The action you took to correct the errors;
- The effective date of the correction; and
- Your contact information, including a telephone number, for further assistance.

(§ 1024.35(e)(1)(ii))

You may request supporting documentation from a borrower in connection with the investigation of an asserted error, but you may not:

- Require the borrower to provide the information as a condition of investigating an asserted error; or
- Determine that no error occurred simply because the borrower failed to provide the information you requested. You must still conduct a reasonable investigation even when you do not get the requested information.

(§ 1024.35(e)(2))

9.10 What is the timeline for responding to borrowers who send notices of errors?

You must either correct the error asserted by the borrower and inform the borrower of the correction or conduct a reasonable investigation and inform the borrower that no error occurred:

- Not later than 7 days (excluding legal public holidays, Saturdays, and Sundays) after you receive a notice of error asserting a failure to provide an accurate payoff balance amount in violation of § 1026.36(c)(3); (§ 1024.35(e)(3)(i)(A))
- Prior to the date of a foreclosure sale or within 30 days (excluding legal public holidays, Saturdays, and Sundays), whichever is earlier, after you receive a notice of error asserting that you improperly made the first foreclosure notice or filing, or moved for foreclosure judgment or order of sale, or conducted a foreclosure sale in violation of the Bureau's rules on loss mitigation procedures (§ 1024.35(e)(3)(i)(B)). Note: If you cannot investigate, correct, or respond to a borrower who asserts this error by the earlier of a foreclosure sale or 30 days after receipt of the error notice, you may cancel or postpone a foreclosure sale to meet the deadline; (Comment 35(e)(3)(i)(B)-1)
- For all other errors, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after you receive the notice of error. (§ 1024.35(e)(3)(i)(C))

9.10.1 May I extend the time limit to respond to notices of errors?

For errors other than those related to payoff statements or the foreclosure process, you may extend the time period for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period after receipt of the notice of error, you notify the borrower in writing of the extension and the reasons for the extension. (§ 1024.35(e)(3)(ii))

If the original notice of error alleges multiple errors, you may treat each asserted error as a separate notice of error and extend the time period for responding to each separate asserted error for which an extension is permissible (i.e., those that do not relate to payoff statements or the foreclosure process as described above). (Comment 35(e)(3)(ii)-1)

9.10.2 If I correct an error within 5 days, can I send a notice of correction instead of the acknowledgment?

If you correct an error and notify the borrower in writing of the correction within 5 days (excluding legal public holidays, Saturdays, and Sundays), you do not also have to send the acknowledgment. (§ 1024.35(f)(1))

9.10.3 What must I do when a borrower asserts an error shortly before a scheduled foreclosure sale?

You are not required to acknowledge and respond to notices of error related to foreclosure if you receive the error notice 7 or fewer days before a foreclosure sale. However, you must make a good faith attempt to respond to the borrower, orally or in writing, and either correct the error or state the reason you have determined that no error has occurred. (§ 1024.35(f)(2))

9.11 What must I do when I receive an information request?

Generally, when you receive an information request, you must provide the borrower a written response acknowledging receipt within 5 days (excluding legal public holidays, Saturdays, and Sundays). Then, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after receipt of the notice, either provide the information requested or conduct a reasonable search for the information and provide the borrower with a written notice that the information is not available. (§ 1024.36(d) and (e))

If you can provide the information, share it in writing within the time frames discussed in *"What is the timeline for responding to borrowers who request information?"* in Section 9.12. Include your contact information and a telephone number for further assistance. (§ 1024.36(d)(1)(i))

9.11.1 What contact information must I provide when complying with an information request for the owner or assignee of a mortgage loan?

When you receive a request for information and the loan **is held** in a trust for which an appointed trustee receives payments on behalf of the trust, you comply with § 1024.36(d) by responding to the borrower's request with the following information, as applicable:

- For any request for information where 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 of the securitization trust** in which the loan is held, you must provide the name of the trust, and the name, address, and appropriate contact information for the trustee.

- If the request for information **did** expressly request the name or number of the trust or pool, **and** Fannie Mae or Freddie Mac **is the owner** of the loan or **the trustee of the securitization trust** in which the loan is held, you must provide the name of the trust, and the name, address, and appropriate contact information for the trustee.

- If the request for information **did not** expressly request the name or number of the trust or pool, **and** Fannie Mae or Freddie Mac **is the owner** of the loan or **the trustee of the securitization trust** in which the loan is held, you must provide the name and contact information for Fannie Mae or Freddie Mac, as applicable, without also providing the name of the trust.

(Comment 36(a)-2.ii)

If, however, a loan is **not held** in a trust for which an appointed trustee receives payments on behalf of the trust, you comply with § 1024.36(d) by responding to a request for information regarding the owner or assignee of a mortgage loan by identifying the person on whose behalf the servicer receives payments from the borrower. (Comment 36(a)-2.i)

You, the servicer, are not the owner or assignee for purposes of § 1024.36(d) if you hold the title to the loan, or title is assigned to you, solely for the administrative convenience in servicing the mortgage loan obligation. (Comment 36(a)-2.i)

The Government National Mortgage Association is not the owner or assignee for purposes of a request for information under § 1024.36(d) solely as a result of its role as the guarantor of the security in which the loan serves as the collateral. (Comment 36(a)-2.i)

9.11.2 What if I do not maintain the type of information requested?

You are not required to provide information that is not available to you. Information is not available if it is not in your control or possession, or you cannot retrieve it in the ordinary course of business through reasonable efforts. (Comment 36(d)(1)(ii)-1)

Here are some examples:

- A borrower requests a copy of a telephonic communication with your staff. Your personnel have access in the ordinary course of business to audio recording files with organized recordings or transcripts of borrower telephone calls and can identify the communication referred to by the borrower through reasonable business efforts. The information requested by the borrower is available to you, so you must share it.
- A borrower requests information stored on electronic backup media that is not accessible to your personnel in the ordinary course of business without undertaking extraordinary efforts to identify and restore the information from the electronic backup media. The information the borrower is requesting is not available to you, so you need not share it.
- A borrower requests information stored at an off-site document storage facility. You have the right to access documents at the off-site document storage facility, and your personnel can access those documents through reasonable efforts in the ordinary course of business. The information requested by the borrower is available to you, assuming that the information can be found within the off-site documents with reasonable efforts.

(Comment 36(d)(1)(ii)-2)

If you determine that the information is not available to you after conducting a reasonable search, send the borrower written notification stating that you have determined the requested information is not available. Provide the basis for your determination and your contact information, including a telephone number, for further assistance. (§ 1024.36(d)(1)(ii))

9.11.3 What if one confirmed successor in interest requests information about another borrower, or a borrower requests information about a potential or confirmed successor in interest who is not the requester? (§ 1024.36(d)(3))

See "*May I omit borrower information from documents that are shared with a confirmed successor in interest in responding to an information request or a notice of error request for documentation?*" in Section 4.7.9.

9.12 What is the timeline for responding to borrowers who request information?

How long you have to respond depends upon the information requested. In general, you must respond not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after you receive the information request. (§ 1024.36(d)(2)(i)(B))

However, when you receive an information request for the identity of, and address or other relevant contact information for, the owner or assignee of a mortgage loan, you must respond to the borrower not later than 10 days (excluding legal public holidays, Saturdays, and Sundays) after you receive the request. (§ 1024.36(d)(2)(i)(A))

9.12.1 May I extend the time limit for responding to information requests?

For requests for information other than those requesting contact information for the owner or assignee, you may extend the time period for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period, you notify the borrower in writing of the extension and the reasons for the extension. (§ 1024.36(d)(2)(ii))

9.12.2 If I provide the information requested within 5 days, do I need to send an acknowledgment?

If you provide the information requested and contact information, including a telephone number for further assistance, in writing, within 5 days (excluding legal public holidays,

Saturdays, and Sundays) of receiving an information request, you do not also need to send the acknowledgment. (§ 1024.36(e))

9.13 May I charge borrowers a fee for responding to notices of errors or requests for information?

You generally may not charge fees for responding to notices of errors or information requests, and you may not require a borrower to make any payment owed to you as a condition for providing a response. You may charge a fee for certain limited types of information, such as payoff statements (because a request for a payoff balance is not an information request) or state law beneficiary notices. (§§ 1024.35(h), 1024.36(a), and 1024.36(g))

Note that this does not alter or otherwise affect the borrower's obligation to make the payments owed. For example, if the borrower makes a monthly payment in February, but asserts an error relating to your acceptance of the February payment, the borrower must still make the March payment. However, you may not require the borrower to make the March monthly payment as a condition of responding to the notice of error. (Comment 35(h)-1)

9.14 How do error notices and information requests affect collections and credit reporting? (§ 1024.35(i)(1) to (2))

Generally, nothing in the error resolution and information request provisions of the rule limits or restricts you from pursuing any remedy you have under applicable law, including initiating foreclosure or proceeding with a foreclosure sale.

However, as discussed above, certain timely notices of error regarding the foreclosure process must be resolved before a foreclosure sale may proceed. (§§ 1024.35(i) and 36(h))

Also, for 60 days after receipt of a notice of error, you may not furnish adverse information to any borrower reporting agency regarding any payment that is the subject of the notice of error. (§ 1024.35(i)). This prohibition does not apply to requests for information.

10. General Servicing Policies, Procedures, and Requirements

10.1 What does the general servicing policies, procedures, and requirements rule require?

The rule requires you to establish policies and procedures reasonably designed to achieve the following objectives, which are described in more detail in *"What objectives must I design my policies and procedures to achieve?"* in Section 10.4:

- Accessing and providing timely and accurate information;
- Properly evaluating loss mitigation applications;
- Facilitating oversight of, and compliance by, service providers;
- Promptly facilitating the transfer of information during servicing transfers;
- Informing borrowers of the written error resolution and information request procedures; and
- Promptly facilitating communication with potential and confirmed successors in interest and confirming a successor in interest's identity and ownership interest.

Additionally, the rule sets standards for:

- Record retention; and
- Servicing file creation.

You may determine the best policies, procedures, and methods for your organization so long as they are reasonably designed to achieve the objectives set forth in the general servicing policies, procedures, and requirements provisions of the Mortgage Servicing Rules.

The rule provides that you have flexibility to set policies, procedures, and methods in light of the size, nature, and scope of your operations, including, for example, the volume and aggregate unpaid principal balance of the mortgage loans you service, the credit quality (including the default risk) of the mortgage loans you service, and your history of borrower complaints.

10.2 What is the scope of the general servicing policies, procedures, and requirements rule?

The rules apply to federally related mortgage loans (as defined in § 1024.2(b)) except for the exemptions in § 1024.5(b), the exemptions in § 1024.30(b), and open-end lines of credit.

Thus, these rules do not apply to:

- HELOCs and open-end lines of credit;
- Small servicers;
- Reverse mortgage transactions; and
- Loans for which the servicer is a qualified lender under the Farm Credit Act of 1971.

10.3 Is there a small servicer exemption to the general servicing policies, procedures, and requirements rule?

Yes, there is a small servicer exemption. Small servicers are exempt from all requirements of the provisions on general servicing policies, procedures, and requirements.

10.4 What objectives must I design my policies and procedures to achieve?

Your policies and procedures must be reasonably designed to achieve the following goals:

10.4.1 Accessing and providing timely and accurate information (§ 1024.38(b)(1))

To meet the objective of accessing and providing timely and accurate information, your policies and procedures must be reasonably designed to ensure that you can:

- Provide accurate disclosures to borrowers within the correct timeframes.
- Investigate, respond to, and when needed, make corrections in response to borrower complaints. (See Section 9 for more on error resolutions.)
- Respond to borrowers' requests for information regarding their mortgage loans with accurate and timely information. (See Section 9 for more on information requests.)
- Provide owners or assignees with accurate and current information and documents about mortgage loans you service for them, including detailed information about loss mitigation actions.
- Submit documents or filings required for a foreclosure process, including those required by a court of competent jurisdiction, that reflect accurate and current information and comply with applicable law.
- Upon receiving notice of a borrower's death or of any transfer of the property securing a mortgage loan, promptly facilitate communication with any potential or confirmed successors in interest regarding the property.
- Upon receiving notice of the existence of a potential successor in interest, promptly determine the documents you reasonably require to confirm the person's identity and ownership interest in the property, provide a description of those documents, and notify the person how to submit a written request for information about the documents required for confirmation (including the appropriate address).
- Upon the receipt of such documents, promptly make a confirmation determination and notify the person, as applicable, that you have confirmed the person's status, have

determined that additional documents are required (and what those documents are), or have determined that the person is not a successor in interest.

10.4.2 Properly evaluating loss mitigation applications (§ 1024.38(b)(2))

To meet the objective of properly evaluating loss mitigation applications, your policies and procedures must be reasonably designed to ensure that you can:

- Provide accurate information to the borrower regarding loss mitigation options that the owner or assignee makes available.
- Identify with specificity all loss mitigation options for which borrowers may be eligible.
- Provide personnel assigned to manage delinquent borrowers with prompt access to all loss mitigation documents and information borrowers submit. (See Section 12 for continuity of contact.)
- Identify documents and information that a borrower must submit to apply for loss mitigation and facilitate compliance with the requirement to notify borrowers whether a loss mitigation application is complete or incomplete, and how to complete an incomplete application. (§ 1024.41(b)(2)(i)(B)) (See Section 13 for more on loss mitigation.)

> In your policies and procedures to identify all the loss mitigation options available for the mortgage loans you service, address how you will identify all of the borrowers' options, the criteria you will apply when evaluating those options, and how you will apply specific eligibility thresholds.

- Properly evaluate borrowers' loss mitigation applications based on all the options available to them and in accordance with the loss mitigation rules.
- 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 § 1024.41(c)(4).

So, for example, if an assignee requires that you only make a particular loss mitigation option available to a certain percentage of the loans you service, then your procedures must be reasonably designed to determine in advance how you will apply that threshold to those

mortgage loans. You will also need to ensure that this information is accessible to the personnel assigned to manage delinquent borrowers. (Comment 38(b)(2)(ii)-1)

10.4.3 Facilitating oversight of, and compliance by, service providers (§ 1024.38(b)(3))

To meet the objective of facilitating oversight of, and compliance by, service providers, your policies and procedures must be reasonably designed to ensure that you can:

- Provide servicing personnel (your own and those working for your service providers) with access to accurate and current documents and information reflecting your service providers' actions.
- Facilitate periodic reviews of your service providers, including by providing your personnel with documents and information they need to audit your service providers' compliance with their contractual obligations and applicable law.
- Share accurate and current information about borrowers' loss mitigation applications and the status of any foreclosure proceeding among appropriate servicer personnel and service provider personnel, including personnel assigned to manage delinquent borrowers and those handling foreclosure proceedings.

> Your policies and procedures must be reasonably designed to ensure that you can promptly inform service provider personnel handling the foreclosure proceedings that you have received a complete loss mitigation application. In addition, your policies and procedures must promptly instruct foreclosure counsel to take any step required by § 1024.41(g) to sufficiently and timely to avoid violating the prohibition against moving for judgment or order of sale, or conducting a foreclosure sale. (Comment 38(b)(3)-1)

10.4.4 Facilitating transfer of information during servicing transfers (§ 1024.38(b)(4))

To meet the objective of facilitating the sharing of borrower information during servicing transfers, your policies and procedures must be reasonably designed to ensure that all information and documents move from the transferor servicer to the transferee servicer.

When you are the transferor servicer, your policies and procedures must be reasonably designed to ensure that you timely transfer all the information and documents you possess or control

related to transferred mortgage loans. You must do this in a form or manner that ensures accuracy and enables the transferee servicer to comply with its obligations to owners or assignees and applicable law.

Your policies and procedures may provide for the electronic transfer of documents provided these requirements are satisfied.

When you transfer the servicing for a loan in loss mitigation, you must ensure that the transfer includes:

- Information reflecting the status of your discussions with the borrower;
- Agreements you have with the borrower; and
- Your analysis of any potential recovery from the mortgage, as appropriate.

(Comment 38(b)(4)(i)-2)

When you are the transferee servicer, you must have policies and procedures reasonably designed to identify and obtain necessary documents or information that the transferor servicer should have, but did not, transfer.

You must ensure that you get copies of any loss mitigation applications and agreements, find out about the status of any prior discussions with borrowers, and that you are able to retrieve missing loss mitigation documents and information from the transferor servicer before asking the borrower for the information. (Comment 38(b)(4)(ii)-1)

10.4.5 Informing borrowers of the written error resolution and information request procedures (§ 1024.38(b)(5))

Your policies and procedures must be reasonably designed to inform borrowers of the procedures for submitting written notices of errors and written information requests. (§§ 1024.35 and 1024.36). You may satisfy this requirement by sending a brief statement informing borrowers of their rights (mailed or delivered electronically) or posting the information on a website. For example, you could choose to include the information in a borrower's monthly periodic statement. (Comment 38(b)(5)-1)

- Note that if you designate an exclusive address for submitting notices of error and requests for information you must follow the notice requirements specific to exclusive addresses. (§§ 1024.35(c), 1024.36(b), and comments 35(c)-2 and 36(b)-2)

Your policies and procedures must be reasonably designed to provide information about the procedures for submitting written notices of error and requests for information to borrowers who are not satisfied with the resolution of an oral complaint or request for information submitted orally. (Comment 38(b)(5)-2)

Your policies and procedures must also be reasonably designed to ensure that you will either inform any borrower that incorrectly submits an assertion of error to an address given in connection with a loss mitigation application or by the continuity of contact of the correct address, or redirect such notices to the correct address. (Comment 38(b)(5)-3)

10.5 What are the standard requirements I must meet?

Two of the rule requirements are written to provide specific requirements and standards, rather than requiring policies and procedures reasonably designed to achieve general objectives.

10.5.1 Document retention

You must retain records that document your actions with respect to a borrower's mortgage loan account until one year after the date you discharged the mortgage or transferred the servicing. (§ 1024.38(c)(1))

This does not mean you must keep actual paper copies of documents. You may retain the records using any method that accurately reproduces them (including computer programs) and that ensures you can easily access the records (including a contractual right to access records possessed by another entity). (Comment 38(c)(1)-1)

10.5.2 Servicing file

For each mortgage loan you service, you must maintain the following documents and data in a way that allows you to compile them into a servicing file within 5 days:

- A schedule of all transactions credited or debited to the mortgage loan account, including escrow and suspense accounts
- A copy of the security instrument that establishes the lien securing the mortgage loan
- Any notes your personnel create that reflect communications with the borrower about the mortgage loan account
- To the extent applicable, a report of the data fields your electronic system creates related to the borrower's mortgage loan account, such as the terms of the borrower's mortgage loan, the occurrence of automated or manual collection calls, loss mitigation evaluation information, owner or assignee information, or any credit reporting history
- Copies of documents and information borrowers submit as part of loss mitigation or error resolution requests

(§ 1024.38(c)(2))

The required information must be kept in a manner that facilitates compiling such documents and data into a servicing file within five days. The Rule does not require that records be retained in a single location or electronic system. For example, multiple electronic systems may be used so long as the servicer can compile the required records within five days.

While you are required to comply with this provision as of January 10, 2014, you are not required to comply with the 5-day rule for information created before that date. For example, if you originate a loan on January 1, 2013, you would not have to maintain information about transactions credited or debited prior to January 10, 2014 in any particular manner. But you would have to maintain information about payments made on or after January 10, 2014, in a manner that facilitates compiling the information into a servicing file within 5 days (Comment 38(c)(2)-1)

The 5-day compilation requirement (§ 1024.38(c)(2)) does not confer upon any borrower an independent right to access information contained in the servicing file. When borrowers file a written request for their servicing file, you must give them a copy of the information contained in their servicing file, subject to the procedures and limitations set forth in the information request provisions of the Mortgage Servicing Rules. (§ 1024.36 and comment 38(c)(2)-2)

11. Early Intervention with Delinquent Borrowers

11.1 What does the early intervention rule require? (§ 1024.39)

You must, at a minimum, establish or make good faith efforts to establish live contact with borrowers by the 36th day of delinquency and, except in certain COVID-19-related situations as described in Appendix B to this Guide, if appropriate to their situation, promptly inform them of loss mitigation options that may be available, as described below. For information on when a borrower is delinquent for purposes of the Mortgage Servicing Rules, see the Bureau's factsheet on Delinquency.

In addition, you must, at a minimum, provide borrowers with written information about any available loss mitigation options by the 45th day of delinquency, as described below.

The Rules contain model language servicers may use for the written notice. The Bureau has also published Spanish translations of this written notice language that servicers may use to the extent allowed by other applicable law. These translations are not part of the model language in the regulation, and therefore do not qualify for the same safe harbor protection under RESPA.

11.2 What is the scope of the early intervention rule?

The early intervention rule applies to federally related mortgage loans (as defined in § 1024.2(b)) except for the exemptions in § 1024.5(b), the exemptions in § 1024.30(b) and (c), and open-end lines of credit.

Thus, these rules do not apply to:

- HELOCs and open-end lines of credit

- Small servicers
- Reverse mortgage transactions
- Loans for which the servicer is a qualified lender under the Farm Credit Act of 1971
- Any loan that is secured by a property that is not the borrower's principal residence

> Determining a borrower's principal residence 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)

In addition, the early intervention rule may apply under certain circumstances even when a borrower is in bankruptcy or has invoked the cease communication protection under FDCPA section 805(c). See "*Do the rules provide any exemptions to the early intervention requirements if a borrower is in bankruptcy or invoked the cease communication protection under the FDCPA?*" in Section 11.8 for more information. This section discusses how the early intervention rule applies to borrowers who are not in bankruptcy and who have not invoked the FDCPA cease communication protection unless otherwise specified.

11.3 Is there a small servicer exemption to the early intervention rule?

Yes, there is a small servicer exemption. Small servicers are exempt from all of the early intervention requirements.

11.4 When must I establish live contact with a delinquent borrower? (§ 1024.39(a) and comment 31(Delinquency)-1)

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

For purposes of the early intervention rule, delinquency is a period of time during which a borrower and the 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. Thus, for each billing cycle for which a borrower is delinquent for at least 36 days, you must establish or make good faith efforts to establish live contact by the 36th day and, if appropriate, inform the borrower about the availability of loss mitigation options. (Comment 31(Delinquency)-1)

For example, assume a borrower's mortgage loan requires a borrower to make periodic payments of principal, interest, and escrow by the first of each month. The borrower does not make the payment that is due on January 1. If you establish live contact with the delinquent borrower on January 31, you are in compliance with the early intervention rule because live contact was established within 36 days of the date the borrower's delinquency began. If the borrower fails to make a payment on February 1, you are required to establish or make good faith efforts to establish live contact with the delinquent borrower within 36 days of February 1, even though you previously established live contact on January 31.

- A borrower is not considered delinquent if you treat a payment that is insufficient to cover a periodic payment of principal, interest, and (if applicable) escrow for any given billing cycle as timely. (Comment 31(Delinquency)-3)
- You cannot rescind or change your decision to treat the payment as timely for purposes of determining the date on which the borrower's delinquency began.
- For more information on when a borrower is delinquent, see the Bureau's factsheet on Delinquency.

To calculate the time period for establishing live contact, start with the date a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if you give the borrower a grace period after the payment is due before you assess a late fee.

For example, if a payment due date is January 1 and the amount due is not fully paid by January 2, the borrower and the borrower's mortgage loan obligation is one day delinquent. Assuming the borrower does not make a payment during the 36-day period after January 1, you must establish or make good faith efforts to establish live contact no later than 36 days after January 1 —meaning by February 6.

If your internal policy requires you to apply a borrower's payment to the oldest outstanding periodic payment due on the mortgage loan, the borrower's payment advances the date that the

borrower's delinquency began, regardless of whether there is a period during which a periodic payment is due and unpaid. (Comment 31(Delinquency)-2)

For example, assume a borrower's mortgage loan requires a borrower to make periodic payments of principal, interest, and escrow by the first of each month. The borrower does not make the payment that is due on January 1. On January 31, the borrower is 30 days delinquent. On February 3, the borrower makes a periodic payment. You apply payments to the oldest outstanding periodic payment (i.e., the periodic payment that was due on January 1). On February 4, borrower is 3 days delinquent. (Comment 31(Delinquency)-2)

You may time your attempts to establish live contact so that a single attempt will satisfy two missed payments.

For example, assume the borrower's mortgage loan requires the borrower to make periodic payments of principal, interest, and escrow by the first of each month. The borrower does not make the payments that are due on January 1 and February 1. If you attempt to establish live contact on February 5, such a single attempt meets the requirements of § 1024.39(a) for both January 1 and February 1 missed payments.

> Generally, if you establish and maintain ongoing contact with a borrower, in accordance with the loss mitigation procedures under § 1024.41, you are **not** required to establish or make good faith efforts to establish live contact. Similarly, continued live contact with a borrower is **not** required if you determine that the borrower does not qualify for any available loss mitigation options. You will, however, need to establish or make good faith efforts to establish live contact for a borrower who becomes delinquent again after curing a prior delinquency. (Comment 39(a)-6)

Borrowers who are performing as agreed under a loss mitigation option designed to bring them current on a previously missed payment are not delinquent for the purposes of this section of the Mortgage Servicing Rules. Thus, for such borrowers, you are not required to engage in early intervention. (Comment 39(a)-1.ii)

11.4.1 What is "establishing live contact"? (Comment 39(a)-2)

Live contact with a borrower includes telephoning or conducting an in-person meeting with the borrower, but not leaving a recorded phone message. You may, but need not, rely on

> While not required, certain electronic media, such as live chat functions, can, in certain circumstances, be compared to telephone or in-person conversations that are permitted as live contact under the Rules.

live contact established at the borrower's initiative to satisfy the live contact requirement of early intervention.

The rule is designed to give you significant flexibility in tailoring your contact methods to particular circumstances. For example, the Bureau would consider the live contact requirement satisfied in cases where a borrower is delinquent in consecutive billing cycles if you have established and maintain ongoing contact with the borrower regarding the borrower's completion of a loss mitigation application and your evaluation of that borrower for loss mitigation options.

11.4.2 What are "good faith efforts"? (Comment 39(a)-3)

Good faith efforts to establish live contact consist of reasonable steps under the circumstances to reach a borrower. Good faith efforts include telephoning a borrower on more than one occasion or, in certain circumstances, sending a borrower a written or electronic communication encouraging the borrower to establish live contact with you. When determining if you have made good faith efforts, except in certain COVID-19 related situations as discussed in Appendix B, the length of the borrower's delinquency as well as a borrower's failure to respond to your repeated attempts at establishing live contact may be relevant circumstances to consider.

11.4.3 Does providing loss mitigation information to a borrower's representative satisfy the requirement to establish live contact? (Comment 39(a)-5)

The rules do not prohibit you from satisfying the live contact requirement by providing information about loss mitigation options to the borrower's authorized representative.

You may set up reasonable procedures to determine whether a person that claims to be the borrower's agent has authority to act on the borrower's behalf. For example, you can require the agent to provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.

11.5 What Information must I share with delinquent borrowers about loss mitigation options? (Comment 39(a)-4.i)

The Rules require you to provide loss mitigation information where appropriate. Generally, it is within your reasonable discretion to determine whether informing a borrower about the availability of loss mitigation options is appropriate under particular circumstances, as you determine from establishing live contact with the borrower. The following examples demonstrate when a servicer has made a reasonable determination regarding the appropriateness of providing information about loss mitigation options:

- During live contact, the borrower notifies you of a material adverse change in financial circumstances that is likely to cause the borrower to experience a long-term delinquency, such as loss of a job, for which loss mitigation options may be available. You provide loss mitigation information to the borrower.
- A borrower who misses a January 1 payment notifies you that the borrower will make a full late payment by February 15. You do not provide information about the availability of loss mitigation options because there does not appear to be a long-term issue.

However, note that in certain COVID-19-related situations, certain loss mitigation information must be discussed in all instances, and the servicer does not have discretion to determine if it is appropriate. *See* Appendix B of this Guide for more information.

11.5.1 What is required to "promptly inform" borrowers about loss mitigation options? (Comment 39(a)-4.ii)

The Mortgage Servicing Rules require that, where appropriate (except when required in certain COVID-19 related situations as discussed in Appendix B of this Guide), you must "promptly inform" borrowers about loss mitigation after establishing live contact. You may provide loss mitigation information orally, in writing, or through electronic communication, as long as you share the information promptly after you establish live contact.

Except as discussed in Appendix B of this Guide, you do not need to notify a borrower about any particular loss mitigation options promptly after establishing live contact. If appropriate, you need only inform the borrower generally that loss mitigation options may be available.

You may satisfy the requirements of the early intervention provisions of the Mortgage Servicing Rules to inform borrowers about loss mitigation options promptly after establishing live contact by providing them with the early intervention written notice. For example, you may provide the model language in MS-4(A), MS-4(B), and MS-4(C) found in appendix MS-4 of the Rules, as well as any information, if required, discussed in Appendix B of this Guide. (See *"What information must be in the written notice about loss mitigation options?"* in Section 11.7)

> Spanish translations of the model clauses are available on the Bureau's website. The Bureau encourages you to ascertain borrower language preferences and utilize the translations to assist limited English proficiency borrowers, where appropriate and to the extent permitted by applicable law.

11.6 When must I provide a written notice about loss mitigation to delinquent borrowers? (§ 1024.39(b) and comments 39(a)-1 and (b)(1)-2 and -5)

By the 45th day of delinquency, you must provide delinquent borrowers with a written notice about loss mitigation. You must provide the written notice even if you provided information about loss mitigation and foreclosure previously during an oral communication with the borrower, as discussed above.

Delinquency, as discussed above, is defined as a period of time during which a borrower and the 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, even if you offer the borrower a period of time after the due date has passed to pay before you assess a late fee.

For example, if a payment is due January 1 and unpaid during the 45-day period after January 1, you must provide the written notice within 45 days after January 1—i.e., by February 15. However, if the borrower satisfies the late payment in full on February 1, you would not need to provide the written notice.

You are not required to provide the written notice more than once during any 180-day period. For example, a borrower has a payment due on March 1. The amount due is not fully paid during the 45 days after March 1, so you provide the written notice on April 15. The borrower fails to make the April 1 payment and does not pay the amount due during the 45 days after April 1. You do not need to provide the written notice again during the 180-day period beginning on April 15—i.e., no sooner than on October 12—and then only if the borrower is at that time 45 days or more delinquent. (Comment 39(b)(1)-2)

11.6.1 Must I provide a written notice when the servicing of a loan is transferred? (Comment 39(b)(1)-5)

In the case of a transferred loan, you, the transferee servicer, **are required** to send a 45-day notice regardless of whether the transferor servicer, the servicer transferring the loan, provided a written notice to the borrower in the preceding 180-day period.

You would **not** be required to provide a written notice under § 1024.39(b), however, if the transferor servicer provided the written notice 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 § 1024.39(b) on April 10. The loan is transferred on April 12. Assuming the borrower remains delinquent, you are 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.

11.7 What information must be in the written notice about loss mitigation options? (§ 1024.39(b)(2) to (3))

Model clauses MS-4(A), MS-4(B), and MS-4(C) in appendix MS-4 have text you can use in your loss mitigation notice.

The notice must include:

- A statement encouraging the borrower to contact you
- The telephone number for the personnel assigned to the borrower. (See *"Do I have to assign a single point of contact to a delinquent borrower?* (Comment 40(a)-2)*"* in Section 12.4.2.)
- Your mailing address
- If applicable, a statement providing a brief description of examples of loss mitigation options that may be available
- If applicable, either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from you
- The website to access either the Bureau list or the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations
- You may also include additional information that you determine to be helpful, or which may be required by applicable law or the owner or assignee of the mortgage loan (Comment 39(b)(2)-1)

> Spanish translations of the model clauses are available on the Bureau's website. The Bureau encourages you to ascertain borrower language preferences and utilize the translations to assist limited English proficiency borrowers, where appropriate and to the extent permitted by applicable law.

> Borrowers are likely to benefit from examples of options that would permit them to retain ownership of their home and examples of options that may require them to end their ownership to avoid foreclosure. You may send a generic list of loss mitigation options you typically offer to borrowers and include a warning that not all borrowers may qualify for the listed options. (Comment 39(b)(2)(iii)-1)

You may use any color, number of pages, size and quality of paper, size and type of print, and method of reproduction for your notice, provided each of the required statements satisfies the clear and conspicuous standard. (§ 1024.32(a)(1) and comment 39(b)(2)-2)

You may combine this notice in a single mailing with other notices that satisfy the content requirements, provided each of the required statements satisfies the clear and conspicuous standard. (Comment 39(b)(2)-2)

> It may be helpful to give borrowers detailed information and instructions about loss mitigation, such as a list of documents they should have in hand when contacting you, or an estimate of how quickly you typically evaluate applications. You can even supplement your written notice with a loss mitigation application form. (Comment 39(b)(2)(iv)-1)

11.8 Do the rules provide any exemptions to the early intervention requirements if a borrower is in bankruptcy or invoked the cease communication protection under the FDCPA?

Under the Mortgage Servicing Rule, you are partially exempt from certain provisions of the early intervention rules with respect to a mortgage loan when any borrower on that loan is a debtor in bankruptcy or invokes the FDCPA's cease communication protections.

11.8.1 When am I exempt from making good faith efforts to establish live contact with a borrower in these contexts? (§§ 1024.39(c)(1)(i) and (d)(1))

You are exempt from the live contact early intervention requirements on a mortgage loan when **either** of the following conditions are met: (1) any borrower on the loan is a debtor in bankruptcy; or (2) you are a debt collector under the FDCPA with respect to the mortgage loan, and any borrower on the loan has invoked the FDCPA's cease communication protection with respect to that loan. (§§ 1024.39(c) and (d))

The live contact requirements occur for each billing cycle for which a borrower is delinquent. Therefore, this exemption will, generally, **not** apply when a borrower is no longer a debtor in

bankruptcy and continues to be delinquent. For example, assume the borrower's mortgage loan requires the borrower to make periodic payments of principal, interest, and escrow by the first of each month. If the borrower's bankruptcy case is dismissed on March 19, and the borrower does not make the payment that is due on April 1, the exemption no longer applies and you must establish or make good faith efforts to establish live contact no later than 36 days after April 1.

See "*What are my obligations under the early intervention rule once the borrower is no longer in bankruptcy?*" in Section 11.8.7 for more information on when the exemption will and will not continue to apply.

This information is summarized in a flowchart that is appended to the guide. See "*Early intervention bankruptcy and FDCPA exemptions*" flowchart in Appendix A of this Guide.

11.8.2 When am I exempt from the written notice requirements in these contexts? (§§ 1024.39(c) and (d))

You are exempt from the written notice requirements for the mortgage loan if **no** loss mitigation option is available and **either** of the following conditions is met: (1) any borrower on the loan is a debtor in bankruptcy; or (2) you are acting as a debt collector under the FDCPA with respect to the mortgage loan, and any borrower on the loan has invoked the FDCPA's cease communication protection with respect to that loan. (§§ 1024.39(c)(1)(ii) and (d)(2)) However, if any loss mitigation option **is** available and **either** of these two conditions is met, you must comply with modified written notice requirements for the mortgage loan. (§§ 1024.39(c)(1)(iii) and 39(d)(3))

You are also exempt from the written notice requirements for the mortgage loan if **both** of the following conditions are met: (1) any borrower on the loan is a debtor in bankruptcy; and (2) you are acting as a debt collector under the FDCPA with respect to the mortgage loan, and any borrower on the loan has invoked the FDCPA's cease communication protection with respect to that loan. (§ 1024.39(c)(1)(ii))

A loss mitigation option is available when the owner or assignee of a mortgage loan offers an alternative to foreclosure for which a borrower may apply. For the purposes of § 1024.39(c)(1)(ii), a loss mitigation option is available even if the borrower ultimately does not qualify for such option. (Comments 39(c)(1)(ii)-1 and 39(d)-1)

If a borrower is represented by a person authorized by the borrower to communicate with the servicer on the borrower's behalf (e.g., bankruptcy counsel), you may provide the written notice to the borrower's representative. (Comment 39(c)-1)

This information is summarized in a flowchart that is appended to the guide. See "*Early intervention bankruptcy and FDCPA exemptions*" flowchart in Appendix A of this Guide.

11.8.3 Are there special timing and frequency requirements for providing a written notice to borrowers in bankruptcy? ((§ 1024.39(c)(1)(iii))

If you are not exempt from the written notice requirement for a mortgage loan, you must provide a modified written notice no later than the 45th day after the first of the following two trigger events.

First, if a borrower is delinquent when the borrower becomes a debtor in bankruptcy, you must provide the modified written notice no later than the 45th day after the borrower files a bankruptcy petition. For example, assume that the borrower's bankruptcy case commences on January 1 and the borrower is delinquent at the time the bankruptcy case commences. You must provide the modified written notice on or before February 15. (§ 1024.39(c)(1)(iii))

Second, if the borrower is not delinquent when the borrower files a bankruptcy petition, but subsequently becomes delinquent while in bankruptcy, you must provide the modified written notice no later than the 45th day of the borrower's delinquency. For example, assume that the borrower's mortgage loan requires the borrower to make a periodic payment by the first of each month. Also assume that the borrower's bankruptcy case commences on January 1. If the borrower misses a payment on March 1, you must provide the modified written notice on or before April 15. (§ 1024.39(c)(1)(iii))

Further, you are required to provide a borrower in bankruptcy with the modified written notice even if you provided a written notice in the preceding 180-day period. For example, assume that the borrower misses a payment that is due on March 1. You provide the written notice on or

before April 15. The borrower then files a petition for bankruptcy on May 1. You must provide the modified written notice on or before June 15. (§ 1024.39(c)(1)(iii))

You are **not** required to provide a modified written notice more than once during a single bankruptcy case. For example, assume that the borrower files a petition for bankruptcy on June 1, you provide the modified written notice on July 10, and the bankruptcy case is dismissed on August 1. If the court subsequently reopens or reinstates the borrower's bankruptcy case and you do not provide a second written notice, you have complied with § 1024.39(b) and (c)(1)(iii). (Comment 39(c)(2)-1)

11.8.4 Can a modified written notice to a borrower in bankruptcy request a payment? ((§ 1024.39(c)(1)(iii)(A))

No, the modified written notice you provide to the borrower in bankruptcy may not contain a request for payment. (§ 1024.39(c)(1)(iii)(A))

11.8.5 Can I provide an early intervention modified written notice to a borrower's representative in the bankruptcy context? (§ 1024.39(c)(1)(iii))

If the borrower in bankruptcy is represented by a person authorized by the borrower to communicate with you on their behalf, you may provide the modified written notice to the borrower's representative. Before doing so, you must undertake reasonable procedures to determine if that person, who claims to be authorized by the borrower to communicate with you, has actual authority from the borrower to communicate with you on the borrower's behalf. (Comments 39(a)-5 and 39(c)-1)

What reasonable procedures you deploy to determine whether that person has actual authority will depend on the particular facts and circumstances of the interaction. For example, assume the borrower's bankruptcy counsel is the borrower's representative. Your procedures for determining whether counsel is borrower's representative are generally considered reasonable if they are limited to, for example, confirming that the attorney's name is listed on the borrower's bankruptcy petition or other court filing. (Comment 39(c)-1)

11.8.6 Can I provide an early intervention modified written notice to one joint obligor in the bankruptcy context? (Comment 39(c)(1)(iii)-1)

When two or more borrowers are joint obligors with primary liability on a mortgage loan where the modified written notice is required, you may comply with § 1024.39(c)(1)(iii) by providing the written notice to any borrower. (Comment 39(c)(1)(iii)-1)

11.8.7 What are my obligations under the early intervention rule once the borrower is no longer in bankruptcy? (§ 1024.39(c)(2)(i) and (ii))

Generally, you must resume compliance with the early intervention requirements after the next payment due date that follows the earliest of the following events: (1) the bankruptcy case is dismissed; (2) the bankruptcy case is closed; or (3) the borrower reaffirms personal liability for the mortgage loan. (§ 1024.39(c)(2)(i))

You are **not** required to resume compliance with the live contact early intervention requirements if the borrower has discharged personal liability on a mortgage loan pursuant to chapters 7, 11, 12, and 13 of the Bankruptcy Code. However, you must resume compliance with the written early intervention notice requirements if the borrower has made any partial or periodic payment on the mortgage loan after commencement of the borrower's bankruptcy case. (§ 1024.39(c)(2)(ii))

11.8.8 How often must I provide a written notice to a borrower who has invoked the cease communication right under the FDCPA? (§ 1024.39(d)(3)(iii))

If you are required to provide a written notice after a borrower has invoked the FDCPA's cease communication right with respect to that loan, you must not provide the modified written notice more than once during any 180-day period. (§ 1024.39(d)(3)(iii))

If the borrower is **45 or more days delinquent** at the end of any 180-day period, you must provide the written notice again no later than 10 days after the end of the 180-day period.[4] (§ 1024.39(d)(3)(iii))

But, if a borrower is **less than 45 days delinquent** at the end of any 180-day period, you must provide the written notice again no later than whichever of the following is later:

- 45 days after the delinquent payment's due date; or
- 190 days after the provision of the prior written notice.

11.8.9 What special statements must be included when I provide a written notice to a borrower who has invoked the cease communication right under the FDCPA? (§ 1024.39(d)(3)(i) and (ii))

If you are required to provide a written notice after a borrower has invoked the FDCPA's cease communication right with respect to that loan, the modified written notice must include a statement that you may or you intend to invoke a specified remedy of foreclosure.

Model Clause MS-4(D), in appendix MS-4 of Regulation X, contains model language that you may use to satisfy this requirement. Use of this model clause provides you a safe harbor from liability under FDCPA section 805(c) for providing the written notice. (§ 1024.39(d)(3)(i))

In addition, the written notice may not contain a request for payment. (§ 1024.39(d)(3)(ii))

11.8.10 How do the early intervention requirements interact with bankruptcy law and the FDCPA?

Bankruptcy law: Generally, the Mortgage Servicing Rules do not require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable

[4] See the October 2017 Interim Final Rule *available at* www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/amendments-2016-amendments-2013-mortgage-servicing-rules-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/.

bankruptcy law or a court order in a bankruptcy case. If necessary to comply with such law or court order, you may adapt the requirements of § 1024.39 as appropriate. (Comment 39(c)-2)

FDCPA: Concurrently with the 2016 Mortgage Servicing Rule, the Bureau issued an interpretive rule under the FDCPA relating to servicers' compliance with certain mortgage servicing rules. The interpretive rule, 81 FR 71977, provides you with a safe harbor from:

1. Liability under FDCPA section 805(b) when you communicate about a mortgage loan with a confirmed successor in interest in compliance with specified mortgage servicing rules in Regulation X or Z; and

2. Liability under FDCPA section 805(c) when you:

    a. Provide a written early intervention notice required by § 1024.39(b), as modified by § 1024.39(d)(3), to a borrower who has invoked the cease communication protection under the FDCPA; or

    b. Respond to borrower-initiated communications concerning loss mitigation after the borrower has invoked the cease communication protection under the FDCPA.

12. Continuity of Contact with Delinquent Borrowers

12.1 What does the continuity of contact rule require?

In general, you must maintain policies and procedures reasonably designed to provide delinquent borrowers with access to personnel who can assist them with loss mitigation options where applicable.

12.2 What is the scope of the continuity of contact rule?

The rule applies to federally related mortgage loans (as defined in § 1024.2(b)) except for the exemptions in § 1024.5(b), the exemptions in § 1024.30(b) and (c), and open-end lines of credit.

Thus, these rules do not apply to:

- HELOCs and other open-end lines of credit
- Small servicers
- Reverse mortgage transactions
- Loans for which the servicer is a qualified under the Farm Credit Act of 1971
- Any loan that is secured by a property that is not the borrower's principal residence

> Determining a borrower's principal residence 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)

12.3 Is there a small servicer exemption to the continuity of contact rule?

Yes, there is a small servicer exemption. Small servicers are exempt from all the requirements of the provisions on continuity of contact.

12.4 What is continuity of contact? (§ 1024.40(a))

You must design policies and procedures to ensure, among other things, that:

- You assign personnel to delinquent borrowers by the time you send the written notice required by the early intervention requirements, but, in any event, by the 45th day of the borrowers' delinquency.
- Borrowers can reach the assigned personnel by phone and that such personnel can respond to borrower inquiries and, as applicable, help them pursue loss mitigation options, including by advising them about the status of any loss mitigation application and applicable timelines.

> Consider who is a delinquent borrower. Borrowers who have refinanced or paid off their loan, brought it current by paying all amounts owed in arrears, and those who have transferred title (for example, though a deed-in-lieu of foreclosure or a short sale) are no longer delinquent borrowers. After a foreclosure sale, borrowers are also no longer delinquent borrowers, so the rule no longer applies to them.

- Your personnel can retrieve, in a timely manner, the complete record of the borrower's payment history and all of the written information the borrowers provide in connection with a loss mitigation application and, when appropriate, provide such information to other persons responsible for evaluating a borrower for available loss mitigation options.
- Your personnel can provide a timely live response to borrowers who call and have to leave a message when they cannot reach a live person.

12.4.1 How do I respond to people who claim they represent a delinquent borrower? (Comment 40(a)-1)

You are required to interact with a person authorized by a borrower to act on the borrower's behalf.

You may set up reasonable procedures to determine if a person that claims to be the borrower's agent has authority to act on the borrower's behalf. For example, you can require the agent to provide documentation from the borrower stating that the purported agent is acting on his or her behalf.

12.4.2 Do I have to assign a single point of contact to a delinquent borrower? (Comment 40(a)-2)

It is up to you to decide whether to assign a single person or a team of personnel to respond to a delinquent borrower.

The personnel you assign to the borrower to comply with the continuity of contact provisions described in § 1024.40(a)(1) may be single-purpose or multi-purpose personnel. Single-purpose personnel are employees whose primary responsibility is to respond to a delinquent borrower's inquiries and, if you offer loss mitigation, assist with loss mitigation. Multi-purpose personnel are employees who do not have a primary responsibility at all or those for whom delinquency and loss mitigation activities are not a primary duty.

You may assign personnel with specialized knowledge in bankruptcy law to assist borrowers who file for bankruptcy.

12.5 When must continuity of contact personnel be available to borrowers? (§ 1024.40(a)(1) to (2))

You must maintain policies and procedures reasonably designed to ensure that you assign personnel to delinquent borrowers by the time you send the written notice required by the early intervention requirements, which means at least by the 45th day of the borrowers' delinquency.

As set forth above, delinquency is a period of time during which a borrower and the 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. (§ 1024.31)

Your policies and procedures must be designed to ensure that personnel remain available until the borrowers have made, without incurring a late charge, 2 consecutive mortgage payments in accordance with the terms of a permanent loss mitigation agreement or the mortgage. If a borrower redefaults after making 2 payments, the clock resets and personnel must be available by the time you send the written notice required by the early intervention requirements, but in any event, by the 45th day of the borrower's delinquency.

12.6 What must personnel be able to do? (§ 1024.40(b)(1)-(2))

Your policies and procedures must be reasonably designed to ensure that the personnel assigned to delinquent borrowers provide them with accurate information about:

- The specific loss mitigation options made available to them by the owner or assignee
- How to submit a complete loss mitigation application, get it evaluated and, if applicable, how to appeal an application that is denied
- The status of a borrower's submitted loss mitigation application
- The circumstances under which you may refer borrowers to foreclosure
- Loss mitigation deadlines set by the loan's owner or assignee or the provisions of the Mortgage Servicing Rules
- How to submit a written notice of error or information request. (See Section 9 for more on error resolutions and information requests.)

Your policies and procedure must be reasonably designed to ensure that personnel are able to retrieve certain information in a timely manner, including:

- A complete record of the borrower's payment history

- All written information the borrower has provided to you, and, if applicable, to prior servicers, in connection with a loss mitigation application

13. Loss Mitigation Procedures

13.1 What does the loss mitigation rule require? (§ 1024.41)

The loss mitigation provisions of the Mortgage Servicing Rules generally require you to:

- Work with borrowers to complete timely applications for loss mitigation options.
- Evaluate complete and timely loss mitigation applications within 30 days for all loss mitigation options available to the borrower. If you require documents or information not in the borrower's control to determine if loss mitigation options are available, you will be required to provide the borrower with a notice that informs the borrower of, among other things, the specific information you are missing.
- For complete and timely applications, inform borrowers of whether the servicer will offer the borrower a loss mitigation option and, if the borrower is denied a loan modification option, of the specific reasons for the denial.
- Evaluate timely appeals submitted by eligible borrowers. The appeals must be reviewed by independent personnel, that is, not the same personnel who initially evaluated the loss mitigation application.
- Refrain from beginning or completing the foreclosure process in certain circumstances, as set forth below, when a borrower is being evaluated for loss mitigation options as required under the rule.

The rule does not require you or the owner of a mortgage loan to offer any specific loss mitigation option. Nor does it mandate any particular eligibility criteria. (See comment 41(c)(1)-2)

However, you must maintain policies and procedures reasonably designed to, for example, properly evaluate the application for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee. In addition, where applicable and in accordance with the requirements of § 1024.41, your policies and procedures must address how you will apply any specific thresholds for eligibility for a particular loss

mitigation option. (§ 1024.38(b)(2)(v) and comment 38(b)(2)(ii)-1). Subject to certain limitations, you must evaluate borrowers for all loss mitigation options the owner or assignee makes available, whether or not the individual borrower is ultimately eligible for any particular loss mitigation option. See "*Properly evaluating loss mitigation applications*" in Section 10.4.2 for more information on loss mitigation evaluation policies and procedures.

13.2 What is the scope of the loss mitigation rule?

The rule applies to federally related mortgage loans (as defined in § 1024.2(b)) except for the exemptions in § 1024.5(b), the exemptions in § 1024.30(b) and (c), and open-end lines of credit.

Thus, these rules do not apply to:

- HELOCs and open-end lines of credit
- Reverse mortgage transactions
- Loans for which the servicer is a qualified lender under the Farm Credit Act of 1971
- Any loan that is secured by a property that is not the borrower's principal residence

> Determining a borrower's principal residence 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)

Servicers that are debt collectors under the FDCPA to whom a borrower has sent a written cease communication request must still comply with the loss mitigation rules, unless the borrower specifically withdraws the request for the loss mitigation. (See CFPB Bulletin 2013-12 for additional details.)

13.3 Is there a small servicer exemption to the loss mitigation rule? (§ 1024.41(j))

Small servicers are exempt from the majority of the loss mitigation requirements. However, two prohibitions apply to small servicers. Small servicers shall not:

- Make the first notice or filing required to foreclose unless a borrower's mortgage loan obligation is more than 120 days delinquent, the foreclosure is based on a borrower's violation of a due-on-sale clause, or the servicer is joining the foreclosure action of a superior or subordinate lienholder
- Make the first notice or filing required to foreclose if a borrower is performing pursuant to the terms of a loss mitigation agreement
- Move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a loss mitigation agreement

13.4 What must I do when I receive a loss mitigation application?

When you receive a loss mitigation application 45 days or more before a foreclosure sale is scheduled (or at any time when no foreclosure sale has been scheduled), you must provide the borrower a notification acknowledging receipt of the application and inform the borrower whether the application is complete or incomplete. If the application is incomplete, the notification must also inform the borrower of any documents or information necessary to complete the application.
(§ 1024.41(b)(2)(i)(B))

You must exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.
(§ 1024.41(b)(1))

If you receive a complete loss mitigation application 37 days or more before a foreclosure sale is scheduled (or at any time when no foreclosure sale has been scheduled), you must evaluate the complete loss mitigation application and notify the borrower in writing:

- Which loss mitigation options, if any, you will offer the borrower; and
- Information on an appeal process.

- A loss mitigation application is defined as an oral or written request for a loss mitigation option that is accompanied by any information required by a servicer for evaluation for a loss mitigation option. (§ 1024.31)
- A servicer has the own application requirements and decide the type and amount of information it will require from borrowers applying for loss mitigation options. (Comment 41(b)(1)-1)
- You should make sure your staff is trained to recognize when an inquiry about loss mitigation has become a loss mitigation application. For example, when giving information to a borrower about loss mitigation programs, if the borrower expresses an interest in applying for a loss mitigation option and provides information that you would evaluate in connection with a loss mitigation application, the borrower's inquiry has become a loss mitigation application. For more information about when an inquiry becomes an application, see comments 41(b)(1)-2 and -3.

If you deny the borrower for any trial or permanent loan modification option, the notification must also state the specific reason or reasons why an application for a loan modification option was denied. The notification must include other specific information set forth in § 1024.41(c)(1)(ii). (§ 1024.41(c) and (d))

13.4.1 Acknowledging loss mitigation applications (§ 1024.41(b)(2) and comments 41(b)(1)-1 to -4)

If you receive a loss mitigation application 45 days or more before a scheduled foreclosure sale (or when no foreclosure sale has been scheduled), you must do the following:

1. Determine if the application is complete, meaning you have received all the information you need from the borrower to evaluate the borrower for all available loss mitigation options. Generally, you have the flexibility to determine the type and amount of information required from borrowers applying for loss mitigation.

2. Provide a written notice to the borrower within 5 days (excluding legal public holidays, Saturdays and Sundays) of receiving the application, acknowledging receipt of the application and stating that you have determined the application is either complete or incomplete.

If the application is incomplete, the notice must also state:

- The additional documents and information the borrower must submit to make the loss mitigation application complete.
- A reasonable date by which the borrower should submit the missing information or documents needed to complete the application.
- 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.

> The reasonable date is generally 30 days after the date you provide the notice acknowledging receipt of a loss mitigation application. However, the reasonable date must be no later than the earliest remaining milestone, and must never be less than seven days from the date you provide the acknowledgment notice. (Comments 41(b)(2)(ii)-1, 2, and 3). See *"Reasonable date"* in Section 13.4.2 for more information.

You must exercise reasonable diligence to make an incomplete application complete. In exercising reasonable diligence, you **may** stop collecting a borrower's documents and information for a particular loss mitigation option once you receive information confirming that that borrower is ineligible for that option, pursuant to requirements established by the owner or assignee. You may **not** stop collecting a borrower's documents and information for a particular loss mitigation option based solely on a borrower's stated preference—for example, a preference for a short sale or, more generally, not to retain the property. However, you **may** stop collecting information based on the borrower's stated preference in conjunction with other information, as

prescribed by any requirements established by the owner or assignee. See Comment 41(b)(1)-1 for more information and illustrations of these principals.

Although providing a notice to the borrower about the information or documents that are missing from the application is a required step for applications submitted 45 days or more before a foreclosure sale is scheduled (or when no sale has been scheduled), you may be required to take additional steps to comply with the reasonable diligence standard. Examples of reasonable diligence include:

- You need additional information from the borrower, such as an address or a telephone number to verify employment, and you contact the borrower promptly to obtain the information after receiving a loss mitigation application. (Comment 41(b)(1)-4.i)
- Servicing for a mortgage loan is transferred to your company. The borrower made an incomplete loss mitigation application to you after the transfer. You review documents provided by the transferor servicer and, if necessary, request from the borrower additional documents needed to complete the application. (Comment 41(b)(1)-4.ii).

See "*Conducting reasonable diligence to obtain information not in the borrower's control*" in Section 13.4.7 and "*Other requirements regarding short-term loss mitigation*" in Section 13.4.10 for more information about reasonable diligence requirements.

When you determine the application is complete (that is, you do not require further documents or information from the borrower), you must provide a notice to the borrower within 5 days of receiving the application (excluding legal public holidays, Saturdays, and Sundays) stating that you have determined the application is complete and that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

3. Once you receive a complete application, you must then proceed with evaluating that application for all loss mitigation options available to the borrower within 30 days, as discussed further below (unless you later discover corrected documents or additional information is needed to evaluate the application, see *"Incomplete loss mitigation applications)"* in Section 13.4.9). Note that you must conduct this evaluation, within 30 days, for any complete loss mitigation application you receive more than 37 days before a scheduled foreclosure sale.

13.4.2 Reasonable date (Comments 41(b)(2)(ii)-1, -2, and -3)

The reasonable date is generally 30 days after the date you provide the notice acknowledging receipt of a loss mitigation application pursuant to § 1024.41(b)(2)(i)(B).

However, the reasonable date must be no later than the earliest remaining milestone:

1. 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;
2. The date that is the 120th day of the borrower's delinquency;
3. The date that is 90 days before a foreclosure sale; or
4. The date that is 38 days before a foreclosure sale.

In addition, the reasonable date must never be less than seven days from the date you provide the acknowledgment notice.

For example, if you provide the written acknowledgment notice to a borrower on January 1, and January 16 is the 120th day of the borrower's delinquency (and the earliest remaining milestone), the reasonable date must be at least seven days from January 1 (i.e., January 8) and not later than the date that is the 120th day of the borrower's delinquency (i.e., January 16). In this example, the reasonable date must be less than 30 days because the 120th day of the borrower's delinquency occurs sooner.

13.4.3 Notice of complete loss mitigation application (§ 1024.41(c)(3))

Upon receiving a complete application, you generally must send the borrower a written notice acknowledging that you received the complete loss mitigation application. Your obligation to provide this notice occurs every time a loss mitigation application becomes complete, even if you have previously sent the borrower this notice. Comment 41(c)(3)(i)-3 offers an example of this principle.

You must provide this notice, when required, within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving a borrower's complete loss mitigation application. (§ 1024.41(c)(3)(i))

This notice must contain the following information:

1. That the loss mitigation application submitted is complete;
2. The date you received the complete application;
3. That you expect to complete your evaluation within 30 days of the date you received the complete application;
4. That the borrower is entitled to certain foreclosure protections because you have received the complete application.
5. One of the following, as applicable:
   a. If you have not made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that you 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
   b. If you have made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that you have begun the foreclosure process, and that you cannot conduct a foreclosure sale before evaluating the borrower's complete application;
6. That you may need additional information at a later date to evaluate the application, and if you should require additional information you 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 you do not receive the information as requested; and
7. That the borrower may be entitled to additional protections under state or federal law.

> The date you received the complete application may not be the same date as when an application became facially complete. For example, assume you receive a complete application on March 1 and send the borrower a notice acknowledging the receipt of a complete loss mitigation application on March 5. On March 10, you discover that the application requires additional information or corrected documents to complete the application. Following this determination, you promptly request additional information or documents from the borrower. If you receive the requested documents, and thereby have a complete application on March 21, you must provide a second notice of complete loss mitigation application and disclose March 21 as the date you received the complete application. (Comment 41(c)(3)(i)-3)

You are **not** required to provide a borrower with notice acknowledging that you received their complete loss mitigation application when:

- You provided the borrower with a notice of complete loss mitigation application and you **have not** requested additional information or a corrected version of a previously submitted document;
- You have completed your evaluation and provided the borrower with a determination notice under § 1024.41(c)(1)(ii) stating, among other things, which loss mitigation options, if any, you will offer the borrower; or
- The borrower's loss mitigation application was not complete or facially complete more than 37 days before a foreclosure sale.

(§ 1024.41(c)(3)(ii))

13.4.4 Evaluating loss mitigation applications (§ 1024.41(c))

The Mortgage Servicing Rules set certain deadlines and procedures concerning review of applications for loss mitigation options.

In general, if you receive a complete loss mitigation application more than 37 days before a scheduled foreclosure sale (or at a time when no foreclosure sale is scheduled), you must evaluate it within 30 days for all available loss mitigation options and provide the borrower a notice in writing stating (among other things) your determination of which loss mitigation options, if any, you will offer to the borrower.

You may combine this notice with other notices required by applicable law, including, without limitation, a Regulation B (12 CFR § 1002) adverse action notice or a Fair Credit Reporting Act notice, unless otherwise prohibited by applicable law. (Comment 41(c)(1)-4)

13.4.5 Facially complete loss mitigation applications (§ 1024.41 (c)(2)(iv) and comments and 41(c)(2)(iv)-1 and -2)

An application is considered facially complete if:

- A borrower submits all the missing documents and information after receiving notice from you that their application was incomplete due to missing documents or information under § 1024.41(b)(2)(i)(B);
- No additional information is requested in your notice to the borrower acknowledging receipt of the loss mitigation application, pursuant to § 1024.41(b)(2)(i)(B); or
- You are required to provide the borrower with a notice of complete application, pursuant to § 1024.41(c)(3)(i).

Once an application is facially complete, certain protections apply, even if you later (in the course of evaluating the application) discover you need additional documents or information for the application to be complete. There are several steps you must take and protections you must afford to the borrower:

- In informing the borrower of the documents and other information you need to evaluate the borrower for loss mitigation options, at the outset or in response to an incomplete application, you should be as precise and specific as possible.
- For example, if you need a notarized tax return but only request from the borrower a tax return without specifying that it must be notarized, then the borrower's application is considered facially complete even if the borrower provides a tax return that is not notarized.
- Similarly, if you request a notarized tax return but the borrower submits a return that is not notarized, then the borrower's application also is considered facially complete, because the borrower has submitted all documents and information requested. If the servicer requires the notarized tax return to evaluate the application, the servicer must promptly request the corrected document from the borrower.

1. If you discover additional information or corrections to a previously submitted document are required to complete the application, you must promptly request them. (§ 1024.41(c)(2)(iv))
2. You must give the borrower a reasonable amount of time to provide the documents and information requested. What is considered a reasonable amount of time will depend on the particular facts and circumstances. (§ 1024.41(c)(2)(iv) and comment 41(c)(2)(iv)-1)

3. You may not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and you may not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, until the borrower has had a reasonable opportunity to complete the application. (§ 1024.41(c)(2)(iv) and comments 41(c)(2)(iv)-1 and -2)

4. If the borrower completes the application by providing the corrected documents or additional information to you in the reasonable period of time you provide, the application is considered complete as of the date it was actually complete for the purpose of evaluation provisions under § 1024.41(c), including that it must be evaluated within 30 days of completion.

5. There are several other borrower rights and protections that depend on when a complete application was received. These include, among others, prohibitions on beginning the foreclosure process and foreclosure sale (§ 1024.41(f)(2) and (g)), the right to appeal a denial of a loan modification program (§ 1024.41(h)), and the right to a particular amount of time for the borrower to respond to an offer of loss mitigation (§ 1024.41(e)). For purposes of these protections, you must treat the application as complete as of the date it first became facially complete, not the date any corrected documents or information were received.

(§ 1024.41(c)(2)(iv))

13.4.6 Information not in the borrower's control

A loss mitigation application is considered complete when a borrower provides all information you require from the borrower, notwithstanding that you may require additional information that is not in the borrower's control. For example, if you require a borrower's credit report for a loss mitigation evaluation, a loss mitigation application is considered complete if the borrower has submitted all the required information without regard to whether you have obtained a credit report you requested from the consumer reporting agency. (Comment 41(b)(1)-5)

13.4.7 Conducting reasonable diligence to obtain information not in the borrower's control (§ 1024.41(c)(4)(i) and comments 41(c)(4)(i)-1 & 2)

You are obligated to exercise reasonable diligence with respect to obtaining documents or information not in the borrower's control that you require to determine what loss mitigation options, if any, you will offer to the borrower.

During the first 30 days following the receipt of a complete loss mitigation application, if you require documents or information not in the borrower's control—which includes information in your control—at a minimum, you must request the documents or information from the appropriate party:

- Promptly upon determining that you require them; and
- By a date that will allow you to complete the evaluation within 30 days of receiving the application, to the extent practicable. (Comment 41(c)(4)(i)-1)

If you have not received required documents or information from a third-party within 30 days of receiving the complete application from the borrower, you act with reasonable diligence by heightening your efforts to obtain the documents or information promptly, to minimize delay in making a determination on the application. Heightening efforts include, for example, promptly verifying that you have contacted the appropriate third-party and determining whether you should obtain the required documents or information from a different third-party. (Comment 41(c)(4)(i)-2)

13.4.8 Denying a complete loss mitigation application because of a lack of information not in the borrower's control (§ 1024.41(c)(4)(ii)(A))

Generally, § 1024.41(c)(4)(ii)(A)(*1*) prohibits servicers from denying complete loss mitigation applications solely because the servicer lacks the required documents or information not in the borrower's control. However, you may deny a complete loss mitigation application if the following three conditions are met:

1. You exercised reasonable diligence to obtain required documents or information from the third-party.
2. You must have been unable to obtain such documents or information for a significant period of time following the 30-day period allowed under § 1024.41(c)(1) to evaluate a loss mitigation application.
3. In accordance with applicable requirements established by the owner or assignee of the borrower's mortgage loan, you are unable to determine which loss mitigation options, if any, you will offer the borrower without the missing documents or information.

Reasonable diligence depends on the facts and circumstances of a particular loss mitigation application. In this context, you act with reasonable diligence by heightening your efforts to obtain the documents or information promptly, to minimize delay in making a determination of which loss mitigations, if any, you will offer the borrower. (Comment 41(c)(4)(ii)-2). See "*Conducting reasonable diligence to obtain information not in the borrower's control*" in Section 13.4.7 for more information.

- The Mortgage Servicing Rules do not set forth standard criteria you must use to evaluate an application.
- You are required to complete all possible steps in the process of evaluating an application within 30 days of receipt, even if there is delay in obtaining required third-party information. (Comment 41(c)(4)(ii)-1). For example, when you need only investor approval to make a determination, you should complete your evaluation within 30 days even if the investor takes longer than that to approve or deny the application.
- Nothing in the Mortgage Servicing Rules requires you to deny a loss mitigation application. You are permitted to offer a borrower a loss mitigation option, even if you do not obtain the requested documents or information. (Comment 41(c)(4)(ii)-2). In addition, the Mortgage Servicing Rules prohibits denial due to missing third-party information unless, among other things, you are unable to determine which loss mitigation options to offer, in accordance with applicable owner or assignee requirements. (§ 1024.41(c)(4)(ii)(2))

In notifying the borrower that you are denying their complete loss mitigation application because of a lack of information not in the borrower's control, you must provide a determination notice under § 1024.41(c)(1), and you must also provide the borrower with a copy of the notice you provided under § 1024.41(c)(4)(ii) informing them of your attempts to get information from third-parties. (See below for more information).

Notifying the borrower of missing third-party information (§ 1024.41(c)(4)(ii)(B) and 41(c)(4)(ii)(C))

Within the 30 days allotted to review a complete application, if you have not received required documents or information not in the borrower's control, you must provide a written notice to the borrower informing the borrower you have not received these documents or information. (§ 1024.41(c)(4)(ii)(B))

Specifically, the notice must include the following information:

- A statement that you have not received documents or information not in the borrower's control that is required to determine what loss mitigation options, if any, will be offered to the borrower;
- The specific documents or information that you lack;
- Notice that you have requested such documents or information from the appropriate third-party; and
- A statement letting the borrower know that you will complete the evaluation for all available loss mitigation options promptly upon receiving the documents or information.

You are not required to disclose the date you contacted the third-party or disclose the specific third-party that has not provided you with the requested information. Instead, you must inform the borrower of the specific information you lack. See § 1024.41(c)(4)(ii)(B)

If you later deny the complete loss mitigation application because you have not received the required documents or information, you must provide a borrower with a written notice, pursuant to § 1024.41(c)(1), stating your determination of which loss mitigation options, if any, you will offer, and you must also include a copy of the notice required under § 1024.41(c)(4)(ii)(B). See "*Denying a complete loss mitigation application because of a lack of information not in the borrower's control*" in Section 13.4.8 for more information.

13.4.9 Incomplete loss mitigation applications (§ 1024.41(c)(2) and comment 41(c)(2)(ii)-1)

In general, subject to the exceptions discussed below and for certain loss mitigation options made available to borrowers experiencing a COVID-19 related hardship, discussed in Appendix B of this Guide, you may not evade the requirement to evaluate complete loss mitigation applications for all available loss mitigation options by offering a loss mitigation option based on an evaluation of an incomplete application. Instead, you must exercise reasonable diligence in obtaining a borrower's documents and information needed to complete the application, and you must evaluate the complete application for all available options.

But if you have exercised reasonable diligence to complete the application and the application nevertheless remains incomplete for a significant period of time under the circumstances without further progress by the borrower to complete it, you may in your discretion, evaluate the incomplete application and offer the borrower a loss mitigation option for which the borrower qualifies. The requirements in § 1024.41 do not apply to such evaluation, and it is not considered an evaluation of a complete loss mitigation application for purposes of determining whether a complete application is duplicative pursuant to § 1024.41(i). (§ 1024.41(c)(2)(ii))

> Nothing in the Mortgage Servicing Rules prohibits you from offering a loss mitigation option to a borrower who has not submitted a loss mitigation application or has submitted an incomplete application, if the loss mitigation option is not based on any evaluation of information submitted by the borrower in connection with the application. For example, if you offer a trial loan modification to all 150-day delinquent borrowers without an application or consideration of any information the borrower provides, you are not required to comply with the loss mitigation procedures of the Mortgage Servicing Rules with respect to such program, and an offer of any such program does not violate the prohibition against evading the requirement to evaluate complete loss mitigation applications for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower. (§ 1024.41(c)(2)(i))

A significant period of time under the circumstances may include consideration of the timing of the foreclosure process. For example, if a borrower has less than 50 days before a foreclosure sale, an application remaining incomplete for 15 days may be a more significant period of time under the circumstances than if the borrower is still less than 120 days delinquent on a mortgage loan obligation. (Comment 41(c)(2)(ii)-1)

13.4.10 Short-term loss mitigation options (§ 1024.41(c)(2)(iii) and comments 41(b)(1)-4.iii and (c)(2)(iii)-1 through -3)

Notwithstanding the restrictions described above, you may offer a borrower a short-term payment forbearance program or a short-term repayment plan (as those terms are defined for purposes of the rule) based on an evaluation of an incomplete loss mitigation application. (§ 1024.41(c)(2)(iii))

A short-term payment forbearance program is when you allow a borrower to forgo making certain payments or portions of payments for a period of time of no more than six months. Such a program would be considered "short-term" regardless of the amount of time you allow the borrower to make up the missing payments. (Comment 41(c)(2)(iii)-1)

A short-term repayment plan exists when you allow a borrower to repay all past due payments, of no more than three months, over a specified period of time, of no more than six months, to bring the mortgage loan account current. The Mortgage Servicing Rules do not prevent you from offering a repayment plan that exceeds the durational limitations. The rule does prohibit you from doing so without obtaining a complete loss mitigation application and evaluating the borrower for all available options. You may also offer a short-term payment forbearance program to a borrower in conjunction with a short-term repayment plan. (Comment 41(c)(2)(iii)-4)

Short-term loss mitigation written notice

Promptly after offering the borrower a short-term payment forbearance program or short-term repayment plan, unless the borrower has rejected the offer, you must provide the borrower a written notice that contains the following disclosures. (§ 1024.41(c)(2)(iii))

> Providing the notice no later than five days (excluding legal public holidays, Saturdays, and Sundays) after making the offer is generally considered prompt for these purposes. (Comment 41(c)(2)(iii)-6)

First, the notice must include the payment terms and duration of the plan or program. This includes the amount and date of each payment due during the plan or program, and whether the mortgage will be current at the end of the plan or program. If you lack the necessary information to determine the amount of each payment at the time the notice is sent (for example, because of an expected change in escrow or a scheduled interest rate adjustment), your notice must reflect the best information reasonably available to you at the time the notice is provided. In that circumstance, the notice also must:

- Identify which payment amounts may change;
- State that those payment amounts are estimates; and
- State the general reason the payment amounts may change (e.g. an interest rate may increase because it is tied to an index, or an escrow account computation year will end during the program or plan).

Second, the notice must include a statement that you offered the program or plan based on an evaluation of an incomplete application and other loss mitigation options may be available.

Last, the notice must contain a statement 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 offered option. (§ 1024.41(c)(2)(iii))

Other requirements regarding short-term loss mitigation

While the borrower is performing according to the terms of the short-term loss mitigation, you may not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process or moving for foreclosure judgment or order of sale or conducting a foreclosure sale. (§ 1024.41(c)(2)(iii))

If the borrower fails to comply with the plan or requests further assistance, you must immediately resume exercising reasonable diligence to obtain a complete application. (See comment 41(b)(1)-4.iii.) Reasonable diligence is explained further in "*Denying a complete loss mitigation application because of a lack of information not in the borrower's control*" in Section 13.4.8.

You continue to remain subject to the other requirements under the loss mitigation rules while complying with the short-term loss mitigation rules. For example:

- You are still obligated to conduct an initial review of the application for completeness, and provide the borrower with the notice under § 1024.41(b)(2)(i)(B) informing the borrower that you acknowledge receipt of the application and have determined the application is incomplete, and also identifying any additional documents or information that would be needed to complete the application. (Comment 41(c)(2)(iii)-2).
- You continue to have an obligation to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application. (Comment

41(c)(2)(iii)-2). As explained in comment 41(b)(1)-4.iii, reasonable diligence includes providing the written notice described above in this section of the Guide. (Comment 41(b)(1)-4.iii). Except as described in Appendix B of this Guide, you may suspend efforts to obtain any additional documents or information while a borrower is in compliance with a short-term payment forbearance program or short-term repayment plan offered under § 1024.41(c)(2)(iii), assuming the borrower does not request further assistance and does not notify you that he or she wishes to complete the application and proceed with a full loss mitigation evaluation.

Generally, near the end of a short-term payment forbearance program and prior to the end of the forbearance period, if the borrower remains delinquent, you must contact the borrower to determine if the borrower wishes to complete the application and proceed with a full loss mitigation evaluation. Appendix B of this Guide discusses specific timing requirements for borrowers in a short-term payment forbearance program made available to borrowers experiencing a COVID-19 related hardship. This obligation does not necessarily apply to short-term repayment plans, although you must resume reasonable diligence efforts to complete the application if, at any time, the borrower fails to comply with the short-term repayment plan.

13.4.11 Non-home retention options

After receiving and evaluating a complete loss mitigation application, you may offer the borrower a non-home retention option conditioned upon receipt of further information not in the borrower's possession and necessary to establish the parameters of your offer.

For example, you can comply with the requirement for evaluating the borrower for a short sale option if you offer the borrower the opportunity to enter into a listing or marketing period agreement, but indicate that the specifics are subject to an appraisal or title search. (Comment 41(c)(1)-3)

13.4.12 Potential successors in interest (Comments 41(b)-1.i and 41(b)-1.ii)

When you receive a loss mitigation application from a potential successor in interest (prior to confirming that person's identity and ownership interest) you may, but are not required to, review and evaluate the application in accordance with loss mitigation procedures.

If you **review** a complete loss mitigation application from a potential successor in interest and comply with the requirements of § 1024.41 with respect to the application prior to confirmation, you do not need to re-evaluate the application after confirming the successor in interest's status (so long as the subsequent evaluation would not result in a different determination due to the person's confirmation as a successor in interest if it had been conducted after confirmation).

If you elect **not to review** an application from a potential successor in interest, you must preserve the loss mitigation application and all documents submitted in connection with the application. Once you confirm the person's status, you must review and evaluate the loss mitigation application. You must treat the application submitted by a potential successor in interest as if it had been received on the date that you confirm that person's status.

If an application is incomplete at the time of confirmation, because the documents submitted by the potential successor in interest became stale or invalid after they were submitted, and confirmation of that person's status is 45 days or more before a foreclosure sale, within five days (excluding legal public holidays, Saturdays, and Sundays) after confirmation you must identify the stale or invalid documents and notify the successor in interest according to § 1024.41(b)(2).

Note that the loss mitigation requirements only apply if the property is the confirmed successor in interest's principal residence. See *"What is the scope of the successor in interest rules?"* in Section 4.2 for more information about confirmed successors in interest.

13.5 What must I do when I deny a loan modification application? (§ 1024.41(d) and comments 41(d)(1)-1 to -4)

If you deny a borrower's complete loss mitigation application received more than 37 days before a scheduled foreclosure sale (or at any time when no foreclosure sale is scheduled) for any trial or permanent loan modification option, you must send the borrower a notice that states:

- The specific reasons for your decision for each trial or permanent loan modification option denied. See Comment 41(d)(1)-1 for additional guidance on denials based on investor requirements
- If you base your denial on a net present value calculation, you must include in your notice the specific inputs you used in your net present value calculation
- If the borrower may appeal, as discussed below, you must include that the borrower may appeal your determination, and information about the requirements for the appeal process, including the deadline for requesting that appeal. (See *"What appeals must I allow when I offer loan modifications?"* in Section 13.7.)

> Any decision not to offer a loan modification option is a denial. If you have four loan modification options and you offer the borrower only one option, you have denied the borrower for the other three options and must provide the required contents of the notice for those denials. (Comment 41(d)(1)-3). You must disclose the actual reason for the denial. You are not required to determine or disclose whether the borrower would have been denied based on criteria that were not actually considered. (Comment 41(d)(1)-4)

13.6 How long must I give borrowers to respond to loss mitigation offers? (§ 1024.41(e)(1))

How much time you must give a borrower to respond to loss mitigation offers under the rule depends on the proximity of a foreclosure sale:

- When a borrower submits a complete or facially complete loss mitigation application 90 days or more before a scheduled foreclosure sale (or at a time when no foreclosure sale is scheduled), you must give the borrower 14 days to accept or reject a loss mitigation offer.
- When a borrower submits a complete or facially complete loss mitigation application less than 90 days but more than 37 days before a scheduled foreclosure sale, you must give the borrower 7 days or more to accept or reject a loss mitigation offer.

If the borrower doesn't respond within the 7-day or 14-day deadline, you can deem that as a rejection of your loss mitigation offer except in these cases:

- If the borrower does not satisfy your requirements for accepting a trial loan modification plan, but does submit the payments the trial plan calls for within the deadline, you must give the borrower a reasonable period to fulfill any remaining requirements.
- In cases where an appeal is available, if a borrower timely appeals your decision, you must extend the deadline for accepting any loss mitigation option you offered until 14 days after you provide the notice concerning how the appeal was resolved. (See *"What appeals must I allow when I offer loan modifications?"* below.*)*

(§ 1024.41(e)(2))

13.7 What appeals must I allow when I offer loan modifications? (§ 1024.41(h))

You must allow borrowers to appeal your decision regarding loan modifications when you receive a complete or facially complete loss mitigation application during the pre-foreclosure review period (before a servicer has made the first notice or filing to begin the foreclosure process) or 90 days or more before a scheduled foreclosure sale (or at a date when no foreclosure sale is scheduled). The appeal process is limited to denial of **loan modification** programs, and is not required for other **loss mitigation** programs.

The appeal must include an independent evaluation. That means you cannot use the same personnel who evaluated the application to review the appeal. Supervisors can review appeals so long as they were not directly involved in the initial evaluation of the borrower's complete loss mitigation application. (§ 1024.41(h)(3) and comment 41(h)-1)

If you previously offered a borrower a loss mitigation option, and a borrower timely requested an appeal of a denial for some other loan modification option, the borrower's deadline for accepting the original offer of a loss mitigation option must be extended to 14 days after you notify the borrower of your decision on the appeal. (§ 1024.41(e)(2)(iii))

Within 30 days of a borrower making an appeal, you must notify the borrower of your decision to offer or reject the loan modification option that is the subject of the appeal. You must give the borrower at least 14 days to accept or reject an offer of a loss mitigation option resulting from your independent evaluation, after the servicer provides this notice to the borrower. The rules do not require that you provide any additional appeal. (§ 1024.41(h)(2))

13.8 When am I prohibited from starting foreclosure or completing a foreclosure for which I have already made the first notice or filing? (§§ 1024.41(f)(1)-(2) and (g) and comments 41(f)-1 and 41(g)-1 to -5)

Generally, you cannot begin the foreclosure process until the borrower is more than 120 days delinquent. Delinquency is a period of time during which a borrower and the 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.

"Beginning the foreclosure process," as used in this Guide, means making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process under certain circumstances. Whether a document is considered the first notice or filing is determined based on foreclosure procedures under the applicable state law.

- Where foreclosure procedure requires a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding (e.g., a complaint, petition, order to docket, or notice of hearing).
- Where foreclosure procedure does not require an action or court proceeding, such as under a power of sale, a document is considered the first notice or filing if it is the earliest document required to be recorded or published to initiate the foreclosure process.
- Where foreclosure procedure does not require any court filing or proceeding, and also does not require any document to be recorded or published, a document is considered the first notice or filing if it is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

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 document must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.

13.8.1 Additional foreclosure protections after submission of a loss mitigation application

Loss mitigation application submitted before the foreclosure process begins

If a borrower has submitted a complete or facially complete loss mitigation application before you have begun the foreclosure process, you may not begin the foreclosure process until one of the following occurs.

1. In the case of a complete application:

   - You send the borrower a notice that the borrower is not eligible for any loss mitigation option, and the borrower has exhausted the appeal process. This can happen when the appeal process is not applicable, the borrower has not requested an appeal within the applicable time period, or you have denied the borrower's appeal.

   - The borrower rejects all loss mitigation options you offer.

   - The borrower fails to perform under an agreement on a loss mitigation option. (See comments 41(g)(3)-1 and -2 for additional guidance on short sales.)

2. In the case of a facially complete application:

> If you want to begin the foreclosure process between August 31, 2021 to January 1, 2022, you'll also need to ensure you've met one of the additional temporary procedural safeguards discussed in Appendix B, below.

Recall that you must seek corrected documents or additional information necessary to complete the application and must give the borrower a reasonable amount of time to provide those materials. In addition, you may not begin the foreclosure process or otherwise refer the borrower to foreclosure until the borrower has had a reasonable amount of time to provide the documents or information. (§ 1024.41(c)(2)(iv), 1024.41(f)(2), and (g) and comments 41(c)(2)(iv)-1 and -2)

Loss mitigation application submitted after the foreclosure process begins

If a borrower submits a complete loss mitigation application after you have begun the foreclosure process but more than 37 days before a scheduled foreclosure sale (or at a time when no sale has been scheduled), you must not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, until one of the following occurs:

- You send the borrower a notice that the borrower is not eligible for any loss mitigation option and the borrower has exhausted the appeal process. This can happen when the appeal process is not applicable, the borrower has not requested an appeal within the applicable time period, or you have denied the borrower's appeal.
- The borrower rejects all loss mitigation options you offer.
- The borrower fails to perform under an agreement on a loss mitigation option. (See comments 41(g)(3)-1 and -2 for additional guidance on short sales.)

Conducting a foreclosure sale, where none of the above conditions are applicable, is prohibited, even if someone other than the servicer administers or conducts the foreclosure sale. (Comment 41(g)-5)

13.8.2 Dispositive motion

The prohibition on moving for judgment or order of sale includes making a dispositive motion for foreclosure judgment such as a motion for default judgment, judgment on the pleadings, or summary judgment, which may directly result in a judgment of foreclosure or order of sale. (Comment 41(g)-1)

If you have made a dispositive motion (meaning you have asked the court to rule in your favor without further trial proceedings) and you then receive a complete and timely loss mitigation application, you should take reasonable steps to avoid a ruling on your dispositive motion until you complete the loss mitigation evaluation process, such as requesting that the court delay consideration of your dispositive motion.

13.8.3 Proceeding with the foreclosure process

The prohibition on moving for judgment or order of sale does not prevent you from proceeding with the foreclosure process, including any publication, arbitration, or mediation requirements, in cases where you receive a complete and timely loss mitigation application after you have

begun a foreclosure proceeding—so long as the steps you take in the foreclosure process do not cause or directly result in the issuance of a foreclosure judgment or order of sale, or the conduct of a foreclosure sale, in violation of the loss mitigation provisions of the Mortgage Servicing Rule. (Comment 41(g)-2). Conducting the foreclosure sale, where none of the conditions described in *"When am I prohibited from starting foreclosure or completing a foreclosure for which I have already made the first notice or filing?"* in Section 13.8 apply, violates the rule.

13.8.4 Interaction with foreclosure counsel

It is your responsibility to promptly instruct your foreclosure counsel 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, when you receive a complete loss mitigation application within the deadlines specified in the rule and no exception under the rule exists. You are responsible for violations caused by foreclosure counsel's actions or inactions. (Comment 41(g)-3)

13.9 What requirements apply to loss mitigation applications submitted 37 days or less before a foreclosure sale?

You are not required to comply with the loss mitigation requirements of this rule when borrowers submit their complete loss mitigation application 37 days or less before a scheduled foreclosure sale.

You are required separately by the general servicing policies, procedures, and requirements provisions to maintain policies and procedures that are reasonably designed to achieve the objective of properly evaluating loss mitigation applications. (See Section 10 for more information on general servicing policies, procedures, and requirements). This objective includes properly evaluating a borrower who submits an application for a loss mitigation option for all loss mitigation options available to the borrower pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. Accordingly, if the owner or assignee requires evaluations of loss mitigation applications received closer to a foreclosure sale than required by the Bureau's loss mitigation rule, your policies and procedures must

ensure that such reviews are performed as required by the owner or assignee. Such evaluation may be subject to requirements applicable to a review of a loss mitigation application submitted by a borrower 37 days or less before a foreclosure sale. (Comment 41(g)-4)

13.10 What loss mitigation rules apply to servicing transfers? (§ 1024.41(k))

The Mortgage Servicing Rules contain requirements applicable to loss mitigation applications pending at the time of a servicing transfer. In addition, the rules provide specific requirements that you, as a transferee servicer, and the transferor servicer must meet when a borrower has initiated a loss mitigation application.

13.10.1 General rules when the servicing of a mortgage loan is transferred

If you, as a transferee servicer, acquire the servicing of a mortgage loan for which a loss mitigation application is pending on the transfer date, you must comply with the loss mitigation rules that applied for that loss mitigation application prior to the transfer. A borrower continues to retain the rights and protections under § 1024.41(c) through (h) to which a borrower was entitled before the servicing was transferred. (§ 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 the transfer date. This is the case, for example, if a borrower submitted a complete loss mitigation application, but the transferor servicer has not determined what loss mitigation options, if any, are available. A loss mitigation application would not be pending if the servicer that transfers the servicing rights has denied the borrower's application for all loss mitigation and the borrower does not have the right to appeal the decision under § 1024.41(h). On the other hand, the application would be a pending complete application if it was complete as of the transfer date under the transferor servicer's criteria for evaluating loss mitigation

- You should ensure that borrowers are kept updated as to the status of their loss mitigation application.
- You, as a transferee servicer, must comply with the applicable requirements of § 1024.41 upon receipt of a loss mitigation application from a borrower even if the borrower previously received an evaluation of a complete loss mitigation application from the transferor servicer. (Comment 41(i)-2)

applications and the borrower's time to appeal the decision has not yet expired. (Comment 41(k)-1)

The transfer date is the date you, as a transferee servicer, begin accepting payments for the mortgage loan. The transfer date is disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv). The transfer date must not be confused with the transfer's effective date, which is disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(i). (§ 1024.41(k)(1)(i) and comment 41(k)(1)(ii)-1)

13.10.2 Obtaining loss mitigation documents and information after a transfer of servicing

If you, as a transferee servicer, receive a transfer of servicing of a mortgage loan, you must ensure that the transferor servicer timely sends you documents and information the borrower submitted in connection with a loss mitigation application. (Comment 41(k)(1)(i)-1.i)

You must exercise reasonable diligence to complete a loss mitigation application, including a facially complete application, received as a result of a transfer. Reasonable diligence, in the transfer context, includes ensuring that a borrower is informed of any changes to the application process, such as a change in the address to which the borrower should submit documents and information to complete the application. Reasonable diligence also includes ensuring that the borrower is informed about the information and documents that are necessary to complete the application. (Comment 41(k)(1)(i)-1.ii)

Upon reviewing the information and documents constituting the application, you may find that the application includes stale or invalid documents. In these circumstances, you may request the borrower provide you with updated documents and information. (Comments 41(k)(1)(i)-1.i and 1.ii)

After the transfer of servicing, borrowers may continue to provide documents and information to the transferor servicer. It is incumbent upon both you, as a transferee servicer, and the transferor servicer to ensure that the information and documents are transferred to

- Unless you are a small servicer, your institution's policies and procedures, as maintained pursuant to § 1024.38(b)(4), should accurately reflect your obligation to ensure you receive or transfer documents and information submitted by a borrower in connection with a loss mitigation application. The Mortgage Servicing Rules also require transferor servicers to maintain policies and procedures with respect to the transfer of any information reflecting the current status of discussions with a borrower regarding loss mitigation options and any agreements entered into with a borrower on a loss mitigation option. (Comment 38(b)(4)(i)-2)

- Section 1024.41(c)(3) requires servicers to provide borrowers a written notice within five days (excluding legal holidays, Saturdays, and Sundays) of receipt of a complete loss mitigation application.

- As a transferee servicer, you are not required to provide a loss mitigation notice that the transferor servicer provided prior to the transfer. For example, if the transferor servicer provided the notice required by § 1024.41(b)(2)(i)(B) prior to the transfer, you are not required to provide the notice again for that application. (Comment 41(k)(1)(i)-3).

you. Both you and the transferor are obligated to ensure that borrowers are not adversely affected by a servicing transfer. (Comment 41(k)(1)(i)-1.iii)

A borrower that submits a facially complete or complete application to the transferor servicer after the transfer date has the same rights and protections that would have applied if the borrower had submitted the complete application to you, as a transferee servicer. For example, when a borrower submits documents or information to the transferor servicer, which causes an application to be either facially complete or complete, you, as a transferee servicer, must treat the application as either facially complete or complete, under § 1024.41(c)(2)(iv), as of the date the application was facially complete or complete with respect to the transferor servicer. (Comment 41(k)(1)(i)-2)

13.10.3 Acknowledging an application submitted before the transfer date (§ 1024.41(k)(2)(ii) and comments 41(k)(2)(ii)-1, -2, and -3)

If you, as a transferee service, acquire the servicing of a mortgage loan for which the transferor servicer received a loss mitigation application but did not send the borrower a notice acknowledging the receipt of the loss mitigation application prior to the transfer date and the period to provide the acknowledgment notice has not expired as of the transfer date, you must provide an acknowledgment notice, pursuant to the requirements § 1024.41(b)(2)(i)(B), within 10 days (excluding legal public holidays, Saturdays, and Sundays) of the transfer date. However, if the transferor provided the acknowledgment notice prior the transfer, you do not need to send an acknowledgment notice. (§ 1024.41(k)(2)(i))

In addition to sending a borrower a notice acknowledging the receipt of the loss mitigation application within 10 days of the transfer date, the Mortgage Servicing Rules provide two additional protections to borrowers who receive the acknowledgment notice from the transferee servicer following transfer. (§ 1024.41(k)(2)(ii))

First, when you, as a transferee servicer, are required to send a borrower an acknowledgment notice that states their application is incomplete, you must not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until **after** the reasonable date given to the borrower to submit missing documents in the notice. Moreover, if the borrower submits a complete loss mitigation application on or before the reasonable date, then for purposes of § 1024.41(f)(2), the borrower shall be treated as having done so during the

pre-foreclosure review period set forth in § 1024.41(f)(1). (§ 1024.41(k)(2)(ii)(A) and comment 41(k)(2)(ii)-2)

For example, assume a transferor servicer received a borrower's incomplete loss mitigation application on October 1, and transfers the loan within five days (excluding legal public holidays, Saturdays, or Sundays) on October 8 without providing an acknowledgment notice pursuant to § 1024.41(b)(2)(i)(B). Further assume that Columbus Day, a legal public holiday, occurs on October 14, and you, as a transferee servicer, provide the notice required by § 1024.41(b)(2)(i)(B) within 10 days of the transfer date, on October 23. With a 30-day reasonable date (November 22), you cannot make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until after November 22, and then only if the borrower has not submitted a complete application by that date, even if the borrower is 101 days delinquent on October 1. (Comment 41(k)(2)(ii)-1.i).

The reasonable date generally is 30 days after the date you provide the notice acknowledging receipt of a loss mitigation application pursuant to § 1024.41(b)(2)(i)(B). However, the reasonable date must be no later than the earliest of the remaining milestones and must never be less than seven days from the date you provide the acknowledgment notice. See "*Reasonable date"* in Section 13.4.2 for more information.

If none of the four milestones remain, you must determine the reasonable date, which may occur less than 30 days but no less than 7 days after you provide an acknowledgment notice, pursuant to the requirements of § 1024.41(b)(2)(ii). (See Comment 41(k)(2)(ii)-3)

Borrowers **do not** have the right to appeal a decision, pursuant to § 1024.41(h), if the 90-day milestone passes before you, as a transferee servicer, or the transferor servicer, receive the complete loss mitigation application. (Comment 41(k)(2)(ii)-2)

Second, if a borrower submits a complete loss mitigation application 37 days or less before a scheduled foreclosure sale but on or before the reasonable date disclosed to the borrower, you, as a transferee servicer, must comply with the requirements of §§ 1024.41(c), (d), and (g), even if even you are not otherwise required to comply with these requirements due to the date the application is submitted. (§ 1024.41(k)(2)(ii)(B))

For example, using similar facts as above, assume the transferor servicer receives a borrower's loss mitigation application on October 1, and transfers the loan within five days (excluding legal public holidays, Saturdays, or Sundays) on October 8 without providing a notice pursuant to

§ 1024.41(b)(2)(i)(B). Further assume that you provide loss mitigation acknowledgment notice within 10 days of the transfer date, on October 23, and you request additional information, pursuant § 1024.41(b)(2)(i). Last, assume you disclose a 30-day reasonable date, November 22, pursuant to § 1024.41(b)(2)(ii). If the transferor servicer received borrower's initial loss mitigation application 55 days before the foreclosure sale (scheduled for November 25), then the date you provided the acknowledgment notice is 33 days (October 23) before the foreclosure sale. You must comply with § 1024.41(c), (d), and (g) if the borrower submits a complete loss mitigation application on or before November 22, which is the reasonable date disclosed. (See Comment 41(k)(2)(ii)-1.ii)

13.10.4 Complete application pending at transfer date (§ 1024.41(k)(3))

If you acquire the servicing of a mortgage loan for which a complete loss mitigation application is pending as of the transfer date, within 30 days of the transfer date you must evaluate the loss mitigation application and exercise reasonable diligence in obtaining any required documents or information not in the borrower's control pursuant to § 1024.41(c)(1) and (c)(4).
(§ 1024.41(k)(3))

If you determine that additional information or a correction to a previously submitted document is required, the application is considered facially complete as of the date it was first facially complete or complete to the transferor servicer. The facially complete application, however, will be treated as complete, for the purposes of § 1024.41(f)(2) and (g), until the borrower is given a reasonable opportunity to complete the application. Once you receive the information or corrections necessary to complete the application, you are required to provide a notice of complete application, pursuant to § 1024.41(c)(3). (Comment 41(k)(3)-1)

If the borrower's loss mitigation application was incomplete based on the transferor servicer's criteria prior to transfer, but is now complete based upon your criteria, the application is considered a pending loss mitigation application complete as of the transfer date. In this situation, you must provide the borrower with a notice of complete application, pursuant to § 1024.41(c)(3), and comply with the applicable requirements of § 1024.41(c)(1) and (c)(4) within 30 days of the transfer date. For purposes of § 1024.41(c) through (h), the application is complete as of the date the transferor servicer **received** the documents and information constituting the complete application. (Comment 41(k)(3)-2)

13.10.5 Applications subject to the appeals process (§ 1024.41(k)(4))

When you acquire the servicing of a mortgage loan for which a borrower's appeal has not been resolved by the transferor servicer as of the transfer date (or is timely filed after the transfer date), you must make a determination on the appeal, if you are able to do so. You must make the determination and provide notice of your determination to the borrower (pursuant to § 1024.41(h)(4)) within 30 days of the transfer date or within 30 days of the date the borrower made the appeal, whichever is later. At your option, you may evaluate the borrower for any loss mitigation options you offer while determining the appeal. (§ 1024.41(k)(4)(i))

In certain circumstances, you may be unable to make a determination on the borrower's appeal. This may be the case, for example, if the transferor servicer denied a borrower for a loan modification option that you do not offer. If you are unable to make a determination, you must treat the appeal as a pending complete loss mitigation application and allow the borrower to accept or reject any loss mitigation options offered by the transferor servicer, even if you do not offer that loss mitigation option. In addition, you are required to comply with all relevant sections of the loss mitigation rules, which include evaluating the borrower for all loss mitigation options available. (Comment 41(k)(4)-2)

- Under the Mortgage Servicing Rules, borrowers may submit appeals to the transferor servicer after the transfer date. Upon receiving an appeal from a borrower, the transferor servicer must timely transfer appeal documents and information to you. (Comment 41(k)(4)-1)
- As either a transferee or transferor servicer, you may not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, foreclosure judgment or order of sale, or conduct a foreclosure sale until a determination is made on the borrower's appeal. (§ 1024.41(f)(2); (g); (h))

For example, assume a transferor servicer denied a borrower for all loan modification options except for a short sale option, and assume that the borrower's appeal of the loan modification denial was pending as of the transfer date. If you, as a transferee servicer, are unable to determine the borrower's appeal, you must treat the appeal as a pending complete loss mitigation application and evaluate the borrower for all available loss mitigation options in accordance with § 1024.41(c) and (k)(3). At the conclusion of such evaluation, you must permit the borrower to accept the short sale option offered by transferor servicer, even if you do not offer the short sale option, in addition to any loss mitigation options you determine to offer the borrower based upon your own evaluation. (Comment 41(k)(4)-2)

For timing purposes under § 1024.41(c) or (k)(3), as applicable, the pending complete loss mitigation application shall be considered complete as of the date the appeal was received by you or the transferor servicer, whichever occurs first. However, for § 1024.41(e) through (h), you must treat a pending complete loss mitigation application as facially complete (pursuant to § 1024.41(c)(2)(iv)) as of the date it was first facially complete or complete with respect to the transferor servicer. (Comment 41(k)(4)-2)

13.10.6 Pending loss mitigation offers (§ 1024.41(k)(5))

A transfer of servicing does not affect the borrower's ability to accept or reject a loss mitigation option offered by the transferor servicer, so long as the offer had not expired. (§ 1024.41(k)(5)). See *"How long must I give borrowers to respond to loss mitigation offers"* in Section 13.6 for more information. The timeframe for borrowers to accept or reject a loss mitigation option under § 1024.41(e) or (h), as applicable, is determined as of the date the servicer provides the notice of the loss mitigation option.

In addition, borrowers may accept or reject a pending loss mitigation offer made by the transferor servicer by contacting the transferor servicer after the transfer date. You, as a transferee servicer, and the transferor servicer, pursuant to § 1024.38(b)(4), should have policies and procedures that ensure a timely transfer of documents and information regarding a borrower's election to accept or reject a previously offered loss mitigation option. You, as a transferee servicer, must provide the borrower with any timely accepted loss mitigation option, even if the borrower submitted the acceptance to the transferor servicer. (Comment 41(k)(5)-1)

> In certain circumstances, acceptance of a loss mitigation option may be performed through a borrower's action. For example, a borrower may be able to accept a trial modification agreement by timely making an initial payment of the modified amount to the transferor servicer instead of to you, as a transferee servicer.

13.11 When must I evaluate a subsequent complete loss mitigation application? (§ 1024.41(i))

When a borrower previously received an evaluation of a complete loss mitigation application, you must comply with all applicable requirements of § 1024.41 for a borrower's subsequent loss mitigation application, unless:

1. You have previously complied with the requirements of § 1024.41 for a complete loss mitigation application submitted by the borrower; and
2. The borrower has been delinquent at all times since submitting the prior complete application.

> Borrowers performing under a temporary loss mitigation program that does not modify the existing loan contract may be delinquent for the purposes of § 1024.41(i). (§ 1024.31(Delinquency) and its relevant commentary)

For example, if the borrower has previously submitted a complete loss mitigation application and you complied fully with § 1024.41 for that application, but the borrower then ceased to be delinquent and later became delinquent again, you must again comply with § 1024.41 for any subsequent loss mitigation application submitted by the borrower. (§ 1024.41(i) and comment 41(i)-1)

If you offered the borrower a loss mitigation option based on the evaluation of an incomplete application as permitted by one of the exceptions under the Mortgage Servicing Rules discussed in Section 13.4.9, you must evaluate a subsequent complete application submitted by the borrower, even if the borrower remained delinquent at all times since you offered the loss mitigation option. (Comments 41(b)(1)-4.iv., 41(c)(2)(iii)-3, and 41(i)-1)

13.12 Is there a private right of action for a borrower to enforce the loss mitigation procedures?

Yes, there is a private right of action and the borrower may enforce the loss mitigation procedures pursuant to the provisions of Section 6(f) of RESPA (12 U.S.C. 2605(f)). However, there is no private right of action under RESPA for loss mitigation policies and procedures that you design that are not required by the loss mitigation rule.

The rule does not entitle a borrower to receive an evaluation for (or an offer of) any particular loss mitigation option. Under this particular rule, you are not liable to a borrower for a RESPA claim that your agreement with an owner of a mortgage loan requires you to evaluate a borrower for, or to offer a borrower, any particular loss mitigation option. Instead, a borrower may have a RESPA cause of action if you fail to follow the timelines and procedures required by the loss mitigation rule.

14. Practical Implementation and Compliance Considerations

You should consult with legal counsel or your compliance officer to understand your obligations under the Mortgage Servicing Rules, including any amendments, and to devise the policies and procedures you need to have in place to comply with the rules' requirements.

How you comply with the Mortgage Servicing Rules may depend on your business model. When mapping out your compliance plan, you should consider practical implementation issues in addition to understanding your obligations under the rule. Your compliance plan may include:

1. Identifying affected products, departments, and staff

Servicers, or others subject to this rule, may offer some or all of the mortgage loan products and servicing activities discussed in the Mortgage Servicing Rules. When creating a servicing compliance program or updating a preexisting program, you may find it useful to identify all affected products, services, departments, and staff.

2. Identifying what business process, operational, and technology changes will be necessary for compliance

Fully understanding the changes required may involve a review of your existing business processes, as well as the hardware and software that you, your agents, or other business partners use. Gap analyses may be a helpful output of such a review and help to inform a robust implementation plan.

3. Identifying impacts on key service providers or business partner impacts.

Third-party updates may be necessary to ensure you interact with borrowers in a compliant fashion; to incorporate new disclosures; and to make sure your servicing software, compliance, quality control, and records management protocols comply with this rule.

Software providers, or other vendors and business partners, such as subservicers, may offer compliance solutions that can assist with any necessary changes. These key partners will

depend on your business model. In some cases, you may need to negotiate revised or new contracts with these parties, or seek a different set of services.

If you seek the assistance of vendors or business partners, make sure you understand the extent of the assistance that they provide. For example, if vendors provide software that produces and distributes ARM disclosures, do they guarantee the accuracy of their disclosures?

The CFPB expects supervised banks and nonbanks to have an effective process for managing the risks of service provider relationships. For more information on this, view CFPB Bulletin 2012-03 Service Providers.

4. Identify training needs

Consider what training will be necessary for your servicing, compliance, loss mitigation, collections, bankruptcy, and quality control staff. Training may also be required for other individuals that are your employees, or your agents' or business partners' employees.

5. Considering other Title XIV rules

The Mortgage Servicing Rules are just one component of the Bureau's Dodd-Frank Act Title XIV rulemakings.

Other Title XIV rules include:

- Ability-to-Repay and Qualified Mortgage Rule
- 2013 HOEPA Rule
- ECOA Valuations Rule
- TILA Higher-Priced Mortgage Loans Appraisal Rule
- Loan Originator Rule
- TILA Higher-Priced Mortgage Loans Escrow Rule

Each of these rules affects aspects of the mortgage industry and its regulation. Many of these rules intersect with one or more of the others. Therefore, the compliance considerations for these rules may overlap in your organization. You will find implementation aids and copies of these rules online at www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/.

15. Other Resources

15.1 Where can I find a copy of the Mortgage Servicing Rules and get more information about them?

You will find the Mortgage Servicing Rules, related amendments, and guidance documents on the Bureau's Implementation & Guidance website: www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/mortserv/.

In addition, that website also contains:

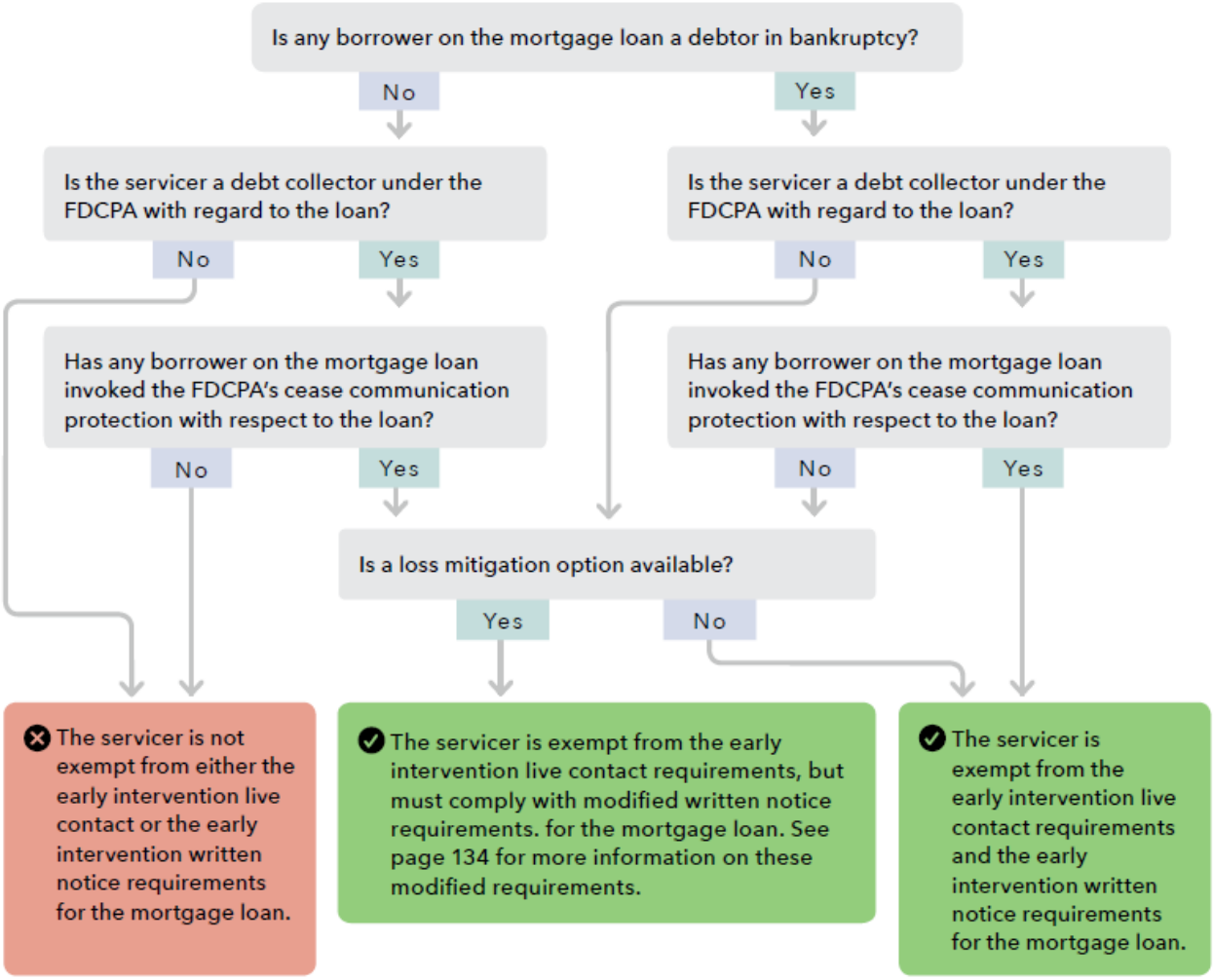
- The preamble, which explains why the Bureau issued the rules; the legal authority and reasoning behind the rules; responses to comments; and analysis of the benefits, costs, and impacts of the rules.
- Official Interpretations of the rules.
- A copy of this Small Entity Compliance Guide.
- Other implementation support materials including reference charts and any proposed rule amendments.
- Supervision and examination materials.

Useful resources related to regulatory implementation are also available at www.consumerfinance.gov/compliance/compliance-resources/.

For email updates about Bureau regulations and when additional Dodd-Frank Act Title XIV implementation resources become available, please submit your email address within the "Sign up for updates about mortgage rule implementation" box here.

APPENDIX A:

Early intervention bankruptcy and FDCPA exemptions



Note: The Mortgage Servicing Rules requires that a servicer resume compliance with the early intervention live contact and written notice requirements if the the bankruptcy case is closed or dismissed, or the borrower reaffirms personal liability for the mortgage loan. For "ride through" borrowers who have discharged personal liability for a mortgage loan, a servicer is required to resume compliance with the written notice requirements if the borrower has made any partial or periodic payment on the mortgage loan after commencement of the borrower's bankruptcy case. Other exemptions to the early intervention live contact and written notice requirements may apply. Servicers should review page 125 for more information on other early intervention exemptions. This flowchart is not a substitute for the Mortgage Servicing Rules, or Regulation X or Regulation Z. For complete and definitive requirements, please refer to the regulatory text and its official interpretations.

APPENDIX B:

Additional Provisions: 2020 and 2021 Mortgage Servicing COVID-19 Rules

As discussed in Section 1.1, above, the Bureau issued an interim final rule on June 23, 2020 and a final rule on June 28, 2021 amending certain Mortgage Servicing Rules provisions in Regulation X to assist borrowers experiencing a COVID-19-related hardship.

The 2020 Mortgage Servicing COVID-19 Interim Final Rule and 2021 Mortgage Servicing COVID-19 Rule amended the loss mitigation procedures discussed in Section 13 for certain mortgages related to 1) the exceptions allowing evaluation of an incomplete loss mitigation application (see Section 13.4.9), 2) the foreclosure protections (see Section 13.8), and 3) reasonable diligence requirements for certain short-term forbearance programs (see Section 13.4.10). The 2021 Rule also adds requirements for servicers to provide specific information to certain borrowers related to the early intervention live contact requirements (see Section 11.5).

The 2020 Mortgage Servicing COVID-19 Interim Final Rule and 2021 Mortgage Servicing COVID-19 Rule do not change the scope of Mortgage Servicing Rules and have the same scope as the underlying provisions. For the scope of the early intervention requirements, see Section 11.2. For the scope of the loss mitigation procedures, see Section 13.2.

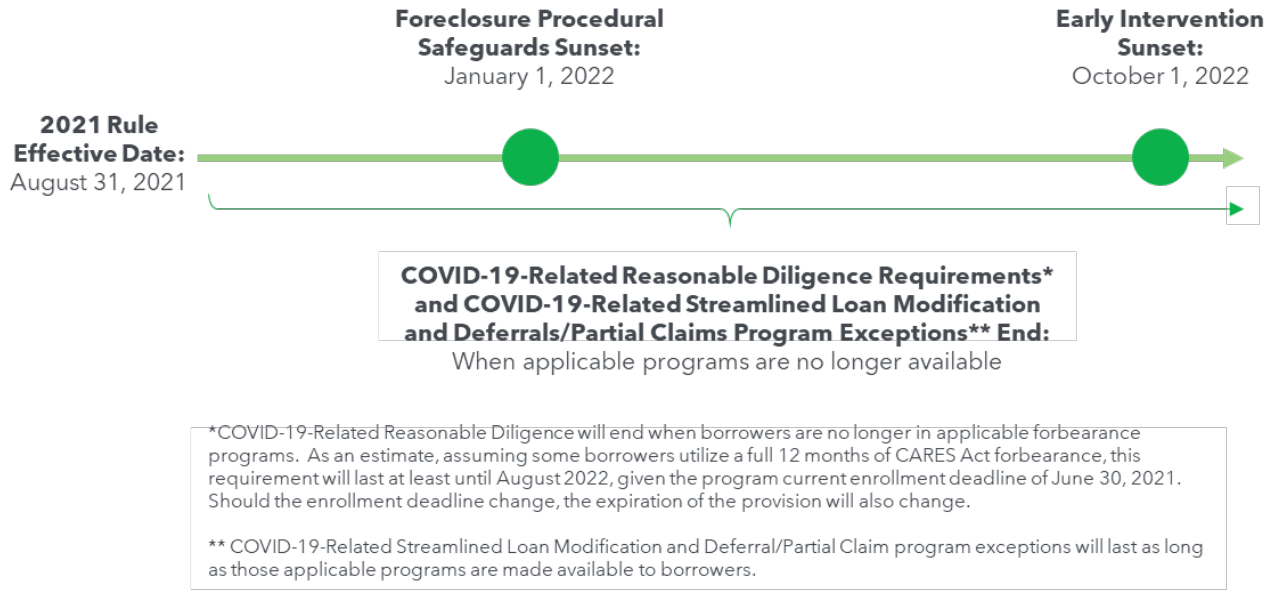
This Appendix B provides a summary of the provisions, and explains how they intersect with the other Mortgage Servicing Rule provisions.

Provision Sunsets

The 2020 Mortgage Servicing COVID-19 Interim Final Rule is **effective July 1, 2020**. The 2021 Mortgage Servicing COVID-19 Rule is **effective August 31, 2021,** although certain pre-effective date actions may be used to demonstrate compliance or meet requirements of the Rule.

All of these provisions are temporary. As illustrated below, these provisions phase out over time.

FIGURE 1: SUNSET OF COVID-19 RELATED PROVISIONS AFTER AUGUST 31, 2021



2020 Interim Final Rule and 2021 Rule Provisions

Foreclosure Protections

If you are considering beginning the foreclosure process from August 31, 2021 through December 31, 2021, then for certain accounts you must make sure at least one of the temporary procedural safeguards below has been met first, in addition to the foreclosure protections discussed in Section 13.8. (§ 1024.41(f)(3)(1)). Otherwise, you must not begin the foreclosure process until on or after January 1, 2022.

> "Beginning the foreclosure process" as it applies to the Mortgage Servicing Rules is discussed in Section 13.8, above.

PROCEDURAL SAFEGUARDS

The three procedural safeguards are:

1. *The borrower was evaluated based on a complete loss mitigation application and existing foreclosure protection conditions are met*. To meet this safeguard, you must confirm that:
   - The borrower submitted a complete loss mitigation application, and you evaluated the application.
   - The borrower remained delinquent since submission of the loss mitigation application.
   - You are permitted by the Mortgage Servicing Rules to begin the foreclosure process because the foreclosure protection conditions discussed in Section 13.8 have been met.

> Remember that actions taken before the 2021 Rule's effective date can demonstrate compliance with the procedural safeguard provisions. For example, complete application evaluations that took place before August 31, 2021 (the 2021 Rule's effective date), and are otherwise in compliance with the Mortgage Servicing Rules, would satisfy part of this procedural safeguard.

§ 1024.41(f)(3)(ii)(A) and 41(f)(2).

The timing requirements for the Mortgage Servicing Rules' foreclosure protection conditions are discussed in Section 13 and are those that existed prior to the 2021 Mortgage Servicing COVID-19 Rule. If choosing to meet this safeguard, you will need to take into account the amount of time these existing Mortgage Servicing foreclosure protection conditions may take. For example, under the 2013 and 2016 Mortgage Servicing Rules, if a borrower submits a complete loss mitigation application more than 90 days before the foreclosure process begins, assuming all requirements are utilized by both you and the borrower and require the maximum time permitted for each, and that the evaluation includes review for loan modification, generally the loss mitigation application review would take 74 days after that application is submitted before a final denial could be issued and foreclosure proceedings could begin, as illustrated below.

FIGURE 2: EXAMPLE LOSS MITIGATION APPLICATION REVIEW UNDER EXISTING MORTGAGE SERVICING RULES' FORECLOSURE PROTECTION CONDITIONS

This example illustrates the maximum time limits assuming the borrower is already 120 days delinquent and the borrower is ultimately denied for loss mitigation options. If the borrower is not yet 120 days delinquent or you approve the borrower for loss mitigation options they later reject, additional time may be necessary before the foreclosure process may begin.

2. *The property is abandoned*. To meet this safeguard, applicable state or local law must consider the property securing the mortgage abandoned when you begin the foreclosure process. (§ 1024.41(f)(3)(ii)(B))

3. *The borrower is unresponsive to servicer outreach*. To meet this safeguard, you must not have received any communications from the borrower in the 90 days prior to beginning the foreclosure process and you must confirm:

   - You have complied with the early intervention live contact requirements in the Mortgage Servicing Rules after each payment due date during that 90-day period, including those discussed below. (§ 1024.41(f)(3)(ii)(C)(1)). See Section 11 for more information about complying with the early intervention live contact requirements.

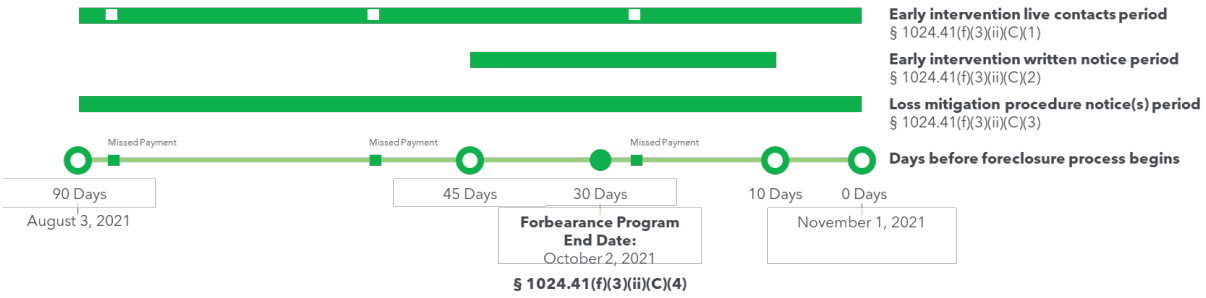
   - You have provided the early intervention written notice required by the Mortgage Servicing Rules. You must send the notice at least 10 but no more than 45 days before beginning the foreclosure process. (§ 1024.41(f)(3)(ii)(C)(2)). See Section 11

> Remember that actions taken before the 2021 Rule's effective date can demonstrate compliance with the procedural safeguard provisions. For example, early intervention live contacts established before August 31, 2021 (the 2021 Rule's effective date) that are otherwise compliant with the Mortgage Servicing Rules can be used to establish part of this procedural safeguard, so long as they comply with the applicable post-effective date requirements.

for more information about complying with the early intervention live contact requirements.

- You have complied with all loss mitigation notice requirements in the Mortgage Servicing Rules, as applicable, during that 90-day period, such as the notice of an incomplete loss mitigation application. (§ 1024.41(f)(3)(ii)(C)(3)). See Section 13 for more information about complying with the loss mitigation procedures notice requirements.
- The borrower's forbearance program, if applicable, ended at least 30 days before the foreclosure process began. (§ 1024.41(f)(3)(ii)(C)(4))

The overlap of these unresponsive borrower safeguard requirements are laid out below.



For purposes of this safeguard, you have not received a communication from the borrower or the borrower's representative if you have not received any written or electronic communications about the mortgage loan obligation, telephone calls about the mortgage loan obligation, a payment on the mortgage loan obligation, or you have not successfully established live contact with the borrower or their representative about the mortgage loan obligation. Comments 41(f)(3)(ii)(C)-1 and -2.

COVERAGE EXCLUSIONS

The temporary procedural safeguards **are not required** if:

- The foreclosure process begins (as permitted by applicable law) on or after January 1, 2022.
- The borrower was more than 120 days delinquent prior to March 1, 2020.
- The applicable statute of limitations will expire before January 1, 2022.
- You began the foreclosure process before August 31, 2021.

- The Mortgage Servicing Rule's general foreclosure protections (as discussed in Section 13.8) do not apply, as discussed in Section 13.2 and 13.3.

(§ 1024.41(f)(3)(i) and (f)(3)(iii))

If you have met any of the temporary procedural safeguards, or if the safeguards do not apply, you may begin the foreclosure process, to the extent permitted by other law and the Mortgage Servicing Rules.

If you begin the foreclosure process during this period, you are required to maintain records that evidence compliance with the temporary procedural safeguards. Section 10.5.1 discusses the requirements for maintaining records under the Mortgage Servicing Rules. For example, records that evidence you did not receive any communications from the borrower during any relevant time period for purposes of the unresponsive borrower safeguard may include, for example: (1) call logs, servicing notes, and other systems of record cataloguing communications showing the absence of written or oral communication from the borrower or their representative during the relevant period; and (2) a schedule of all transactions credited or debited to the mortgage loan account, including any escrow account and any suspense account illustrating you did not receive any payments from the borrower or their representative. (Comment 41(f)(3)-1). See Section 10.5 for more information about the requirements for the servicing file, including this information, such as the time period those records must be kept and the method of retention.

Offering Loss Mitigation Options Based on Incomplete Loss Mitigation Applications

As discussed in Section 13.4.9, in general, the Mortgage Servicing Rules prohibit you from evading the requirement to evaluate complete loss mitigation applications for all available loss mitigation options by offering a loss mitigation option based on an evaluation of an incomplete application, unless an exception applies.

In addition to the generally applicable exceptions to this prohibition, such as those for short-term forbearance programs, the Bureau added two COVID-19 specific exceptions. First, the 2020 Mortgage Servicing COVID-19 Interim Final Rule created an exception for certain loss mitigation options, such as certain payment deferrals or partial claims, that permit borrowers to delay repayment of forborne or delinquent amounts accrued during a COVID-19-related forbearance. Second, the 2021 Mortgage Servicing COVID-19 Rule provided an exception for certain COVID-19-related streamlined loan modification options.

COVID-19 PAYMENT DEFERRALS OR PARTIAL CLAIMS

To qualify for the COVID-19 payment deferral or partial claim exception, the program must do all of the following:

1. *Delay payment of certain amounts.* The loss mitigation option must delay payment of certain amounts owed until the property is sold, the mortgage is refinanced, the term of the loan at the time the loss mitigation option is offered ends, or, for FHA insured loans, until the mortgage insurance terminates. The amounts must include principal and interest payments either forborne under a COVID-19-related forbearance program or unpaid due to a COVID-19-related hardship.

> COVID-19-related hardship is defined as a financial hardship due, directly or indirectly, to the national emergency for the COVID-19 pandemic declared in Proclamation 9994 on March 13, 2020 (beginning on March 1, 2020) and continued on February 24, 2021, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C.1622(d)). (§ 1024.31 (COVID-19-Related Hardship))

2. *Prohibit interest accrual on delayed amounts.* The loss mitigation option must not permit interest to accrue on those delayed amounts.

3. *End (or be designed to end) preexisting delinquency.* The loss mitigation options must end any pre-existing delinquency when the borrower accepts the modification offer.

4. *Not include certain fees.* You must not charge fees in connection with the loan modification, and must promptly waive certain existing fees the borrower owes, such as late fees, penalties, or stop-payment fees.

§ 1024.41(c)(2)(v)(A)

If the borrower accepts a payment deferral or partial claim offer that you make under this exception, you are not required to exercise reasonable diligence, as discussed in Section 13.4.9, to complete any loss mitigation application submitted prior to the streamlined loan modification offer. Similarly, you are not required to send an acknowledgement notice, as discussed in Section 13.4.1, for any loss mitigation application submitted prior to the loan modification offer. (§ 1024.41(c)(2)(v)(B)). However, if the borrower submits a new application after accepting a payment deferral or partial claim offer under this exception, you will be required to comply with the loss mitigation requirements discussed in Section 13.

COVID-19 STREAMLINED LOAN MODIFICATION PROGRAMS

To qualify for the COVID-19 streamlined loan modification exception, the program must do all of the following:

1. *Limit loan term extensions*. The loan modification must not extend the loan term more than 40 years from the date the modification is effective.

2. *Limit periodic payment increases*. The loan modification must not increase the borrower's monthly principal and interest payment beyond the amount that was required prior to the modification.

> Remember, the Bureau does not anticipate taking supervisory or enforcement action against you if you offer a COVID-19 streamlined loan modification that meets these requirements before the 2021 Rule's effective date.

3. *Prohibit interest accrual on delayed amounts*. If the loan modification allows the borrower to delay payment of any portion of the amount owed until the property is sold, the mortgage is refinanced, the modification matures, or, for FHA insured loans, until the mortgage insurance terminates, then the loan modification must not allow interest to accrue on those amounts. Such amounts could include, for example, forborne periodic payments.

4. *Be available to borrowers with COVID-19-related hardships*. The loan modification must be made available to borrowers experiencing COVID-19-related hardships, although it need not be only available to those borrowers.

5. *End (or be designed to end) preexisting delinquency*. The loan modification must end any pre-existing delinquency when the borrower accepts the modification offer. If a trial period applies, the loan modification must be designed to end any pre-existing delinquency when the borrower satisfactorily completes any trial period requirements and accepts the permanent loan modification.

> COVID-19-related hardship is defined as a financial hardship due, directly or indirectly, to the national emergency for the COVID-19 pandemic declared in Proclamation 9994 on March 13, 2020 (beginning on March 1, 2020) and continued on February 24, 2021, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C.1622(d)). (§ 1024.31 (COVID-19-Related Hardship))

6. *Not include certain fees*. You must not charge fees in connection with the loan modification, and you must promptly waive certain existing fees the borrower owes, such as late fees, penalties, or stop-payment fees, that were incurred on or after March 1, 2020.

§ 1024.41(c)(2)(vi)(A)

If the borrower accepts a streamlined loan modification that you make under this exception, you are not required to exercise reasonable diligence, as discussed in Section 13.4.9, to complete any loss mitigation application submitted prior to the streamlined loan modification offer. Similarly, you are not required to send an acknowledgement notice, as discussed in Section 13.4.1, for any loss mitigation application submitted prior to the loan modification offer. However, you may be required to resume these activities for the most recent loss mitigation application submitted if the streamlined loan modification offered includes a trial period and the borrower fails to perform or if the borrower requests further assistance. (§ 1024.41(c)(2)(vi)(B))

Offering a loan modification under this exception does not constitute offering a loan modification based on a complete application. If a borrower subsequently submits a complete loss mitigation application, it is not considered a duplicative request, as discussed in Sections 13.4.9 and 13.11. (§ 1024.41(i) and comment 41(b)(1)-4.iv). For example, if a borrower submits a complete loss mitigation application after failing a trial period for an applicable COVID-19-related streamlined loan modification offered under this exception, the borrower is not considered to have submitted a duplicative request. You must review the complete application and the foreclosure protections discussed above must be met before you can start or complete certain foreclosure actions.

Reasonable Diligence Contact Near the End of a COVID-19 Related Short-term Forbearance Program

In addition to the reasonable diligence requirements discussed in Section 13.4.10, if a borrower is in a short-term payment forbearance program made available to borrowers with a COVID-19-related hardship and that program was offered based on an evaluation of an incomplete application, you must take certain actions before the end of the forbearance program.

In this situation, if the borrower remains delinquent, you must contact the borrower no later than 30 days before the scheduled end of the forbearance period to determine if they wish to complete the loss mitigation application. If the borrower requests further assistance, you must reinstate reasonable diligence efforts to complete the loss mitigation application before the end of the forbearance period. (Comment 41(b)(1)-4.iv)

Early intervention live contact requirements

In addition to the requirements discussed in Section 11, promptly after establishing live contact with certain borrowers, you must share specific additional information. If the borrower meets the applicable criteria, you do not have the discretion that otherwise exists in the Mortgage Servicing Rules to determine that it is not appropriate under the circumstances to inform the borrower about the availability of loss mitigation options or to only provide the information in a more generic manner. (Comment 39(a)-4). Until October 1, 2022, when complying with existing early intervention live contact requirements discussed in Section 11, if you establish live contact with (1) a borrower who is not in a forbearance program or (2) a borrower whose forbearance program will end within the next 10 to 45 days, you must share the specific additional information, as discussed below.

BORROWERS NOT IN FORBEARANCE

For delinquent borrowers that are not in a forbearance program at the time live contact is established, if the owner or assignee of the mortgage provides forbearance programs for borrowers with a COVID-19-related hardship, then promptly after establishing live contact, you must inform the borrower of the following:

> COVID-19-related hardship is defined as a financial hardship due, directly or indirectly, to the national emergency for the COVID-19 pandemic declared in Proclamation 9994 on March 13, 2020 (beginning on March 1, 2020) and continued on February 24, 2021, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C.1622(d)). (§ 1024.31 (COVID-19-Related Hardship))

1. *Program availability statement*. That forbearance programs are available for borrowers experiencing a COVID-19-related hardship. For example, you could say, "We wanted to let you know that forbearance programs are available for borrowers that are having difficulty making their payments because of the COVID-19 emergency."

2. *List and description of applicable programs*. Unless the borrower states that they are not interested in receiving information about such programs, you must then list and briefly describe to the borrower the applicable programs.

> The Mortgage Servicing Rules require you to have certain policies and procedures to provide accurate information about the specific loss mitigation options made available to borrowers by the owner or assignee of the borrower's mortgage loan. (§§ 1024.38(b)(2)(i)-(iv) and 40(b)). See Sections 10.4.2 and 12.6 for more information about these existing requirements.

3. *Homeownership counseling services.* Additionally, you must tell the borrower at least one way that they can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement.

See Sections 5.6.1 and 11.7 for examples of notices you might direct borrowers to so that they might find this homeownership counseling information.

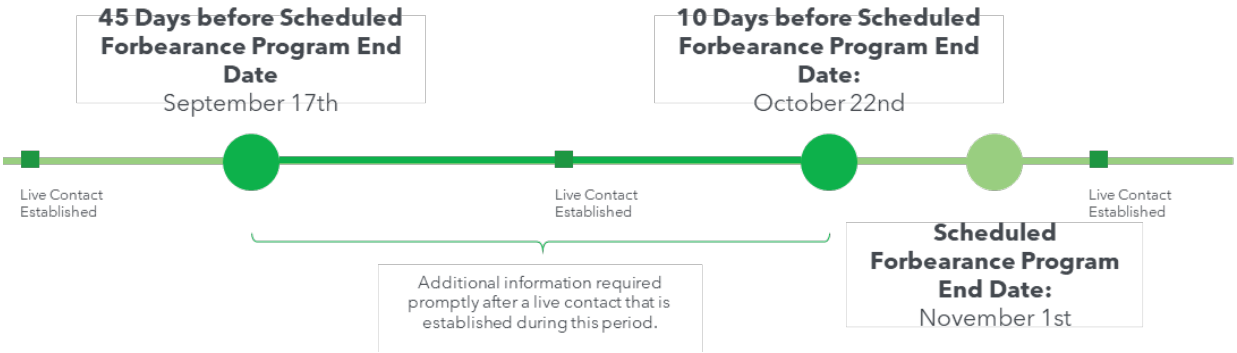
(§ 1024.39(e)(1))

BORROWERS IN FORBEARANCE

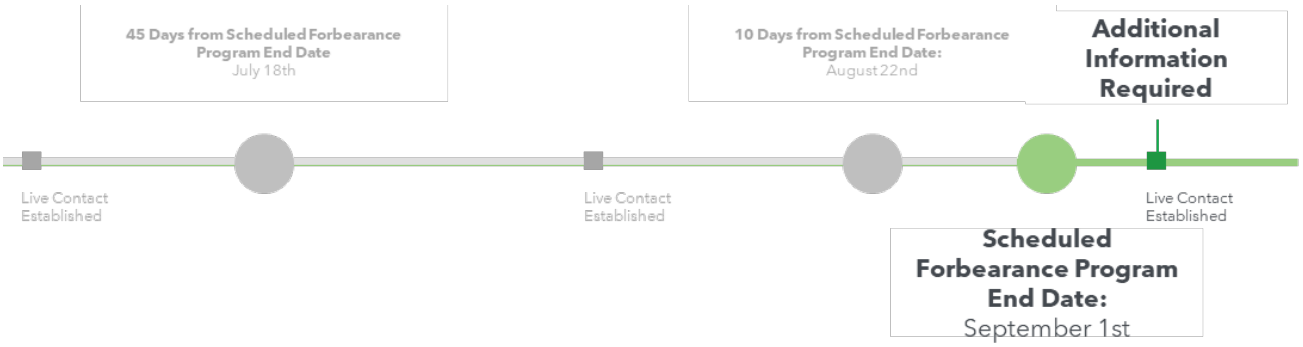
For borrowers in a forbearance program made available to those experiencing a COVID-19-related hardship at the time live contact is established, you must provide additional information during the live contact that occurs 10 to 45 days before the *scheduled* end of the borrower's program.

COVID-19-related hardship is defined as a financial hardship due, directly or indirectly, to the national emergency for the COVID-19 pandemic declared in Proclamation 9994 on March 13, 2020 (beginning on March 1, 2020) and continued on February 24, 2021, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C.1622(d)). (§ 1024.31 (COVID-19-Related Hardship))

For example, if the borrower's forbearance program is scheduled to end on November 1, 2021, you must provide the additional information during a live contact that occurs between September 17, 2021 and October 22, 2021.



However, if the borrower's scheduled forbearance end date is within 10 days of the effective date of the 2021 Rule, you must provide this information in the next applicable live contact, even if that contact occurs less than 10 days before or some time after the scheduled end of the forbearance program.



When live contact is established, you must inform the borrower of:

1. *Scheduled end date*. When the forbearance program is scheduled to end.
2. *List and description of applicable programs*. A list and brief description of any loss mitigation programs, including forbearance extensions and repayment options, that are available through the owner or assignee of the mortgage, and how the borrower can apply for those options. You are only required to list loss mitigation options available at the time the live contact is established, and do not need to include any options that have already expired.

   The Mortgage Servicing Rules require you to have certain policies and procedures to provide accurate information about the specific loss mitigation options made available to borrowers by the owner or assignee of the borrower's mortgage loan. (§§ 1024.38(b)(2)(i)-(iv) and 40(b)). See Sections 10.4.2 and 12.6 for more information about these existing requirements.
3. *Homeownership counseling services*. At least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement.

   See Sections 5.6.1 and 11.7 for examples you might direct borrowers to so that they might find this homeownership counseling information.

§ 1024.39(e)(2).

For both groups of borrowers, nothing in the Mortgage Servicing Rules prevent you from sharing additional information beyond these requirements. For example, you may also share information about eligibility criteria for loss mitigation programs or discuss how investor review standards, such as waterfalls, may impact which available options may be offered to the borrower.

The COVID-19 pandemic also presents circumstances that may impact what good faith efforts are considered reasonable to establish live contact with the borrower. For example, given the hardship COVID-19 places on borrower financially, the extended length of borrower forbearance programs, and the limitations the pandemic has placed communication methods, generally you are required to do more for unresponsive borrowers that are 6 or 7 payments delinquent than include a statement encouraging they contact you on written or electronic notices you send. (Comment 39(a)-3)