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Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1681 et seq.:

Section 602	15 U.S.C. 1681	Section 615	15 U.S.C. 1681m
Section 603	15 U.S.C. 1681a	Section 616	15 U.S.C. 1681n
Section 604	15 U.S.C. 1681b	Section 617	15 U.S.C. 1681o
Section 605	15 U.S.C. 1681c	Section 618	15 U.S.C. 1681p
Section 605A	15 U.S.C. 1681cA	Section 619	15 U.S.C. 1681q
Section 605B	15 U.S.C. 1681cB	Section 620	15 U.S.C. 1681r
Section 606	15 U.S.C. 1681d	Section 621	15 U.S.C. 1681s
Section 607	15 U.S.C. 1681e	Section 622	15 U.S.C. 1681s-1
Section 608	15 U.S.C. 1681f	Section 623	15 U.S.C. 1681s-2
Section 609	15 U.S.C. 1681g	Section 624	15 U.S.C. 1681t
Section 610	15 U.S.C. 1681h	Section 625	15 U.S.C. 1681u
Section 611	15 U.S.C. 1681i	Section 626	15 U.S.C. 1681v
Section 612	15 U.S.C. 1681j	Section 627	15 U.S.C. 1681w
Section 613	15 U.S.C. 1681k	Section 628	15 U.S.C. 1681x
Section 614	15 U.S.C. 1681l	Section 629	15 U.S.C. 1681y

[77 FR 67754, Nov. 14, 2012]

APPENDIX O TO PART 1022—REASONABLE CHARGES FOR CERTAIN DISCLOSURES

Section 612(f) of the FCRA, 15 U.S.C. 1681j(f), directs the Bureau to increase the maximum allowable charge a consumer reporting agency may impose for making a disclosure to the consumer pursuant to section 609 of the FCRA, 15 U.S.C. 1681g, on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents. The Bureau will publish notice of the maximum allowable charge each year by amending this appendix. For calendar year 2021, the maximum allowable charge is $13.00. For historical purposes:

1. For calendar year 2012, the maximum allowable disclosure charge was $11.50.
2. For calendar year 2013, the maximum allowable disclosure charge was $11.50.
3. For calendar year 2014, the maximum allowable disclosure charge was $11.50.
4. For calendar year 2015, the maximum allowable disclosure charge was $12.00.
5. For calendar year 2016, the maximum allowable disclosure charge was $12.00.
6. For calendar year 2017, the maximum allowable disclosure charge was $12.00.
7. For calendar year 2018, the maximum allowable disclosure charge was $12.00.
8. For calendar year 2019, the maximum allowable disclosure charge was $12.50.
9. For calendar year 2020, the maximum allowable disclosure charge was $12.50.
10. For calendar year 2021, the maximum allowable disclosure charge is $13.00.

[85 FR 83750, Dec. 23, 2020]

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

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SUPPLEMENT I TO PART 1024—OFFICIAL BUREAU INTERPRETATIONS

AUTHORITY: 12 U.S.C. 2603–2605, 2607, 2609, 2617, 5512, 5532, 5581.

SOURCE: 76 FR 78981, Dec. 20, 2011, unless otherwise noted.

Subpart A—General Provisions

§ 1024.1 Designation.

This part, known as Regulation X, is issued by the Bureau of Consumer Financial Protection to implement the Real Estate Settlement Procedures Act of 1974, as amended, 12 U.S.C. 2601 *et. seq*.

§ 1024.2 Definitions.

(a) *Statutory terms*. All terms defined in RESPA (12 U.S.C. 2602) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) *Other terms*. As used in this part:

Application means the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may either be in writing or electronically submitted, including a written record of an oral application.

Balloon payment has the same meaning as ''balloon payment'' under Regulation Z (12 CFR part 1026).

Bureau means the Bureau of Consumer Financial Protection.

Business day means a day on which the offices of the business entity are open to the public for carrying on substantially all of the entity's business functions.

Changed circumstances means:

(1)(i) Acts of God, war, disaster, or other emergency;

(ii) Information particular to the borrower or transaction that was relied on in providing the GFE and that changes or is found to be inaccurate after the GFE has been provided. This may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE;

(iii) New information particular to the borrower or transaction that was not relied on in providing the GFE; or

(iv) Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

(2) Changed circumstances do not include:

(i) The borrower's name, the borrower's monthly income, the property

address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided; or

(ii) Market price fluctuations by themselves.

Dealer means, in the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, ''dealer'' means one who engages in the business of manufactured home retail sales.

Dealer loan or dealer consumer credit contract means, generally, any arrangement in which a dealer assists the borrower in obtaining a federally related mortgage loan from the funding lender and then assigns the dealer's legal interests to the funding lender and receives the net proceeds of the loan. The funding lender is the lender for the purposes of the disclosure requirements of this part. If a dealer is a ''creditor'' as defined under the definition of ''federally related mortgage loan'' in this part, the dealer is the lender for purposes of this part.

Effective date of transfer is defined in section 6(i)(1) of RESPA (12 U.S.C. 2605(i)(1)). In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, the effective date of transfer is the transfer date agreed upon by the transferee servicer and the transferor servicer.

Federally related mortgage loan means:

(1) Any loan (other than temporary financing, such as a construction loan):

(i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property, upon which there is either:

(A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit); or

(B) Located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and

(ii) For which one of the following paragraphs applies. The loan:

(A) Is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government;

(B) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:

(*1*) By the Secretary of the Department of Housing and Urban Development (HUD) or any other officer or agency of the Federal Government; or

(*2*) Under or in connection with a housing or urban development program administered by the Secretary of HUD or a housing or related program administered by any other officer or agency of the Federal Government;

(C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors);

(D) Is made in whole or in part by a ''creditor,'' as defined in section 103(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)), that makes or invests in residential real estate loans aggregating more than $1,000,000 per year. For purposes of this definition, the term ''creditor'' does not include any agency or instrumentality of any State, and the term ''residential real estate loan'' means any loan secured by residential real property, including single-family and multifamily residential property;

(E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition, by a mortgage broker; or

(F) Is the subject of a home equity conversion mortgage, also frequently called a ''reverse mortgage,'' issued by any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition.

(2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.

(3) If the residential real property securing a mortgage loan is not located in a State, the loan is not a federally related mortgage loan.

Good faith estimate or *GFE* means an estimate of settlement charges a borrower is likely to incur, as a dollar amount, and related loan information, based upon common practice and experience in the locality of the mortgaged property, as provided on the form prescribed in §1024.7 and prepared in accordance with the Instructions in appendix C to this part.

HUD means the Department of Housing and Urban Development.

HUD–1 or HUD–1A settlement statement (also *HUD–1 or HUD–1A*) means the statement that is prescribed in this part for setting forth settlement charges in connection with either the purchase or the refinancing (or other subordinate lien transaction) of 1- to 4-family residential property.

Lender means, generally, the secured creditor or creditors named in the debt obligation and document creating the lien. For loans originated by a mortgage broker that closes a federally related mortgage loan in its own name in a table funding transaction, the lender is the person to whom the obligation is initially assigned at or after settlement. A lender, in connection with dealer loans, is the lender to whom the loan is assigned, unless the dealer meets the definition of creditor as defined under ''federally related mortgage loan'' in this section. See also §1024.5(b)(7), secondary market transactions.

Loan originator means a lender or mortgage broker.

Manufactured home is defined in HUD regulation 24 CFR 3280.2.

Mortgage broker means a person (other than an employee of a lender) that renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a federally related mortgage loan, including such a person that closes the loan in its own name in a table-funded transaction.

Mortgaged property means the real property that is security for the federally related mortgage loan.

Origination service means any service involved in the creation of a federally related mortgage loan, including but not limited to the taking of the loan application, loan processing, the underwriting and funding of the loan, and the processing and administrative services required to perform these functions.

Person is defined in section 3(5) of RESPA (12 U.S.C. 2602(5)).

Prepayment penalty has the same meaning as ''prepayment penalty'' under Regulation Z (12 CFR part 1026).

Public Guidance Documents means FEDERAL REGISTER documents adopted or published, that the Bureau may amend from time-to-time by publication in the FEDERAL REGISTER. These documents are also available from the Bureau. Requests for copies of Public Guidance Documents should be directed to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

Refinancing means a transaction in which an existing obligation that was subject to a secured lien on residential real property is satisfied and replaced by a new obligation undertaken by the same borrower and with the same or a new lender. The following shall not be treated as a refinancing, even when the existing obligation is satisfied and replaced by a new obligation with the same lender (this definition of ''refinancing'' as to transactions with the same lender is similar to Regulation Z, 12 CFR 1026.20(a)):

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate as computed under the Truth in Lending Act with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, in which a change in the payment schedule or

change in collateral requirements is agreed to as a result of the consumer's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for continuation of allowable insurance; and

(5) The renewal of optional insurance purchased by the consumer that is added to an existing transaction, if disclosures relating to the initial purchase were provided.

Regulation Z means the regulations issued by the Bureau (12 CFR part 1026) to implement the Federal Truth in Lending Act (15 U.S.C. 1601 *et seq.*), and includes the Commentary on Regulation Z.

Required use means a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process.

RESPA means the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*).

Servicer means a person responsible for the servicing of a federally related mortgage loan (including the person who makes or holds such loan if such person also services the loan). The term does not include:

(1) The Federal Deposit Insurance Corporation (FDIC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution;

(2) The National Credit Union Administration (NCUA), in connection with assets acquired, assigned, sold, or transferred pursuant to section 208 of the Federal Credit Union Act or as conservator or liquidating agent of an insured credit union; and

(3) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the FDIC; HUD, including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA) (including cases in which a mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*) is assigned to HUD); the NCUA; the Farm Service Agency; and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the federally related mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, commencement of proceedings by the FDIC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled), or commencement of proceedings by the NCUA for appointment of a conservator or liquidating agent of the servicer (or an entity by which the servicer is owned or controlled).

Servicing means receiving any scheduled periodic payments from a borrower pursuant to the terms of any federally related mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 U.S.C. 2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

Settlement means the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan. This process may also be called ''closing'' or ''escrow'' in different jurisdictions.

Settlement service means any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of the following:

(1) Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans);

(2) Rendering of services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender);

(3) Provision of any services related to the origination, processing or funding of a federally related mortgage loan;

(4) Provision of title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies;

(5) Rendering of services by an attorney;

(6) Preparation of documents, including notarization, delivery, and recordation;

(7) Rendering of credit reports and appraisals;

(8) Rendering of inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title;

(9) Conducting of settlement by a settlement agent and any related services;

(10) Provision of services involving mortgage insurance;

(11) Provision of services involving hazard, flood, or other casualty insurance or homeowner's warranties;

(12) Provision of services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan;

(13) Provision of services involving real property taxes or any other assessments or charges on the real property;

(14) Rendering of services by a real estate agent or real estate broker; and

(15) Provision of any other services for which a settlement service provider requires a borrower or seller to pay.

Special information booklet means the booklet adopted pursuant to section 5 of RESPA (12 U.S.C. 2604) to help persons understand the nature and costs of settlement services. The Bureau publishes the form of the special information booklet in the FEDERAL REGISTER or by other public notice. The Bureau may issue or approve additional booklets or alternative booklets by publication of a Notice in the FEDERAL REGISTER.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Table funding means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. A table-funded transaction is not a secondary market transaction (see § 1024.5(b)(7)).

Third party means a settlement service provider other than a loan originator.

Title company means any institution, or its duly authorized agent, that is qualified to issue title insurance.

Title service means any service involved in the provision of title insurance (lender's or owner's policy), including but not limited to: Title examination and evaluation; preparation and issuance of title commitment; clearance of underwriting objections; preparation and issuance of a title insurance policy or policies; and the processing and administrative services required to perform these functions. The term also includes the service of conducting a settlement.

Tolerance means the maximum amount by which the charge for a category or categories of settlement costs may exceed the amount of the estimate for such category or categories on a GFE.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10873, Feb. 14, 2013]

§ 1024.3 E-Sign applicability.

The disclosures required by this part may be provided in electronic form,

subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

[78 FR 10873, Feb. 14, 2013]

§ 1024.4 Reliance upon rule, regulation, or interpretation by the Bureau.

(a) *Rule, regulation or interpretation.* (1) For purposes of sections 19(a) and (b) of RESPA (12 U.S.C. 2617(a) and (b)), only the following constitute a rule, regulation or interpretation of the Bureau:

(i) All provisions, including appendices and supplements, of this part. Any other document referred to in this part is not incorporated in this part unless it is specifically set out in this part;

(ii) Any other document that is published in the FEDERAL REGISTER by the Bureau and states that it is an ''interpretation,'' ''interpretive rule,'' ''commentary,'' or a ''statement of policy'' for purposes of section 19(a) of RESPA. Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official interpretation to this part, which will be amended periodically.

(2) A ''rule, regulation, or interpretation thereof by the Bureau'' for purposes of section 19(b) of RESPA (12 U.S.C. 2617(b)) shall not include the special information booklet prescribed by the Bureau or any other statement or issuance, whether oral or written, by an officer or representative of the Bureau, letter or memorandum by the Director, General Counsel, or other officer or employee of the Bureau, preamble to a regulation or other issuance of the Bureau, Public Guidance Document, report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (a)(1) of this section.

(b) All informal counsel's opinions and staff interpretations issued by HUD before November 2, 1992, were withdrawn as of that date. Courts and administrative agencies, however, may use previous opinions to determine the validity of conduct under the previous Regulation X.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10874, Feb. 14, 2013]

§ 1024.5 Coverage of RESPA.

(a) *Applicability.* RESPA and this part apply to federally related mortgage loans, except as provided in paragraphs (b) and (d) of this section.

(b) *Exemptions.* (1) [Reserved]

(2) *Business purpose loans.* An extension of credit primarily for a business, commercial, or agricultural purpose, as defined by 12 CFR 1026.3(a)(1) of Regulation Z. Persons may rely on Regulation Z in determining whether the exemption applies.

(3) *Temporary financing.* Temporary financing, such as a construction loan. The exemption for temporary financing does not apply to a loan made to finance construction of 1- to 4-family residential property if the loan is used as, or may be converted to, permanent financing by the same lender or is used to finance transfer of title to the first user. If a lender issues a commitment for permanent financing, with or without conditions, the loan is covered by this part. Any construction loan for new or rehabilitated 1- to 4-family residential property, other than a loan to a *bona fide* builder (a person who regularly constructs 1- to 4-family residential structures for sale or lease), is subject to this part if its term is for two years or more. A ''bridge loan'' or ''swing loan'' in which a lender takes a security interest in otherwise covered 1- to 4-family residential property is not covered by RESPA and this part.

(4) *Vacant land.* Any loan secured by vacant or unimproved property, unless within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds. If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by this part.

(5) *Assumption without lender approval.* Any assumption in which the lender

does not have the right expressly to approve a subsequent person as the borrower on an existing federally related mortgage loan. Any assumption in which the lender's permission is both required and obtained is covered by RESPA and this part, whether or not the lender charges a fee for the assumption.

(6) *Loan conversions.* Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.

(7) *Secondary market transactions.* A bona fide transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except with respect to RESPA (12 U.S.C. 2605) and subpart C of this part (§§ 1024.30–1024.41). In determining what constitutes a *bona fide* transfer, the Bureau will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction (see § 1024.2).

(c) *Relation to State laws.* (1) State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency.

(2) Upon request by any person, the Bureau is authorized to determine if inconsistencies with State law exist; in doing so, the Bureau shall consult with appropriate Federal agencies.

(i) The Bureau may not determine that a State law or regulation is inconsistent with any provision of RESPA or this part, if the Bureau determines that such law or regulation gives greater protection to the consumer.

(ii) In determining whether provisions of State law or regulations concerning affiliated business arrangements are inconsistent with RESPA or this part, the Bureau may not construe those provisions that impose more stringent limitations on affiliated business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(3) Any person may request the Bureau to determine whether an inconsistency exists by submitting to the address established by the Bureau to request an official interpretation, a copy of the State law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Bureau that an inconsistency with State law exists will be made by publication of a notice in the FEDERAL REGISTER. ''Law'' as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a State or any political subdivision of a State.

(4) A specific preemption of conflicting State laws regarding notices and disclosures of mortgage servicing transfers is set forth in § 1024.33(d).

(d) *Partial exemptions for certain mortgage loans.* Sections 1024.6, 1024.7, 1024.8, 1024.10, and 1024.33(a) do not apply to a federally related mortgage loan:

(1) That is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, 12 CFR 1026.19(e), (f), and (g); or

(2) That satisfies the criteria in Regulation Z, 12 CFR 1026.3(h).

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10874, Feb. 14, 2013; 78 FR 44717, July 24, 2013; 78 FR 80104, Dec. 31, 2013; 80 FR 8775, Feb. 19, 2015]

Subpart B—Mortgage Settlement and Escrow Accounts

§ 1024.6 Special information booklet at time of loan application.

(a) *Lender to provide special information booklet.* Subject to the exceptions set forth in this paragraph, the lender shall provide a copy of the special information booklet to a person from whom the lender receives, or for whom

the lender prepares, a written application for a federally related mortgage loan. When two or more persons apply together for a loan, the lender is in compliance if the lender provides a copy of the booklet to one of the persons applying.

(1) The lender shall provide the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days (as that term is defined in §1024.2) after the application is received or prepared. However, if the lender denies the borrower's application for credit before the end of the three-business-day period, then the lender need not provide the booklet to the borrower. If a borrower uses a mortgage broker, the mortgage broker shall distribute the special information booklet and the lender need not do so. The intent of this provision is that the applicant receive the special information booklet at the earliest possible date.

(2) In the case of a federally related mortgage loan involving an open-ended credit plan, as defined in Regulation Z, 12 CFR 1026.2(a)(20), a lender or mortgage broker that provides the borrower with a copy of the brochure entitled ''When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit'', or any successor brochure issued by the Bureau, is deemed to be in compliance with this section.

(3) In the categories of transactions set forth at the end of this paragraph, the lender or mortgage broker does not have to provide the booklet to the borrower. Under the authority of section 19(a) of RESPA (12 U.S.C. 2617(a)), the Bureau may issue a revised or separate special information booklet that deals with these transactions, or the Bureau may choose to endorse the forms or booklets of other Federal agencies. In such an event, the requirements for delivery by lenders and the availability of the booklet or alternate materials for these transactions will be set forth in a Notice in the FEDERAL REGISTER. This paragraph shall apply to the following transactions:

(i) Refinancing transactions;

(ii) Closed-end loans, as defined in 12 CFR 1026.2(a)(10) of Regulation Z, when the lender takes a subordinate lien;

(iii) Reverse mortgages; and

(iv) Any other federally related mortgage loan whose purpose is not the purchase of a 1- to 4-family residential property.

(b) *Revision*. The Bureau may from time to time revise the special information booklet, publishing a notice in the FEDERAL REGISTER.

(c) *Reproduction*. The special information booklet may be reproduced in any form, provided that no change is made other than as provided under paragraph (d) of this section. The special information booklet may not be made a part of a larger document for purposes of distribution under RESPA and this section. Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.

(d) *Permissible changes*. (1) No changes to, deletions from, or additions to the special information booklet currently prescribed by the Bureau shall be made other than the permissible changes specified in paragraphs (d)(2) and (3) of this section or changes as otherwise approved in writing by the Bureau in accordance with the procedures described in this paragraph (d). A request to the Bureau for approval of any changes other than the permissible changes specified in paragraphs (d)(2) and (3) of this section shall be submitted in writing to the address indicated in the definition of *Public Guidance Documents* in §1024.2, stating the reasons why the applicant believes such changes, deletions, or additions are necessary.

(2) The cover of the booklet may be in any form and may contain any drawings, pictures, or artwork, provided that the words ''settlement costs'' are used in the title. Names, addresses and telephone numbers of the lender or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover.

(3) The special information booklet may be translated into languages other than English.

[76 FR 78981, Dec. 20, 2011, as amended at 81 FR 72370, Oct. 19, 2016]

§ 1024.7 Good faith estimate.

(a) *Lender to provide.* (1) Except as otherwise provided in paragraphs (a), (b), or (h) of this section, not later than 3 business days after a lender receives an application, or information sufficient to complete an application, the lender must provide the applicant with a GFE. In the case of dealer loans, the lender must either provide the GFE or ensure that the dealer provides the GFE.

(2) The lender must provide the GFE to the loan applicant by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means.

(3) The lender is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

(i) The lender denies the application; or

(ii) The applicant withdraws the application.

(4) The lender is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The lender may, at its option, charge a fee limited to the cost of a credit report. The lender may not charge additional fees until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(5) The lender may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the lender is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(b) *Mortgage broker to provide.* (1) Except as otherwise provided in paragraphs (a), (b), or (h) of this section, either the lender or the mortgage broker must provide a GFE not later than 3 business days after a mortgage broker receives either an application or information sufficient to complete an application. The lender is responsible for ascertaining whether the GFE has been provided. If the mortgage broker has provided a GFE, the lender is not required to provide an additional GFE.

(2) The mortgage broker must provide the GFE by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means.

(3) The mortgage broker is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

(i) The mortgage broker or lender denies the application; or

(ii) The applicant withdraws the application.

(4) The mortgage broker is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The mortgage broker may, at its option, charge a fee limited to the cost of a credit report. The mortgage broker may not charge additional fees until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(5) The mortgage broker may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the mortgage broker is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(c) *Availability of GFE terms.* Except as provided in this paragraph, the estimate of the charges and terms for all settlement services must be available for at least 10 business days from when the GFE is provided, but it may remain available longer, if the loan originator extends the period of availability. The estimate for the following charges are

excepted from this requirement: the interest rate, charges and terms dependent upon the interest rate, which includes the charge or credit for the interest rate chosen, the adjusted origination charges, and per diem interest.

(d) *Content and form of GFE.* The GFE form is set out in appendix C to this part. The loan originator must prepare the GFE in accordance with the requirements of this section and the Instructions in appendix C to this part. The instructions in appendix C to this part allow for flexibility in the preparation and distribution of the GFE in hard copy and electronic format.

(e) *Tolerances for amounts included on GFE.* (1) Except as provided in paragraph (f) of this section, the actual charges at settlement may not exceed the amounts included on the GFE for:

(i) The origination charge;

(ii) While the borrower's interest rate is locked, the credit or charge for the interest rate chosen;

(iii) While the borrower's interest rate is locked, the adjusted origination charge; and

(iv) Transfer taxes.

(2) Except as provided in paragraph (f) of this section, the sum of the charges at settlement for the following services may not be greater than 10 percent above the sum of the amounts included on the GFE:

(i) Lender-required settlement services, where the lender selects the third party settlement service provider;

(ii) Lender-required services, title services and required title insurance, and owner's title insurance, when the borrower uses a settlement service provider identified by the loan originator; and

(iii) Government recording charges.

(3) The amounts charged for all other settlement services included on the GFE may change at settlement.

(f) *Binding GFE.* The loan originator is bound, within the tolerances provided in paragraph (e) of this section, to the settlement charges and terms listed on the GFE provided to the borrower, unless a revised GFE is provided prior to settlement consistent with this paragraph (f) or the GFE expires in accordance with paragraph (f)(4) of this section. If a loan originator provides a revised GFE consistent with this paragraph, the loan originator must document the reason that a revised GFE was provided. Loan originators must retain documentation of any reason for providing a revised GFE for no less than 3 years after settlement.

(1) *Changed circumstances affecting settlement costs.* If changed circumstances result in increased costs for any settlement services such that the charges at settlement would exceed the tolerances for those charges, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The revised GFE may increase charges for services listed on the GFE only to the extent that the changed circumstances actually resulted in higher charges.

(2) *Changed circumstances affecting loan.* If changed circumstances result in a change in the borrower's eligibility for the specific loan terms identified in the GFE, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The revised GFE may increase charges for services listed on the GFE only to the extent that the changed circumstances affecting the loan actually resulted in higher charges.

(3) *Borrower-requested changes.* If a borrower requests changes to the federally related mortgage loan identified in the GFE that change the settlement charges or the terms of the loan, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within three business days of the borrower's request. The revised GFE may increase charges for services listed on the GFE only to the extent that the borrower-requested changes to the mortgage loan identified on the GFE actually resulted in higher charges.

(4) *Expiration of GFE.* If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or such

longer time specified by the loan originator pursuant to paragraph (c) of this section, the loan originator is no longer bound by the GFE.

(5) *Interest rate-dependent charges and terms*. If the interest rate has not been locked, or a locked interest rate has expired, the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate may change. When the interest rate is later locked, a revised GFE must be provided showing the revised interest rate-dependent charges and terms. The loan originator must provide the revised GFE within 3 business days of the interest rate being locked or, for an expired interest rate, re-locked. All other charges and terms must remain the same as on the original GFE, except as otherwise provided in paragraph (f) of this section.

(6) *New construction home purchases*. In transactions involving new construction home purchases, where settlement is anticipated to occur more than 60 calendar days from the time a GFE is provided, the loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the loan originator may issue a revised GFE. If no such separate disclosure is provided, the loan originator cannot issue a revised GFE, except as otherwise provided in paragraph (f) of this section.

(g) *GFE is not a loan commitment*. Nothing in this section shall be interpreted to require a loan originator to make a loan to a particular borrower. The loan originator is not required to provide a GFE if the loan originator does not have available a loan for which the borrower is eligible.

(h) *Open-end lines of credit (home-equity plans) under Truth in Lending Act*. In the case of a federally related mortgage loan involving an open-end line of credit (home-equity plan) covered under the Truth in Lending Act and Regulation Z, a lender or mortgage broker that provides the borrower with the disclosures required by 12 CFR 1026.40 of Regulation Z at the time the borrower applies for such loan shall be deemed to satisfy the requirements of this section.

(i) *Violations of section 5 of RESPA (12 U.S.C. 2604)*. A loan originator that violates the requirements of this section shall be deemed to have violated section 5 of RESPA. If any charges at settlement exceed the charges listed on the GFE by more than the permitted tolerances, the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded, at settlement or within 30 calendar days after settlement. A borrower will be deemed to have received timely reimbursement if the loan originator delivers or places the payment in the mail within 30 calendar days after settlement.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10875, Feb. 14, 2013]

§ 1024.8 Use of HUD–1 or HUD–1A settlement statements.

(a) *Use by settlement agent*. The settlement agent shall use the HUD–1 settlement statement in every settlement involving a federally related mortgage loan in which there is a borrower and a seller. For transactions in which there is a borrower and no seller, such as refinancing loans or subordinate lien loans, the HUD–1 may be utilized by using the borrower's side of the HUD–1 statement. Alternatively, the form HUD–1A may be used for these transactions. The HUD–1 or HUD–1A may be modified as permitted under this part. Either the HUD–1 or the HUD–1A, as appropriate, shall be used for every RESPA-covered transaction, unless its use is specifically exempted. The use of the HUD–1 or HUD–1A is exempted for open-end lines of credit (home-equity plans) covered by the Truth in Lending Act and Regulation Z.

(b) *Charges to be stated*. The settlement agent shall complete the HUD–1 or HUD–1A, in accordance with the instructions set forth in appendix A to this part. The loan originator must transmit to the settlement agent all information necessary to complete the HUD–1 or HUD–1A.

(1) *In general*. The settlement agent shall state the actual charges paid by the borrower and seller on the HUD–1, or by the borrower on the HUD–1A. The settlement agent must separately itemize each third party charge paid by

the borrower and seller. All origination services performed by or on behalf of the loan originator must be included in the loan originator's own charge. Administrative and processing services related to title services must be included in the title underwriter's or title agent's own charge. The amount stated on the HUD–1 or HUD–1A for any itemized service cannot exceed the amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge in accordance with paragraph (b)(2) of this section.

(2) *Use of average charge.* (i) The average charge for a settlement service shall be no more than the average amount paid for a settlement service by one settlement service provider to another settlement service provider on behalf of borrowers and sellers for a particular class of transactions involving federally related mortgage loans. The total amounts paid by borrowers and sellers for a settlement service based on the use of an average charge may not exceed the total amounts paid to the providers of that service for the particular class of transactions.

(ii) The settlement service provider shall define the particular class of transactions for purposes of calculating the average charge as all transactions involving federally related mortgage loans for:

(A) A period of time as determined by the settlement service provider, but not less than 30 calendar days and not more than 6 months;

(B) A geographic area as determined by the settlement service provider; and

(C) A type of loan as determined by the settlement service provider.

(iii) A settlement service provider may use an average charge in the same class of transactions for which the charge was calculated. If the settlement service provider uses the average charge for any transaction in the class, the settlement service provider must use the same average charge in every transaction within that class for which a GFE was provided.

(iv) The use of an average charge is not permitted for any settlement service if the charge for the service is based on the loan amount or property value. For example, an average charge may not be used for transfer taxes, interest charges, reserves or escrow, or any type of insurance, including mortgage insurance, title insurance, or hazard insurance.

(v) The settlement service provider must retain all documentation used to calculate the average charge for a particular class of transactions for at least 3 years after any settlement for which that average charge was used.

(c) *Violations of section 4 of RESPA (12 U.S.C. 2603).* A violation of any of the requirements of this section will be deemed to be a violation of section 4 of RESPA. An inadvertent or technical error in completing the HUD–1 or HUD–1A shall not be deemed a violation of section 4 of RESPA if a revised HUD–1 or HUD–1A is provided in accordance with the requirements of this section within 30 calendar days after settlement.

§ 1024.9 Reproduction of settlement statements.

(a) *Permissible changes—HUD–1.* The following changes and insertions are permitted when the HUD–1 settlement statement is reproduced:

(1) The person reproducing the HUD–1 may insert its business name and logo in section A and may rearrange, but not delete, the other information that appears in section A.

(2) The name, address, and other information regarding the lender and settlement agent may be printed in sections F and H, respectively.

(3) Reproduction of the HUD–1 must conform to the terminology, sequence, and numbering of line items as presented in lines 100–1400. However, blank lines or items listed in lines 100–1400 that are not used locally or in connection with mortgages by the lender may be deleted, except for the following: Lines 100, 120, 200, 220, 300, 301, 302, 303, 400, 420, 500, 520, 600, 601, 602, 603, 700, 800, 900, 1000, 1100, 1200, 1300, and 1400. The form may be shortened correspondingly. The number of a deleted item shall not be used for a substitute or new item, but the number of a blank space on the HUD–1 may be used for a substitute or new item.

(4) Charges not listed on the HUD–1, but that are customary locally or pursuant to the lender's practice, may be

inserted in blank spaces. Where existing blank spaces on the HUD–1 are insufficient, additional lines and spaces may be added and numbered in sequence with spaces on the HUD–1.

(5) The following variations in layout and format are within the discretion of persons reproducing the HUD–1 and do not require prior Bureau approval: Size of pages; tint or color of pages; size and style of type or print; vertical spacing between lines or provision for additional horizontal space on lines (for example, to provide sufficient space for recording time periods used in prorations); printing of the HUD–1 contents on separate pages, on the front and back of a single page, or on one continuous page; use of multicopy tear-out sets; printing on rolls for computer purposes; reorganization of sections B through I, when necessary to accommodate computer printing; and manner of placement of the HUD number, but not the OMB approval number, neither of which may be deleted. The expiration date associated with the OMB number listed on the form may be deleted. Any changes in the HUD number or OMB approval number may be announced by notice in the FEDERAL REGISTER, rather than by amendment of this part.

(6) The borrower's information and the seller's information may be provided on separate pages.

(7) Signature lines may be added.

(8) The HUD–1 may be translated into languages other than English.

(9) An additional page may be attached to the HUD–1 for the purpose of including customary recitals and information used locally in real estate settlements; for example, breakdown of payoff figures, a breakdown of the borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred. If space permits, such information may be added at the end of the HUD–1.

(10) As required by HUD/FHA in FHA-insured loans.

(11) As allowed by § 1024.17, relating to an initial escrow account statement.

(b) *Permissible changes—HUD–1A.* The changes and insertions on the HUD–1 permitted under paragraph (a) of this section are also permitted when the HUD–1A settlement statement is reproduced, except the changes described in paragraphs (a)(3) and (6) of this section.

(c) *Written approval.* Any other deviation in the HUD–1 or HUD–1A forms is permissible only upon receipt of written approval of the Bureau; provided, however, that notwithstanding contrary instructions in this section or appendix A of this part, reproducing the HUD–1 or HUD–1A forms with the Bureau's OMB approval number displayed in place of HUD's OMB approval number does not require the written approval of the Bureau. A request to the Bureau for approval shall be submitted in writing to the address indicated in the definition of *Public Guidance Documents* in § 1024.2 and shall state the reasons why the applicant believes such deviation is needed. The prescribed form(s) must be used until approval is received.

[76 FR 78981, Dec. 20, 2011, as amended at 81 FR 72370, Oct. 19, 2016]

§ 1024.10 One-day advance inspection of HUD–1 or HUD–1A settlement statement; delivery; recordkeeping.

(a) *Inspection one day prior to settlement upon request by the borrower.* The settlement agent shall permit the borrower to inspect the HUD–1 or HUD–1A settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement. Items related only to the seller's transaction may be omitted from the HUD–1.

(b) *Delivery.* The settlement agent shall provide a completed HUD–1 or HUD–1A to the borrower, the seller (if there is one), the lender (if the lender is not the settlement agent), and/or their agents. When the borrower's and seller's copies of the HUD–1 or HUD–1A differ as permitted by the instructions in appendix A to this part, both copies shall be provided to the lender (if the lender is not the settlement agent). The settlement agent shall deliver the completed HUD–1 or HUD–1A at or before the settlement, except as provided in paragraphs (c) and (d) of this section.

(c) *Waiver*. The borrower may waive the right to delivery of the completed HUD–1 or HUD–1A no later than at settlement by executing a written waiver at or before settlement. In such case, the completed HUD–1 or HUD–1A shall be mailed or delivered to the borrower, seller, and lender (if the lender is not the settlement agent) as soon as practicable after settlement.

(d) *Exempt transactions*. When the borrower or the borrower's agent does not attend the settlement, or when the settlement agent does not conduct a meeting of the parties for that purpose, the transaction shall be exempt from the requirements of paragraphs (a) and (b) of this section, except that the HUD–1 or HUD–1A shall be mailed or delivered as soon as practicable after settlement.

(e) *Recordkeeping*. The lender shall retain each completed HUD–1 or HUD–1A and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. In that case, the lender shall provide its copy of the HUD–1 or HUD–1A to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain the HUD–1 or HUD–1A for the remainder of the five-year period. The Bureau shall have the right to inspect or require copies of records covered by this paragraph (e).

§ 1024.11 Mailing.

The provisions of this part requiring or permitting mailing of documents shall be deemed to be satisfied by placing the document in the mail (whether or not received by the addressee) addressed to the addresses stated in the loan application or in other information submitted to or obtained by the lender at the time of loan application or submitted or obtained by the lender or settlement agent, except that a revised address shall be used where the lender or settlement agent has been expressly informed in writing of a change in address.

§ 1024.12 No fee.

No fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a manufactured home), or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for or on account of the preparation and distribution of the HUD–1 or HUD–1A settlement statement, escrow account statements required pursuant to section 10 of RESPA (12 U.S.C. 2609), or statements required by the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

§ 1024.13 [Reserved]

§ 1024.14 Prohibition against kickbacks and unearned fees.

(a) *Section 8 violation*. Any violation of this section is a violation of section 8 of RESPA (12 U.S.C. 2607).

(b) *No referral fees*. No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in §1024.14(g)(1). A company may not pay any other company or the employees of any other company for the referral of settlement service business.

(c) *No split of charges except for actual services performed*. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable. Nor may the prohibitions of this part be avoided by creating an arrangement wherein the purchaser of services splits the fee.

(d) *Thing of value*. This term is broadly defined in section 3(2) of RESPA (12

U.S.C. 2602(2)). It includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation. The term ''payment'' is used throughout §§ 1024.14 and 1024.15 as synonymous with the giving or receiving of any ''thing of value'' and does not require transfer of money.

(e) *Agreement or understanding.* An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.

(f) *Referral.* (1) A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.

(2) A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use (see § 1024.2, ''required use'') a particular provider of a settlement service or business incident thereto.

(g) *Fees, salaries, compensation, or other payments.* (1) Section 8 of RESPA permits:

(i) A payment to an attorney at law for services actually rendered;

(ii) A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;

(iii) A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan;

(iv) A payment to any person of a *bona fide* salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;

(v) A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers. (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers.);

(vi) Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto; or

(vii) An employer's payment to its own employees for any referral activities.

(2) The Bureau may investigate high prices to see if they are the result of a referral fee or a split of a fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. These facts may be used as evidence of a violation of section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation. The value of a referral (*i.e.,* the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services. The fact that the

transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.

(3) *Multiple services*. When a person in a position to refer settlement service business, such as an attorney, mortgage lender, real estate broker or agent, or developer or builder, receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person. For example, for an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, issuance of the title commitment, and the conducting of the title search and closing.

(h) *Recordkeeping*. Any documents provided pursuant to this section shall be retained for five (5) years from the date of execution.

(i) *Appendix B of this part*. Illustrations in appendix B of this part demonstrate some of the requirements of this section.

§ 1024.15 Affiliated business arrangements.

(a) *General*. An affiliated business arrangement is defined in section 3(7) of RESPA (12 U.S.C. 2602(7)).

(b) *Violation and exemption*. An affiliated business arrangement is not a violation of section 8 of RESPA (12 U.S.C. 2607) and of § 1024.14 if the conditions set forth in this section are satisfied. Paragraph (b)(1) of this section shall not apply to the extent it is inconsistent with section 8(c)(4)(A) of RESPA (12 U.S.C. 2607(c)(4)(A)).

(1) The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Affiliated Business Arrangement Disclosure Statement set forth in appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD–1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that:

(i) Where a lender makes the referral to a borrower, the condition contained in paragraph (b)(1) of this section may be satisfied at the time that the good faith estimate or a statement under § 1024.7(d) is provided; and

(ii) Whenever an attorney or law firm requires a client to use a particular title insurance agent, the attorney or law firm shall provide the disclosures no later than the time the attorney or law firm is engaged by the client.

(iii) Failure to comply with the disclosure requirements of this section may be overcome if the person making a referral can prove by a preponderance of the evidence that procedures reasonably adopted to result in compliance with these conditions have been maintained and that any failure to comply with these conditions was unintentional and the result of a *bona fide* error. An error of legal judgment with respect to a person's obligations under RESPA is not a *bona fide* error. Administrative and judicial interpretations of section 130(c) of the Truth in Lending Act shall not be binding interpretations of the preceding sentence or section 8(d)(3) of RESPA (12 U.S.C. 2607(d)(3)).

(2) No person making a referral has required (as defined in § 1024.2, ''required use'') any person to use any particular provider of settlement services or business incident thereto, except if such person is a lender, for requiring a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the

lender's interest in a real estate transaction, or except if such person is an attorney or law firm for arranging for issuance of a title insurance policy for a client, directly as agent or through a separate corporate title insurance agency that may be operated as an adjunct to the law practice of the attorney or law firm, as part of representation of that client in a real estate transaction.

(3) The only thing of value that is received from the arrangement other than payments listed in §1024.14(g) is a return on an ownership interest or franchise relationship.

(i) In an affiliated business arrangement:

(A) *Bona fide* dividends, and capital or equity distributions, related to ownership interest or franchise relationship, between entities in an affiliate relationship, are permissible; and

(B) *Bona fide* business loans, advances, and capital or equity contributions between entities in an affiliate relationship (in any direction), are not prohibited—so long as they are for ordinary business purposes and are not fees for the referral of settlement service business or unearned fees.

(ii) A return on an ownership interest does not include:

(A) Any payment which has as a basis of calculation no apparent business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated or anticipated referrals;

(B) Any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or

(C) A payment based on an ownership, partnership or joint venture share which has been adjusted on the basis of previous relative referrals by recipients of similar payments.

(iii) Neither the mere labeling of a thing of value, nor the fact that it may be calculated pursuant to a corporate or partnership organizational document or a franchise agreement, will determine whether it is a *bona fide* return on an ownership interest or franchise relationship. Whether a thing of value is such a return will be determined by analyzing facts and circumstances on a case by case basis.

(iv) A return on franchise relationship may be a payment to or from a franchisee but it does not include any payment which is not based on the franchise agreement, nor any payment which varies according to the number or amount of referrals by the franchisor or franchisee or which is based on a franchise agreement which has been adjusted on the basis of a previous number or amount of referrals by the franchiser or franchisees. A franchise agreement may not be constructed to insulate against kickbacks or referral fees.

(c) *Definitions.* As used in this section:

Associate is defined in section 3(8) of RESPA (12 U.S.C. 2602(8)).

Affiliate relationship means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership.

Beneficial ownership means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person's name.

Control, as used in the definitions of ''associate'' and ''affiliate relationship,'' means that a person:

(i) Is a general partner, officer, director, or employer of another person;

(ii) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interests of another person;

(iii) Affirmatively influences in any manner the election of a majority of the directors of another person; or

(iv) Has contributed more than 20 percent of the capital of the other person.

Direct ownership means the holding of legal title to an interest in a provider of settlement service except where title is being held for the beneficial owner.

Franchise is defined in FTC regulation 16 CFR 436.1(h).

Franchisor is defined in FTC regulation 16 CFR 436.1(k).

Franchisee is defined in FTC regulation 16 CFR 436.1(i).

FTC means the Federal Trade Commission.

Person who is in a position to refer settlement service business means any real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent, or other person deriving a significant portion of his or her gross income from providing settlement services.

(d) *Recordkeeping*. Any documents provided pursuant to this section shall be retained for 5 years after the date of execution.

(e) *Appendix B of this part*. Illustrations in appendix B of this part demonstrate some of the requirements of this section.

§ 1024.16 Title companies.

No seller of property that will be purchased with the assistance of a federally related mortgage loan shall violate section 9 of RESPA (12 U.S.C. 2608). Section 1024.2 defines ''required use'' of a provider of a settlement service.

§ 1024.17 Escrow accounts.

(a) *General*. This section sets out the requirements for an escrow account that a lender establishes in connection with a federally related mortgage loan. It sets limits for escrow accounts using calculations based on monthly payments and disbursements within a calendar year. If an escrow account involves biweekly or any other payment period, the requirements in this section shall be modified accordingly. A Public Guidance Document entitled ''Biweekly Payments—Example'' provides examples of biweekly accounting and a Public Guidance Document entitled ''Annual Escrow Account Disclosure Statement—Example'' provides examples of a 3-year accounting cycle that may be used in accordance with paragraph (c)(9) of this section. A Public Guidance Document entitled ''Consumer Disclosure for Voluntary Escrow Account Payments'' provides a model disclosure format that originators and servicers are encouraged, but not required, to provide to consumers when the originator or servicer anticipates a substantial increase in disbursements from the escrow account after the first year of the loan. The disclosures in that model format may be combined with or included in the Initial Escrow Account Statement required in § 1024.17(g).

(b) *Definitions*. As used in this section:

Aggregate (or) composite analysis, hereafter called *aggregate analysis*, means an accounting method a servicer uses in conducting an escrow account analysis by computing the sufficiency of escrow account funds by analyzing the account as a whole. Appendix E to this part sets forth examples of aggregate escrow account analyses.

Annual escrow account statement means a statement containing all of the information set forth in § 1024.17(i). As noted in § 1024.17(i), a servicer shall submit an annual escrow account statement to the borrower within 30 calendar days of the end of the escrow account computation year, after conducting an escrow account analysis.

Cushion or reserve (hereafter cushion) means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account, as limited by § 1024.17(c).

Deficiency is the amount of a negative balance in an escrow account. As noted in § 1024.17(f), if a servicer advances funds for a borrower, then the servicer must perform an escrow account analysis before seeking repayment of the deficiency.

Delivery means the placing of a document in the United States mail, first-class postage paid, addressed to the last known address of the recipient. Hand delivery also constitutes delivery.

Disbursement date means the date on which the servicer actually pays an escrow item from the escrow account.

Escrow account means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood

insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a ''trust account'', ''reserve account'', ''impound account'', or other term in different localities. An ''escrow account'' includes any arrangement where the servicer adds a portion of the borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of this section, the term ''escrow account'' excludes any account that is under the borrower's total control.

Escrow account analysis means the accounting that a servicer conducts in the form of a trial running balance for an escrow account to:

(1) Determine the appropriate target balances;

(2) Compute the borrower's monthly payments for the next escrow account computation year and any deposits needed to establish or maintain the account; and

(3) Determine whether shortages, surpluses or deficiencies exist.

Escrow account computation year is a 12-month period that a servicer establishes for the escrow account beginning with the borrower's initial payment date. The term includes each 12-month period thereafter, unless a servicer chooses to issue a short year statement under the conditions stated in § 1024.17(i)(4).

Escrow account item or *separate item* means any separate expenditure category, such as ''taxes'' or ''insurance'', for which funds are collected in the escrow account for disbursement. An escrow account item with installment payments, such as local property taxes, remains one escrow account item regardless of multiple disbursement dates to the tax authority.

Initial escrow account statement means the first disclosure statement that the servicer delivers to the borrower concerning the borrower's escrow account. The initial escrow account statement shall meet the requirements of § 1024.17(g) and be in substantially the format set forth in § 1024.17(h).

Installment payment means one of two or more payments payable on an escrow account item during an escrow account computation year. An example of an installment payment is where a jurisdiction bills quarterly for taxes.

Payment due date means the date each month when the borrower's monthly payment to an escrow account is due to the servicer. The initial payment date is the borrower's first payment due date to an escrow account.

Penalty means a late charge imposed by the payee for paying after the disbursement is due. It does not include any additional charge or fee imposed by the payee associated with choosing installment payments as opposed to annual payments or for choosing one installment plan over another.

Pre-accrual is a practice some servicers use to require borrowers to deposit funds, needed for disbursement and maintenance of a cushion, in the escrow account some period before the disbursement date. Pre-accrual is subject to the limitations of § 1024.17(c).

Shortage means an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

Single-item analysis means an accounting method servicers use in conducting an escrow account analysis by computing the sufficiency of escrow account funds by considering each escrow item separately. Appendix E to this part sets forth examples of single-item analysis.

Submission (of an escrow account statement) means the delivery of the statement.

Surplus means an amount by which the current escrow account balance exceeds the target balance for the account.

System of recordkeeping means the servicer's method of keeping information that reflects the facts relating to that servicer's handling of the borrower's escrow account, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to borrowers.

Target balance means the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the

escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion, if any.

Trial running balance means the accounting process that derives the target balances over the course of an escrow account computation year. Section 1024.17(d) provides a description of the steps involved in performing a trial running balance.

(c) *Limits on payments to escrow accounts.* (1) A lender or servicer (hereafter servicer) shall not require a borrower to deposit into any escrow account, created in connection with a federally related mortgage loan, more than the following amounts:

(i) *Charges at settlement or upon creation of an escrow account.* At the time a servicer creates an escrow account for a borrower, the servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payment(s) were last paid until the initial payment date. The ''amount sufficient to pay'' is computed so that the lowest month end target balance projected for the escrow account computation year is zero (–0–) (see Step 2 in appendix E to this part). In addition, the servicer may charge the borrower a cushion that shall be no greater than one-sixth (1/6) of the estimated total annual payments from the escrow account.

(ii) *Charges during the life of the escrow account.* Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth (1/12) of the total annual escrow payments which the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth (1/6) of the estimated total annual payments from the account. However, if a servicer determines through an escrow account analysis that there is a shortage or deficiency, the servicer may require the borrower to pay additional deposits to make up the shortage or eliminate the deficiency, subject to the limitations set forth in § 1024.17(f).

(2) *Escrow analysis at creation of escrow account.* Before establishing an escrow account, the servicer must conduct an escrow account analysis to determine the amount the borrower must deposit into the escrow account (subject to the limitations of paragraph (c)(1)(i) of this section), and the amount of the borrower's periodic payments into the escrow account (subject to the limitations of paragraph (c)(1)(ii) of this section). In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. Upon completing the initial escrow account analysis, the servicer must prepare and deliver an initial escrow account statement to the borrower, as set forth in paragraph (g) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists and must make any adjustments to the account pursuant to paragraph (f) of this section.

(3) *Subsequent escrow account analyses.* For each escrow account, the servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, subject to the limitations of paragraph (c)(1)(ii) of this section. In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists, and must make any adjustments to the account pursuant to paragraph (f) of this section. Upon completing an escrow account analysis, the servicer

must prepare and submit an annual escrow account statement to the borrower, as set forth in paragraph (i) of this section.

(4) *Aggregate accounting required.* All servicers must use the aggregate accounting method in conducting escrow account analyses.

(5) *Cushion.* The cushion must be no greater than one-sixth (1/6) of the estimated total annual disbursements from the escrow account.

(6) *Restrictions on pre-accrual.* A servicer must not practice pre-accrual.

(7) *Servicer estimates of disbursement amounts.* To conduct an escrow account analysis, the servicer shall estimate the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. If the charge is unknown to the servicer, the servicer may base the estimate on the preceding year's charge, or the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items). In cases of unassessed new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area.

(8) *Provisions in federally related mortgage documents.* The servicer must examine the federally related mortgage loan documents to determine the applicable cushion for each escrow account. If any such documents provide for lower cushion limits, then the terms of the loan documents apply. Where the terms of any such documents allow greater payments to an escrow account than allowed by this section, then this section controls the applicable limits. Where such documents do not specifically establish an escrow account, whether a servicer may establish an escrow account for the loan is a matter for determination by other Federal or State law. If such documents are silent on the escrow account limits and a servicer establishes an escrow account under other Federal or State law, then the limitations of this section apply unless applicable Federal or State law provides for a lower amount. If such documents provide for escrow accounts up to the RESPA limits, then the servicer may require the maximum amounts consistent with this section, unless an applicable Federal or State law sets a lesser amount.

(9) *Assessments for periods longer than one year.* Some escrow account items may be billed for periods longer than one year. For example, servicers may need to collect flood insurance or water purification escrow funds for payment every three years. In such cases, the servicer shall estimate the borrower's payments for a full cycle of disbursements. For a flood insurance premium payable every 3 years, the servicer shall collect the payments reflecting 36 equal monthly amounts. For two out of the three years, however, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle, as compared to an annual one. The annual escrow account statement shall explain this situation (see example in the Public Guidance Document entitled ''Annual Escrow Account Disclosure Statement—Example'', available in accordance with § 1024.3).

(d) *Methods of escrow account analysis.* (1) The following sets forth the steps servicers must use to determine whether their use of aggregate analysis conforms with the limitations in § 1024.17(c)(1). The steps set forth in this section result in maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This section does not require the use of a cushion.

(2) *Aggregate analysis.* (i) In conducting the escrow account analysis using aggregate analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:

(A) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does

not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements.

(B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all other monthly balances accordingly.

(C) The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower's escrow payments to the servicer or a lesser amount specified by state law or the mortgage document (net of any increases or decreases because of prior year shortages or surpluses, respectively).

(ii) *Lowest monthly balance.* Under aggregate analysis, the lowest monthly target balance for the account shall be less than or equal to one-sixth of the estimated total annual escrow account disbursements or a lesser amount specified by state law or the mortgage document. The target balances that the servicer derives using these steps yield the maximum limit for the escrow account. Appendix E to this part illustrates these steps.

(e) *Transfer of servicing.* (1) If the new servicer changes either the monthly payment amount or the accounting method used by the transferor (old) servicer, then the new servicer shall provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer.

(i) Where a new servicer provides an initial escrow account statement upon the transfer of servicing, the new servicer shall use the effective date of the transfer of servicing to establish the new escrow account computation year.

(ii) Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis and provide the borrower with an annual escrow account statement.

(2) The new servicer shall treat shortages, surpluses and deficiencies in the transferred escrow account according to the procedures set forth in §1024.17(f).

(f) *Shortages, surpluses, and deficiencies requirements*—(1) *Escrow account analysis.* For each escrow account, the servicer shall conduct an escrow account analysis to determine whether a surplus, shortage or deficiency exists.

(i) As noted in §1024.17(c)(2) and (3), the servicer shall conduct an escrow account analysis upon establishing an escrow account and at completion of the escrow account computation year.

(ii) The servicer may conduct an escrow account analysis at other times during the escrow computation year. If a servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, then the servicer shall conduct an escrow account analysis to determine the extent of the deficiency before seeking repayment of the funds from the borrower under this paragraph (f).

(2) *Surpluses.* (i) If an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to 50 dollars ($50). If the surplus is less than 50 dollars ($50), the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments.

(ii) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the federally related mortgage loan documents.

(iii) After an initial or annual escrow analysis has been performed, the servicer and the borrower may enter into a voluntary agreement for the

forthcoming escrow accounting year for the borrower to deposit funds into the escrow account for that year greater than the limits established under paragraph (c) of this section. Such an agreement shall cover only one escrow accounting year, but a new voluntary agreement may be entered into after the next escrow analysis is performed. The voluntary agreement may not alter how surpluses are to be treated when the next escrow analysis is performed at the end of the escrow accounting year covered by the voluntary agreement.

(3) *Shortages*. (i) If an escrow account analysis discloses a shortage of less than one month's escrow account payment, then the servicer has three possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it;

(B) The servicer may require the borrower to repay the shortage amount within 30 days; or

(C) The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

(ii) If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it; or

(B) The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

(4) *Deficiency*. If the escrow account analysis confirms a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

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

(A) May allow the deficiency to exist and do nothing to change it;

(B) May require the borrower to repay the deficiency within 30 days; or

(C) May require the borrower to repay the deficiency in 2 or more equal monthly payments.

(ii) If the deficiency is greater than or equal to 1 month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments.

(iii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the federally related mortgage loan documents.

(5) *Notice of shortage or deficiency in escrow account*. The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.

(g) *Initial escrow account statement*—(1) *Submission at settlement, or within 45 calendar days of settlement*. As noted in § 1024.17(c)(2), the servicer shall conduct an escrow account analysis before establishing an escrow account to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of § 1024.17(c)(1)(i). After conducting the escrow account analysis for each escrow account, the servicer shall submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.

(i) The initial escrow account statement shall include the amount of the borrower's monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The initial escrow account statement shall indicate the amount that the servicer

selects as a cushion. The statement shall include a trial running balance for the account.

(ii) Pursuant to §1024.17(h)(2), the servicer may incorporate the initial escrow account statement into the HUD–1 or HUD–1A settlement statement. If the servicer does not incorporate the initial escrow account statement into the HUD–1 or HUD–1A settlement statement, then the servicer shall submit the initial escrow account statement to the borrower as a separate document.

(2) *Time of submission of initial escrow account statement for an escrow account established after settlement.* For escrow accounts established after settlement (and which are not a condition of the loan), a servicer shall submit an initial escrow account statement to a borrower within 45 calendar days of the date of establishment of the escrow account.

(h) *Format for initial escrow account statement.* (1) The format and a completed example for an initial escrow account statement are set out in Public Guidance Documents entitled ''Initial Escrow Account Disclosure Statement—Format'' and ''Initial Escrow Account Disclosure Statement—Example,'' available in accordance with the direction in the definition of *Public Guidance Documents* in §1024.2.

(2) *Incorporation of initial escrow account statement into HUD–1 or HUD–1A settlement statement.* Pursuant to §1024.9(a)(11), a servicer may add the initial escrow account statement to the HUD–1 or HUD–1A settlement statement. The servicer may include the initial escrow account statement in the basic text or may attach the initial escrow account statement as an additional page to the HUD–1 or HUD–1A settlement statement.

(3) *Identification of payees.* The initial escrow account statement need not identify a specific payee by name if it provides sufficient information to identify the use of the funds. For example, appropriate entries include: county taxes, hazard insurance, condominium dues, *etc.* If a particular payee, such as a taxing body, receives more than one payment during the escrow account computation year, the statement shall indicate each payment and disbursement date. If there are several taxing authorities or insurers, the statement shall identify each taxing body or insurer (*e.g.*, ''City Taxes'', ''School Taxes'', ''Hazard Insurance'', or ''Flood Insurance,'' *etc.*).

(i) *Annual escrow account statements.* For each escrow account, a servicer shall submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer shall also submit to the borrower the previous year's projection or initial escrow account statement. The servicer shall conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.

(1) *Contents of annual escrow account statement.* The annual escrow account statement shall provide an account history, reflecting the activity in the escrow account during the escrow account computation year, and a projection of the activity in the account for the next year. In preparing the statement, the servicer may assume scheduled payments and disbursements will be made for the final 2 months of the escrow account computation year. The annual escrow account statement must include, at a minimum, the following (the items in paragraphs (i)(1)(i) through (i)(1)(iv) must be clearly itemized):

(i) The amount of the borrower's current monthly mortgage payment and the portion of the monthly payment going into the escrow account;

(ii) The amount of the past year's monthly mortgage payment and the portion of the monthly payment that went into the escrow account;

(iii) The total amount paid into the escrow account during the past computation year;

(iv) The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges (as separately identified);

(v) The balance in the escrow account at the end of the period;

(vi) An explanation of how any surplus is being handled by the servicer;

(vii) An explanation of how any shortage or deficiency is to be paid by the borrower; and

(viii) If applicable, the reason(s) why the estimated low monthly balance was not reached, as indicated by noting differences between the most recent account history and last year's projection. Public Guidance Documents entitled ''Annual Escrow Account Disclosure Statement—Format'' and ''Annual Escrow Account Disclosure Statement—Example'' set forth an acceptable format and methodology for conveying this information.

(2) *No annual statements in the case of default, foreclosure, or bankruptcy*. This paragraph (i)(2) contains an exemption from the provisions of § 1024.17(i)(1). If at the time the servicer conducts the escrow account analysis the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of submitting an annual escrow account statement to the borrower under § 1024.17(i). This exemption also applies in situations where the servicer has brought an action for foreclosure under the underlying federally related mortgage loan, or where the borrower is in bankruptcy proceedings. If the servicer does not issue an annual statement pursuant to this exemption and the loan subsequently is reinstated or otherwise becomes current, the servicer shall provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.

(3) *Delivery with other material*. The servicer may deliver the annual escrow account statement to the borrower with other statements or materials, including the Substitute 1098, which is provided for Federal income tax purposes.

(4) *Short year statements*. A servicer may issue a short year annual escrow account statement (''short year statement'') to change one escrow account computation year to another. By using a short year statement a servicer may adjust its production schedule or alter the escrow account computation year for the escrow account.

(i) *Effect of short year statement*. The short year statement shall end the ''escrow account computation year'' for the escrow account and establish the beginning date of the new escrow account computation year. The servicer shall deliver the short year statement to the borrower within 60 days from the end of the short year.

(ii) *Short year statement upon servicing transfer*. Upon the transfer of servicing, the transferor (old) servicer shall submit a short year statement to the borrower within 60 days of the effective date of transfer.

(iii) *Short year statement upon loan payoff*. If a borrower pays off a federally related mortgage loan during the escrow account computation year, the servicer shall submit a short year statement to the borrower within 60 days after receiving the payoff funds.

(j) *Formats for annual escrow account statement*. The formats and completed examples for annual escrow account statements using single-item analysis (pre-rule accounts) and aggregate analysis are set out in Public Guidance Documents entitled ''Annual Escrow Account Disclosure Statement—Format'' and ''Annual Escrow Account Disclosure Statement—Example''.

(k) *Timely payments*. (1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer must pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.

(2) The servicer must advance funds to make disbursements in a timely manner as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to paragraph (f) of this section.

(3) For the payment of property taxes from the escrow account, if a taxing jurisdiction offers a servicer a choice between annual and installment disbursements, the servicer must also comply with this paragraph (k)(3). If the taxing jurisdiction neither offers a discount for disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursements, the servicer must make disbursements on an installment basis. If, however, the taxing jurisdiction offers a discount for disbursements on a lump

sum annual basis or imposes any additional charge or fee for installment disbursements, the servicer may, at the servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements in order to take advantage of the discount for the borrower or avoid the additional charge or fee for installments, as long as such method of disbursement complies with paragraphs (k)(1) and (k)(2) of this section. The Bureau encourages, but does not require, the servicer to follow the preference of the borrower, if such preference is known to the servicer.

(4) Notwithstanding paragraph (k)(3) of this section, a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date for property taxes from that required under paragraph (k)(3) of this section, so long as the agreement meets the requirements of paragraphs (k)(1) and (k)(2) of this section. The borrower must voluntarily agree; neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different disbursement basis or disbursement date.

(5) *Timely payment of hazard insurance*—(i) *In general*. Except as provided in paragraph (k)(5)(iii) of this section, with respect to a borrower whose mortgage payment is more than 30 days overdue, but who has established an escrow account for the payment for hazard insurance, as defined in § 1024.31, a servicer may not purchase force-placed insurance, as that term is defined in § 1024.37(a), unless a servicer is unable to disburse funds from the borrower's escrow account to ensure that the borrower's hazard insurance premium charges are paid in a timely manner.

(ii) *Inability to disburse funds*—(A) *When inability exists*. A servicer is considered unable to disburse funds from a borrower's escrow account to ensure that the borrower's hazard insurance premiums are paid in a timely manner only if the servicer has a reasonable basis to believe either that the borrower's hazard insurance has been canceled (or was not renewed) for reasons other than nonpayment of premium charges or that the borrower's property is vacant.

(B) *When inability does not exist*. A servicer shall not be considered unable to disburse funds from the borrower's escrow account because the escrow account contains insufficient funds for paying hazard insurance premium charges.

(C) *Recoupment of advances*. If a servicer advances funds to an escrow account to ensure that the borrower's hazard insurance premium charges are paid in a timely manner, a servicer may seek repayment from the borrower for the funds the servicer advanced, unless otherwise prohibited by applicable law.

(iii) *Small servicers*. Notwithstanding paragraphs (k)(5)(i) and (k)(5)(ii)(B) of this section and subject to the requirements in § 1024.37, a servicer that qualifies as a small servicer pursuant to 12 CFR 1026.41(e)(4) may purchase force-placed insurance and charge the cost of that insurance to the borrower if the cost to the borrower of the force-placed insurance is less than the amount the small servicer would need to disburse from the borrower's escrow account to ensure that the borrower's hazard insurance premium charges were paid in a timely manner.

(l) *Discretionary payments*. Any borrower's discretionary payment (such as credit life or disability insurance) made as part of a monthly mortgage payment is to be noted on the initial and annual statements. If a discretionary payment is established or terminated during the escrow account computation year, this change should be noted on the next annual statement. A discretionary payment is not part of the escrow account unless the payment is required by the lender, in accordance with the definition of ''settlement service'' in § 1024.2, or the servicer chooses to place the discretionary payment in the escrow account. If a servicer has not established an escrow account for a federally related mortgage loan and only receives payments for discretionary items, this section is not applicable.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10875, Feb. 14, 2013; 81 FR 72370, Oct. 19, 2016]

§§ 1024.18–1024.19 [Reserved]

§ 1024.20 List of homeownership counseling organizations.

(a) *Provision of list.* (1) Except as otherwise provided in this section, not later than three business days after a lender, mortgage broker, or dealer receives an application, or information sufficient to complete an application, the lender must provide the loan applicant with a clear and conspicuous written list of homeownership counseling organizations that provide relevant counseling services in the loan applicant's location. The list of homeownership counseling organizations distributed to each loan applicant under this section shall be obtained no earlier than 30 days prior to the time when the list is provided to the loan applicant from either:

(i) The Web site maintained by the Bureau for lenders to use in complying with the requirements of this section; or

(ii) Data made available by the Bureau or HUD for lenders to use in complying with the requirements of this section, provided that the data is used in accordance with instructions provided with the data.

(2) The list of homeownership counseling organizations provided under this section may be combined and provided with other mortgage loan disclosures required pursuant to Regulation Z, 12 CFR part 1026, or this part unless prohibited by Regulation Z or this part.

(3) A mortgage broker or dealer may provide the list of homeownership counseling organizations required under this section to any loan applicant from whom it receives or for whom it prepares an application. If the mortgage broker or dealer has provided the required list of homeownership counseling organizations, the lender is not required to provide an additional list. The lender is responsible for ensuring that the list of homeownership counseling organizations is provided to a loan applicant in accordance with this section.

(4) If the lender, mortgage broker, or dealer does not provide the list of homeownership counseling organizations required under this section to the loan applicant in person, the lender must mail or deliver the list to the loan applicant by other means. The list may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq.*

(5) The lender is not required to provide the list of homeownership counseling organizations required under this section if, before the end of the three-business-day period provided in paragraph (a)(1) of this section, the lender denies the application or the loan applicant withdraws the application.

(6) If a mortgage loan transaction involves more than one lender, only one list of homeownership counseling organizations required under this section shall be given to the loan applicant and the lenders shall agree among themselves which lender will comply with the requirements that this section imposes on any or all of them. If there is more than one loan applicant, the required list of homeownership counseling organizations may be provided to any loan applicant with primary liability on the mortgage loan obligation.

(b) *Open-end lines of credit (home-equity plans) under Regulation Z.* For a federally related mortgage loan that is a home-equity line of credit subject to Regulation Z, 12 CFR 1026.40, a lender or mortgage broker that provides the loan applicant with the list of homeownership organizations required under this section may comply with the timing and delivery requirements set out in either paragraph (a) of this section or 12 CFR 1026.40(b).

(c) *Exemptions*—(1) *Reverse mortgage transactions.* A lender is not required to provide an applicant for a reverse mortgage transaction subject to 12 CFR 1026.33(a) the list of homeownership counseling organizations required under this section.

(2) *Timeshare plans.* A lender is not required to provide an applicant for a mortgage loan secured by a timeshare, as described under 11 U.S.C. 101(53D), the list of homeownership counseling

organizations required under this section.

[78 FR 6961, Jan. 31, 2013]

Subpart C—Mortgage Servicing

SOURCE: 78 FR 10876, Feb. 14, 2013, unless otherwise noted.

§ 1024.30 Scope.

(a) *In general*. Except as provided in paragraphs (b) and (c) of this section, this subpart applies to any mortgage loan, as that term is defined in § 1024.31.

(b) *Exemptions*. Except as otherwise provided in § 1024.41(j), §§ 1024.38 through 1024.41 of this subpart shall not apply to the following:

(1) A servicer that qualifies as a small servicer pursuant to 12 CFR 1026.41(e)(4);

(2) A servicer with respect to any reverse mortgage transaction as that term is defined in § 1024.31; and

(3) A servicer with respect to any mortgage loan for which the servicer is a qualified lender as that term is defined in 12 CFR 617.7000.

(c) *Scope of certain sections*. (1) Section 1024.33(a) only applies to reverse mortgage transactions.

(2) The procedures set forth in §§ 1024.39 through 1024.41 of this subpart only apply to a mortgage loan that is secured by a property that is a borrower's principal residence.

(d) *Successors in interest*. A confirmed successor in interest shall be considered a borrower for purposes of § 1024.17 and this subpart.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013; 78 FR 80104, Dec. 31, 2013; 81 FR 72370, Oct. 19, 2016]

§ 1024.31 Definitions.

For purposes of this subpart:

Confirmed successor in interest means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in a property that secures a mortgage loan subject to this subpart.

Consumer reporting agency has the meaning set forth in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.

Day means calendar day.

Delinquency means a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid, until such time as no periodic payment is due and unpaid.

Hazard insurance means insurance on the property securing a mortgage loan that protects the property against loss caused by fire, wind, flood, earthquake, theft, falling objects, freezing, and other similar hazards for which the owner or assignee of such loan requires insurance.

Loss mitigation application means 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.

Loss mitigation option means an alternative to foreclosure offered by the owner or assignee of a mortgage loan that is made available through the servicer to the borrower.

Master servicer means the owner of the right to perform servicing. A master servicer may perform the servicing itself or do so through a subservicer.

Mortgage loan means any federally related mortgage loan, as that term is defined in § 1024.2 subject to the exemptions in § 1024.5(b), but does not include open-end lines of credit (home equity plans).

Qualified written request means a written correspondence from the borrower to the servicer that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and either:

(1) States the reasons the borrower believes the account is in error; or

(2) Provides sufficient detail to the servicer regarding information relating to the servicing of the mortgage loan sought by the borrower.

Reverse mortgage transaction has the meaning set forth in 12 CFR 1026.33(a).

Service provider means any party retained by a servicer that interacts with a borrower or provides a service to the servicer for which a borrower may incur a fee.

Subservicer means a servicer that does not own the right to perform servicing, but that performs servicing on behalf of the master servicer.

Successor in interest means a person to whom an ownership interest in a property securing a mortgage loan subject to this subpart is transferred from a borrower, provided that the transfer is:

(1) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(2) A transfer to a relative resulting from the death of a borrower;

(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.

Transferee servicer means a servicer that obtains or will obtain the right to perform servicing pursuant to an agreement or understanding.

Transferor servicer means a servicer, including a table-funding mortgage broker or dealer on a first- lien dealer loan, that transfers or will transfer the right to perform servicing pursuant to an agreement or understanding.

[78 FR 10876, Feb. 14, 2013, as amended at 81 FR 72370, Oct. 19, 2016]

§ 1024.32 General disclosure requirements.

(a) *Disclosure requirements*—(1) *Form of disclosures*. Except as otherwise provided in this subpart, disclosures required under this subpart must be clear and conspicuous, in writing, and in a form that a recipient may keep. The disclosures required by this subpart may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act, as set forth in § 1024.3. A servicer may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this subpart.

(2) *Foreign language disclosures*. Disclosures required under this subpart may be made in a language other than English, provided that the disclosures are made available in English upon a recipient's request.

(b) *Additional information; disclosures required by other laws*. Unless expressly prohibited in this subpart, by other applicable law, such as the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) or the Truth in Savings Act (12 U.S.C. 4301 *et seq.*), or by the terms of an agreement with a Federal or State regulatory agency, a servicer may include additional information in a disclosure required under this subpart or combine any disclosure required under this subpart with any disclosure required by such other law.

(c) *Successors in interest*—(1) *Optional notice with acknowledgment form*. Upon confirmation, a servicer may provide a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice together with a separate acknowledgment form that meets the requirements of paragraph (c)(1)(iv) of this section and that does not require acknowledgment of any items other than those identified in paragraph (c)(1)(iv) of this section. The written notice must clearly and conspicuously explain that:

(i) The servicer has confirmed the successor in interest's identity and ownership interest in the property;

(ii) Unless the successor in interest assumes the mortgage loan obligation 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 assets to pay the mortgage debt, except that the lender has 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;

(iii) The successor in interest may be entitled to receive certain notices and communications about the mortgage loan if the servicer is not providing them to another confirmed successor in interest or borrower on the account;

(iv) In order to receive such notices and communications, the successor in interest must execute and provide to

the servicer an acknowledgment form that:

(A) Requests receipt of such notices and communications if the servicer is not providing them to another confirmed successor in interest or borrower on the account; and

(B) 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; and

(C) Informs the successor in interest that there is no time limit to return the acknowledgment but that the servicer will not begin sending such notices and communications to the confirmed successor in interest until the acknowledgment is returned; and

(v) Whether or not the successor in interest executes the acknowledgment described in paragraph (c)(1)(iv) of this section, the successor in interest is entitled to submit notices of error under § 1024.35, requests for information under § 1024.36, and requests for a payoff statement under § 1026.36 with respect to the mortgage loan account, with a brief explanation of those rights and how to exercise them, including appropriate address information.

(2) *Effect of failure to execute acknowledgment.* If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice and acknowledgment form in accordance with paragraph (c)(1) of this section, the servicer is not required to provide to the confirmed successor in interest any written disclosure required by § 1024.17, § 1024.33, § 1024.34, § 1024.37, or § 1024.39 or to comply with the live contact requirements in § 1024.39(a) with respect to the confirmed successor in interest until the confirmed successor in interest either assumes the mortgage loan obligation under State law or executes an acknowledgment that complies with paragraph (c)(1)(iv) of this section and provides it to the servicer.

(3) *Additional copies of acknowledgment form.* If a servicer provides a confirmed successor in interest with a written notice and acknowledgment form in accordance with paragraph (c)(1) of this section, the servicer must make additional copies of the written notice and acknowledgment form available to the confirmed successor in interest upon written or oral request.

(4) *Multiple notices unnecessary.* Except as required by § 1024.36, a servicer is not required to provide to a confirmed successor in interest any written disclosure required by § 1024.17, § 1024.33, § 1024.34, § 1024.37, or § 1024.39(b) if the servicer is providing the same specific disclosure to another borrower on the account. A servicer is also not required to comply with the live contact requirements set forth in § 1024.39(a) with respect to a confirmed successor in interest if the servicer is complying with those requirements with respect to another borrower on the account.

[78 FR 10876, Feb. 14, 2013, as amended at 81 FR 72371, Oct. 19, 2016]

§ 1024.33 Mortgage servicing transfers.

(a) *Servicing disclosure statement.* Within three days (excluding legal public holidays, Saturdays, and Sundays) after a person applies for a reverse mortgage transaction, the lender, mortgage broker who anticipates using table funding, or dealer in a first-lien dealer loan shall provide to the person a servicing disclosure statement that states whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time. Appendix MS–1 of this part contains a model form for the disclosures required under this paragraph (a). If a person who applies for a reverse mortgage transaction is denied credit within the three-day period, a servicing disclosure statement is not required to be delivered.

(b) *Notices of transfer of loan servicing*—(1) *Requirement for notice.* Except as provided in paragraph (b)(2) of this section, each transferor servicer and transferee servicer of any mortgage loan shall provide to the borrower a notice of transfer for any assignment, sale, or transfer of the servicing of the mortgage loan. The notice must contain the information described in paragraph (b)(4) of this section. Appendix MS–2 of this part contains a model

form for the disclosures required under this paragraph (b).

(2) *Certain transfers excluded.* (i) The following transfers are not assignments, sales, or transfers of mortgage loan servicing for purposes of this section if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

(A) A transfer between affiliates;

(B) A transfer that results from mergers or acquisitions of servicers or subservicers;

(C) A transfer that occurs between master servicers without changing the subservicer;

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

(3) *Time of notice*—(i) *In general.* Except as provided in paragraphs (b)(3)(ii) and (iii) of this section, the transferor servicer shall provide the notice of transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage loan. The transferee servicer shall provide the notice of transfer to the borrower not more than 15 days after the effective date of the transfer. The transferor and transferee servicers may provide a single notice, in which case the notice shall be provided not less than 15 days before the effective date of the transfer of the servicing of the mortgage loan.

(ii) *Extended time.* The notice of transfer shall be provided to the borrower by the transferor servicer or the transferee servicer not more than 30 days after the effective date of the transfer of the servicing of the mortgage loan in any case in which the transfer of servicing is preceded by:

(A) Termination of the contract for servicing the loan for cause;

(B) Commencement of proceedings for bankruptcy of the servicer;

(C) Commencement of proceedings by the FDIC for conservatorship or receivership of the servicer or an entity that owns or controls the servicer; or

(D) Commencement of proceedings by the NCUA for appointment of a conservator or liquidating agent of the servicer or an entity that owns or controls the servicer.

(iii) *Notice provided at settlement.* Notices of transfer provided at settlement by the transferor servicer and transferee servicer, whether as separate notices or as a combined notice, satisfy the timing requirements of paragraph (b)(3) of this section.

(4) *Contents of notice.* The notices of transfer shall include the following information:

(i) The effective date of the transfer of servicing;

(ii) The name, address, and a collect call or toll-free telephone number for an employee or department of the transferee servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;

(iii) The name, address, and a collect call or toll-free telephone number for an employee or department of the transferor servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;

(iv) The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;

(v) Whether the transfer will affect the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain such coverage; and

(vi) A statement that the transfer of servicing does not affect any term or condition of the mortgage loan other than terms directly related to the servicing of the loan.

(c) *Borrower payments during transfer of servicing*—(1) *Payments not considered late.* During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, if the transferor servicer (rather than the transferee servicer that should properly receive payment on the loan) receives payment on or before the applicable due date (including any grace period allowed under the mortgage loan instruments), a payment may not be treated as late for any purpose.

(2) *Treatment of payments.* Beginning on the effective date of transfer of the servicing of any mortgage loan, with respect to payments received incorrectly by the transferor servicer (rather than the transferee servicer that should properly receive the payment on the loan), the transferor servicer shall promptly either:

(i) Transfer the payment to the transferee servicer for application to a borrower's mortgage loan account, or

(ii) Return the payment to the person that made the payment and notify such person of the proper recipient of the payment.

(d) *Preemption of State laws.* A lender who makes a mortgage loan or a servicer shall be considered to have complied with the provisions of any State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of servicing of a loan if the lender or servicer complies with the requirements of this section. Any State law requiring notice to the borrower at the time of application or at the time of transfer of servicing of the loan is preempted, and there shall be no additional borrower disclosure requirements. Provisions of State law, such as those requiring additional notices to insurance companies or taxing authorities, are not preempted by section 6 of RESPA or this section, and this additional information may be added to a notice provided under this section, if permitted under State law.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 80104, Dec. 31, 2013]

§ 1024.34 Timely escrow payments and treatment of escrow account balances.

(a) *Timely escrow disbursements required.* If the terms of a mortgage loan require the borrower to make payments to the servicer of the mortgage loan for deposit into an escrow account to pay taxes, insurance premiums, and other charges for the mortgaged property, the servicer shall make payments from the escrow account in a timely manner, that is, on or before the deadline to avoid a penalty, as governed by the requirements in § 1024.17(k).

(b) *Refund of escrow balance*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, within 20 days (excluding legal public holidays, Saturdays, and Sundays) of a borrower's payment of a mortgage loan in full, a servicer shall return to the borrower any amounts remaining in an escrow account that is within the servicer's control.

(2) *Servicer may credit funds to a new escrow account.* Notwithstanding paragraph (b)(1) of this section, if the borrower agrees, a servicer may credit any amounts remaining in an escrow account that is within the servicer's control to an escrow account for a new mortgage loan as of the date of the settlement of the new mortgage loan if the new mortgage loan is provided to the borrower by a lender that:

(i) Was also the lender to whom the prior mortgage loan was initially payable;

(ii) Is the owner or assignee of the prior mortgage loan; or

(iii) Uses the same servicer that serviced the prior mortgage loan to service the new mortgage loan.

§ 1024.35 Error resolution procedures.

(a) *Notice of error.* A servicer shall comply with the requirements of this section for any written notice from the borrower that asserts an error and that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and the error the borrower believes has occurred. A notice on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as 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 for purposes of this section, and a servicer must comply with all requirements applicable to a notice of error with respect to such qualified written request.

(b) *Scope of error resolution.* For purposes of this section, the term ''error'' refers to the following categories of covered errors:

(1) Failure to accept a payment that conforms to the servicer's written requirements for the borrower to follow in making payments.

(2) Failure to apply an accepted payment to principal, interest, escrow, or

other charges under the terms of the mortgage loan and applicable law.

(3) Failure to credit a payment to a borrower's mortgage loan account as of the date of receipt in violation of 12 CFR 1026.36(c)(1).

(4) Failure to pay taxes, insurance premiums, or other charges, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay, in a timely manner as required by § 1024.34(a), or to refund an escrow account balance as required by § 1024.34(b).

(5) Imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower.

(6) Failure to provide an accurate payoff balance amount upon a borrower's request in violation of section 12 CFR 1026.36(c)(3).

(7) Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure, as required by § 1024.39.

(8) Failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer.

(9) Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process in violation of § 1024.41(f) or (j).

(10) Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of § 1024.41(g) or (j).

(11) Any other error relating to the servicing of a borrower's mortgage loan.

(c) *Contact information for borrowers to assert errors.* A servicer may, by written notice provided to a borrower, establish an address that a borrower must use to submit a notice of error in accordance with the procedures in this section. The notice shall include a statement that the borrower must use the established address to assert an error. If a servicer designates a specific address for receiving notices of error, the servicer shall designate the same address for receiving information requests pursuant to § 1024.36(b). A servicer shall provide a written notice to a borrower before any change in the address used for receiving a notice of error. A servicer that designates an address for receipt of notices of error must post the designated address on any Web site maintained by the servicer if the Web site lists any contact address for the servicer.

(d) *Acknowledgment of receipt.* Within five days (excluding legal public holidays, Saturdays, and Sundays) of a servicer receiving a notice of error from a borrower, the servicer shall provide to the borrower a written response acknowledging receipt of the notice of error.

(e) *Response to notice of error*—(1) *Investigation and response requirements*—(i) *In general.* Except as provided in paragraphs (f) and (g) of this section, a servicer must respond to a notice of error by either:

(A) Correcting the error or errors identified by the borrower and providing the borrower with a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance; or

(B) Conducting a reasonable investigation and providing the borrower with a written notification that includes a statement that the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance.

(ii) *Different or additional error.* If during a reasonable investigation of a notice of error, a servicer concludes that errors occurred other than, or in addition to, the error or errors alleged by the borrower, the servicer shall correct all such additional errors and provide the borrower with a written notification that describes the errors the servicer identified, the action taken to correct the errors, the effective date of the correction, and contact information, including a telephone number, for further assistance.

(2) *Requesting information from borrower.* A servicer may request supporting documentation from a borrower in connection with the investigation of an asserted error, but may not:

(i) Require a borrower to provide such information as a condition of investigating an asserted error; or

(ii) Determine that no error occurred because the borrower failed to provide any requested information without conducting a reasonable investigation pursuant to paragraph (e)(1)(i)(B) of this section.

(3) *Time limits*—(i) *In general.* A servicer must comply with the requirements of paragraph (e)(1) of this section:

(A) Not later than seven days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error for errors asserted under paragraph (b)(6) of this section.

(B) Prior to the date of a foreclosure sale or within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error, whichever is earlier, for errors asserted under paragraphs (b)(9) and (10) of this section.

(C) For all other asserted errors, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the applicable notice of error.

(ii) *Extension of time limit.* For asserted errors governed by the time limit set forth in paragraph (e)(3)(i)(C) of this section, a servicer 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, the servicer notifies the borrower of the extension and the reasons for the extension in writing. A servicer may not extend the time period for responding to errors asserted under paragraph (b)(6), (9), or (10) of this section.

(4) *Copies of documentation.* A servicer shall provide to the borrower, at no charge, copies of documents and information relied upon by the servicer in making its determination that no error occurred within 15 days (excluding legal public holidays, Saturdays, and Sundays) of receiving the borrower's request for such documents. A servicer is not required to provide documents relied upon that constitute confidential, proprietary or privileged information. If a servicer withholds documents relied upon because it has determined that such documents constitute confidential, proprietary or privileged information, the servicer must notify the borrower of its determination in writing within 15 days (excluding legal public holidays, Saturdays, and Sundays) of receipt of the borrower's request for such documents.

(5) *Omissions in responses to requests for documentation.* In its response to a request for documentation under paragraph (e)(4) of this section, a servicer may omit location and contact information and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) if:

(i) The information pertains to a potential or confirmed successor in interest who is not the requester; or

(ii) The requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester.

(f) *Alternative compliance*—(1) *Early correction.* A servicer is not required to comply with paragraphs (d) and (e) of this section if the servicer corrects the error or errors asserted by the borrower and notifies the borrower of that correction in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the notice of error.

(2) *Error asserted before foreclosure sale.* A servicer is not required to comply with the requirements of paragraphs (d) and (e) of this section for errors asserted under paragraph (b)(9) or (10) of this section if the servicer receives the applicable notice of an error seven or fewer days before a foreclosure sale. For any such notice of error, a servicer shall make a good faith attempt to respond to the borrower, orally or in writing, and either correct the error or state the reason the servicer has determined that no error has occurred.

(g) *Requirements not applicable*—(1) *In general.* A servicer is not required to comply with the requirements of paragraphs (d), (e), and (i) of this section if the servicer reasonably determines that any of the following apply:

(i) *Duplicative notice of error.* The asserted error is substantially the same as an error previously asserted by the borrower for which the servicer has

previously complied with its obligation to respond pursuant to paragraphs (d) and (e) of this section, unless the borrower provides new and material information to support the asserted error. New and material information means information that was not reviewed by the servicer in connection with investigating a prior notice of the same error and is reasonably likely to change the servicer's prior determination about the error.

(ii) *Overbroad notice of error*. The notice of error is overbroad. A notice of error is overbroad if the servicer cannot reasonably determine from the notice of error the specific error that the borrower asserts has occurred on a borrower's account. To the extent a servicer can reasonably identify a valid assertion of an error in a notice of error that is otherwise overbroad, the servicer shall comply with the requirements of paragraphs (d), (e) and (i) of this section with respect to that asserted error.

(iii) *Untimely notice of error*. A notice of error is delivered to the servicer more than one year after:

(A) Servicing for the mortgage loan that is the subject of the asserted error was transferred from the servicer receiving the notice of error to a transferee servicer; or

(B) The mortgage loan is discharged.

(2) *Notice to borrower*. If a servicer determines that, pursuant to this paragraph (g), the servicer is not required to comply with the requirements of paragraphs (d), (e), and (i) of this section, the servicer shall notify the borrower of its determination in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making such determination. The notice to the borrower shall set forth the basis under paragraph (g)(1) of this section upon which the servicer has made such determination.

(h) *Payment requirements prohibited*. A servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to a notice of error.

(i) *Effect on servicer remedies*—(1) *Adverse information*. After receipt of a notice of error, a servicer may not, for 60 days, furnish adverse information to any consumer reporting agency regarding any payment that is the subject of the notice of error.

(2) *Remedies permitted*. Except as set forth in this section with respect to an assertion of error under paragraph (b)(9) or (10) of this section, nothing in this section shall limit or restrict a lender or servicer from pursuing any remedy it has under applicable law, including initiating foreclosure or proceeding with a foreclosure sale.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013; 81 FR 72371, Oct. 19, 2016]

§ 1024.36 Requests for information.

(a) *Information request*. A servicer shall comply with the requirements of this section for any written request for information from a borrower that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and states the information the borrower is requesting with respect to the borrower's mortgage loan. A request on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a request for information. A request for a payoff balance need not be treated by the servicer as a request for information. A qualified written request that requests information relating to the servicing of the mortgage loan is a request for information for purposes of this section, and a servicer must comply with all requirements applicable to a request for information with respect to such qualified written request.

(b) *Contact information for borrowers to request information*. A servicer may, by written notice provided to a borrower, establish an address that a borrower must use to request information in accordance with the procedures in this section. The notice shall include a statement that the borrower must use the established address to request information. If a servicer designates a specific address for receiving information requests, a servicer shall designate the same address for receiving notices of error pursuant to § 1024.35(c). A servicer shall provide a written notice to a borrower before any change in the address used for receiving an information request. A servicer that designates

an address for receipt of information requests must post the designated address on any Web site maintained by the servicer if the Web site lists any contact address for the servicer.

(c) *Acknowledgment of receipt.* Within five days (excluding legal public holidays, Saturdays, and Sundays) of a servicer receiving an information request from a borrower, the servicer shall provide to the borrower a written response acknowledging receipt of the information request.

(d) *Response to information request*—(1) *Investigation and response requirements.* Except as provided in paragraphs (e) and (f) of this section, a servicer must respond to an information request by either:

(i) Providing the borrower with the requested information and contact information, including a telephone number, for further assistance in writing; or

(ii) Conducting a reasonable search for the requested information and providing the borrower with a written notification that states that the servicer has determined that the requested information is not available to the servicer, provides the basis for the servicer's determination, and provides contact information, including a telephone number, for further assistance.

(2) *Time limits*—(i) *In general.* A servicer must comply with the requirements of paragraph (d)(1) of this section:

(A) Not later than 10 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives an information request for the identity of, and address or other relevant contact information for, the owner or assignee of a mortgage loan; and

(B) For all other requests for information, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the information request.

(ii) *Extension of time limit.* For requests for information governed by the time limit set forth in paragraph (d)(2)(i)(B) of this section, a servicer 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, the servicer notifies the borrower of the extension and the reasons for the extension in writing. A servicer may not extend the time period for requests for information governed by paragraph (d)(2)(i)(A) of this section.

(3) *Omissions in responses to requests.* In its response to a request for information, a servicer may omit location and contact information and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) if:

(i) The information pertains to a potential or confirmed successor in interest who is not the requester; or

(ii) The requester is a confirmed successor and the information pertains to any borrower who is not the requester.

(e) *Alternative compliance.* A servicer is not required to comply with paragraphs (c) and (d) of this section if the servicer provides the borrower with the information requested and contact information, including a telephone number, for further assistance in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving an information request.

(f) *Requirements not applicable*—(1) *In general.* A servicer is not required to comply with the requirements of paragraphs (c) and (d) of this section if the servicer reasonably determines that any of the following apply:

(i) *Duplicative information.* The information requested is substantially the same as information previously requested by the borrower for which the servicer has previously complied with its obligation to respond pursuant to paragraphs (c) and (d) of this section.

(ii) *Confidential, proprietary or privileged information.* The information requested is confidential, proprietary or privileged.

(iii) *Irrelevant information.* The information requested is not directly related to the borrower's mortgage loan account.

(iv) *Overbroad or unduly burdensome information request.* The information request is overbroad or unduly burdensome. An information request is overbroad if a borrower requests that the servicer provide an unreasonable volume of documents or information to a borrower. An information request is

unduly burdensome if a diligent servicer could not respond to the information request without either exceeding the maximum time limit permitted by paragraph (d)(2) of this section or incurring costs (or dedicating resources) that would be unreasonable in light of the circumstances. To the extent a servicer can reasonably identify a valid information request in a submission that is otherwise overbroad or unduly burdensome, the servicer shall comply with the requirements of paragraphs (c) and (d) of this section with respect to that requested information.

(v) *Untimely information request.* The information request is delivered to a servicer more than one year after:

(A) Servicing for the mortgage loan that is the subject of the information request was transferred from the servicer receiving the request for information to a transferee servicer; or

(B) The mortgage loan is discharged.

(2) *Notice to borrower.* If a servicer determines that, pursuant to this paragraph (f), the servicer is not required to comply with the requirements of paragraphs (c) and (d) of this section, the servicer shall notify the borrower of its determination in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making such determination. The notice to the borrower shall set forth the basis under paragraph (f)(1) of this section upon which the servicer has made such determination.

(g) *Payment requirement limitations*—(1) *Fees prohibited.* Except as set forth in paragraph (g)(2) of this section, a servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to an information request.

(2) *Fee permitted.* Nothing in this section shall prohibit a servicer from charging a fee for providing a beneficiary notice under applicable State law, if such a fee is not otherwise prohibited by applicable law.

(h) *Servicer remedies.* Nothing in this section shall prohibit a servicer from furnishing adverse information to any consumer reporting agency or pursuing any of its remedies, including initiating foreclosure or proceeding with a foreclosure sale, allowed by the underlying mortgage loan instruments, during the time period that response to an information request notice is outstanding.

(i) *Potential successors in interest.* (1) With respect to any written request from a person that indicates that the person may be a successor in interest and that includes the name of the transferor borrower from whom the person received an ownership interest and information that enables the servicer to identify the mortgage loan account, a servicer shall respond by providing the potential successor in interest with 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. With respect to the written request, a servicer shall treat the potential successor in interest as a borrower for purposes of the requirements of paragraphs (c) through (g) of this section.

(2) If a written request under paragraph (i)(1) of this section does not provide sufficient information to enable the servicer to identify the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property, the servicer may provide a response that 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. A servicer's response under this paragraph (i)(2) must otherwise comply with the requirements of paragraph (i)(1). Notwithstanding paragraph (f)(1)(i) of this section, if a potential successor in interest subsequently provides orally or in writing the required information specified by the servicer pursuant to this paragraph (i)(2), the

servicer must treat the new information, together with the original request, as a new, non-duplicative request under paragraph (i)(1), received as of the date the required information was received, and must respond accordingly.

(3) In responding to a request under paragraph (i)(1) of this section prior to confirmation, the servicer is not required to provide any information other than the information specified in paragraphs (i)(1) and (2) of this section. In responding to a written request under paragraph (i)(1) that requests other information, the servicer must indicate that the potential successor in interest may resubmit any request for information once confirmed as a successor in interest.

(4) If a servicer has established an address that a borrower must use to request information pursuant to paragraph (b) of this section, a servicer must comply with the requirements of paragraph (i)(1) of this section only for requests received at the established address.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013; 81 FR 72371, Oct. 19, 2016]

§ 1024.37 Force-placed insurance.

(a) *Definition of force-placed insurance*—(1) *In general*. For the purposes of this section, the term ''force-placed insurance'' means hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan that insures the property securing such loan.

(2) *Types of insurance not considered force-placed insurance*. The following insurance does not constitute ''force-placed insurance'' under this section:

(i) Hazard insurance required by the Flood Disaster Protection Act of 1973.

(ii) Hazard insurance obtained by a borrower but renewed by the borrower's servicer as described in § 1024.17(k)(1), (2), or (5).

(iii) Hazard insurance obtained by a borrower but renewed by the borrower's servicer at its discretion, if the borrower agrees.

(b) *Basis for charging borrower for force-placed insurance*. A servicer may not assess on a borrower a premium charge or fee related to force-placed insurance unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the mortgage loan contract's requirement to maintain hazard insurance.

(c) *Requirements before charging borrower for force-placed insurance*—(1) *In general*. Before a servicer assesses on a borrower any premium charge or fee related to force-placed insurance, the servicer must:

(i) Deliver to a borrower or place in the mail a written notice containing the information required by paragraph (c)(2) of this section at least 45 days before a servicer assesses on a borrower such charge or fee;

(ii) Deliver to the borrower or place in the mail a written notice in accordance with paragraph (d)(1) of this section; and

(iii) By the end of the 15-day period beginning on the date the written notice described in paragraph (c)(1)(ii) of this section was delivered to the borrower or placed in the mail, not have received, from the borrower or otherwise, evidence demonstrating that the borrower has had in place, continuously, hazard insurance coverage that complies with the loan contract's requirements to maintain hazard insurance.

(2) *Content of notice*. The notice required by paragraph (c)(1)(i) of this section shall set forth the following information:

(i) The date of the notice;

(ii) The servicer's name and mailing address;

(iii) The borrower's name and mailing address;

(iv) A statement that requests the borrower to provide hazard insurance information for the borrower's property and identifies the property by its physical address;

(v) A statement that:

(A) The borrower's hazard insurance is expiring, has expired, or provides insufficient coverage, as applicable;

(B) The servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date or evidence that the borrower has hazard insurance that provides sufficient coverage, as applicable; and

(C) If applicable, identifies the type of hazard insurance for which the servicer lacks evidence of coverage;

(vi) A statement that hazard insurance is required on the borrower's property, and that the servicer has purchased or will purchase, as applicable, such insurance at the borrower's expense;

(vii) A statement requesting the borrower to promptly provide the servicer with insurance information;

(viii) A description of the requested insurance information and how the borrower may provide such information, and if applicable, a statement that the requested information must be in writing;

(ix) A statement that insurance the servicer has purchased or purchases:

(A) May cost significantly more than hazard insurance purchased by the borrower;

(B) Not provide as much coverage as hazard insurance purchased by the borrower;

(x) The servicer's telephone number for borrower inquiries; and

(xi) If applicable, a statement advising the borrower to review additional information provided in the same transmittal.

(3) *Format.* A servicer must set the information required by paragraphs (c)(2)(iv), (vi), and (ix)(A) and (B) in bold text, except that the information about the physical address of the borrower's property required by paragraph (c)(2)(iv) of this section may be set in regular text. A servicer may use form MS–3A in appendix MS–3 of this part to comply with the requirements of paragraphs (c)(1)(i) and (2) of this section.

(4) *Additional information.* Except for the mortgage loan account number, a servicer may not include any information other than information required by paragraph (c)(2) of this section in the written notice required by paragraph (c)(1)(i) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal.

(d) *Reminder notice*—(1) *In general.* The notice required by paragraph (c)(1)(ii) of this section shall be delivered to the borrower or placed in the mail at least 15 days before a servicer assesses on a borrower a premium charge or fee related to force-placed insurance. A servicer may not deliver to a borrower or place in the mail the notice required by paragraph (c)(1)(ii) of this section until at least 30 days after delivering to the borrower or placing in the mail the written notice required by paragraph (c)(1)(i) of this section.

(2) *Content of the reminder notice*—(i) *Servicer receiving no insurance information.* A servicer that receives no hazard insurance information after delivering to the borrower or placing in the mail the notice required by paragraph (c)(1)(i) of this section must set forth in the notice required by paragraph (c)(1)(ii) of this section:

(A) The date of the notice;

(B) A statement that the notice is the second and final notice;

(C) The information required by paragraphs (c)(2)(ii) through (xi) of this section; and

(D) The cost of the force-placed insurance, stated as an annual premium, except if a servicer does not know the cost of force-placed insurance, a reasonable estimate shall be disclosed and identified as such.

(ii) *Servicer lacking evidence of continuous coverage.* A servicer that has received hazard insurance information after delivering to a borrower or placing in the mail the notice required by paragraph (c)(1)(i) of this section, but has not received, from the borrower or otherwise, evidence demonstrating that the borrower has had sufficient hazard insurance coverage in place continuously, must set forth in the notice required by paragraph (c)(1)(ii) of this section the following information:

(A) The date of the notice;

(B) The information required by paragraphs (c)(2)(ii) through (iv) and (ix) through (xi) and (d)(2)(i)(B) and (D) of this section;

(C) A statement that the servicer has received the hazard insurance information that the borrower provided;

(D) A statement that requests the borrower to provide the information that is missing;

(E) A statement that the borrower will be charged for insurance the servicer has purchased or purchases for the period of time during which the servicer is unable to verify coverage;

(3) *Format.* A servicer must set the information required by paragraphs (d)(2)(i)(B) and (D) of this section in bold text. The requirements of paragraph (c)(3) of this section apply to the information required by paragraph (d)(2)(i)(C) of this section. A servicer may use form MS–3B in appendix MS–3 of this part to comply with the requirements of paragraphs (d)(1) and (d)(2)(i) of this section. A servicer may use form MS–3C in appendix MS–3 of this part to comply with the requirements of paragraphs (d)(1) and (d)(2)(ii) of this section.

(4) *Additional information.* Except for the borrower's mortgage loan account number, a servicer may not include any information other than information required by paragraph (d)(2)(i) or (ii) of this section, as applicable, in the written notice required by paragraph (c)(1)(ii) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal.

(5) *Updating notice with borrower information.* If a servicer receives new information about a borrower's hazard insurance after a written notice required by paragraph (c)(1)(ii) of this section has been put into production, the servicer is not required to update such notice based on the new information so long as the notice was put into production a reasonable time prior to the servicer delivering the notice to the borrower or placing the notice in the mail.

(e) *Renewing or replacing force-placed insurance*—(1) *In general.* Before a servicer assesses on a borrower a premium charge or fee related to renewing or replacing existing force-placed insurance, a servicer must:

(i) Deliver to the borrower or place in the mail a written notice containing the information set forth in paragraph (e)(2) of this section at least 45 days before assessing on a borrower such charge or fee; and

(ii) By the end of the 45-day period beginning on the date the written notice required by paragraph (e)(1)(i) of this section was delivered to the borrower or placed in the mail, not have received, from the borrower or otherwise, evidence demonstrating that the borrower has purchased hazard insurance coverage that complies with the loan contract's requirements to maintain hazard insurance.

(iii) *Charging a borrower before end of notice period.* Notwithstanding paragraphs (e)(1)(i) and (ii) of this section, if not prohibited by State or other applicable law, if a servicer has renewed or replaced existing force-placed insurance and receives evidence demonstrating that the borrower lacked insurance coverage for some period of time following the expiration of the existing force-placed insurance (including during the notice period prescribed by paragraph (e)(1) of this section), the servicer may, promptly upon receiving such evidence, assess on the borrower a premium charge or fee related to renewing or replacing existing force-placed insurance for that period of time.

(2) *Content of renewal notice.* The notice required by paragraph (e)(1)(i) of this section shall set forth the following information:

(i) The date of the notice;

(ii) The servicer's name and mailing address;

(iii) The borrower's name and mailing address;

(iv) A statement that requests the borrower to update the hazard insurance information for the borrower's property and identifies the borrower's property by its physical address;

(v) A statement that the servicer previously purchased insurance on the borrower's property and assessed the cost of the insurance to the borrower because the servicer did not have evidence that the borrower had hazard insurance coverage for the property;

(vi) A statement that:

(A) The insurance the servicer purchased previously has expired or is expiring, as applicable; and

(B) Because hazard insurance is required on the borrower's property, the servicer intends to maintain insurance on the property by renewing or replacing the insurance it previously purchased;

(vii) A statement informing the borrower:

(A) That insurance the servicer purchases may cost significantly more

than hazard insurance purchased by the borrower;

(B) That such insurance may not provide as much coverage as hazard insurance purchased by the borrower; and

(C) The cost of the force-placed insurance, stated as an annual premium, except if a servicer does not know the cost of force-placed insurance, a reasonable estimate shall be disclosed and identified as such.

(viii) A statement that if the borrower purchases hazard insurance, the borrower should promptly provide the servicer with insurance information.

(ix) A description of the requested insurance information and how the borrower may provide such information, and if applicable, a statement that the requested information must be in writing;

(x) The servicer's telephone number for borrower inquiries; and

(xi) If applicable, a statement advising a borrower to review additional information provided in the same transmittal.

(3) *Format*. A servicer must set the information required by paragraphs (e)(2)(iv), (vi)(B), and (vii)(A) through (C) of this section in bold text, except that the information about the physical address of the borrower's property required by paragraph (e)(2)(iv) may be set in regular text. A servicer may use form MS–3D in appendix MS–3 of this part to comply with the requirements of paragraphs (e)(1)(i) and (2) of this section.

(4) *Additional information*. Except for the borrower's mortgage loan account number, a servicer may not include any information other than information required by paragraph (e)(2) of this section in the written notice required by paragraph (e)(1) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal.

(5) *Frequency of renewal notices*. Before each anniversary of a servicer purchasing force-placed insurance on a borrower's property, the servicer shall deliver to the borrower or place in the mail the written notice required by paragraph (e)(1) of this section. A servicer is not required to provide the written notice required by paragraph (e)(1) of this section more than once a year.

(f) *Mailing the notices*. If a servicer mails a written notice required by paragraphs (c)(1)(i), (c)(1)(ii), or (e)(1) of this section, the servicer must use a class of mail not less than first-class mail.

(g) *Cancellation of force-placed insurance*. Within 15 days of receiving, from the borrower or otherwise, evidence demonstrating that the borrower has had in place hazard insurance coverage that complies with the loan contract's requirements to maintain hazard insurance, a servicer must:

(1) Cancel the force-placed insurance the servicer purchased to insure the borrower's property; and

(2) Refund to such borrower all force-placed insurance premium charges and related fees paid by such borrower for any period of overlapping insurance coverage and remove from the borrower's account all force-placed insurance charges and related fees for such period that the servicer has assessed to the borrower.

(h) *Limitations on force-placed insurance charges*—(1) *In general*. 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 to a borrower by or through the servicer must be bona fide and reasonable.

(2) *Bona fide and reasonable charge*. A bona fide and reasonable charge is a charge for a service actually performed that bears a reasonable relationship to the servicer's cost of providing the service, and is not otherwise prohibited by applicable law.

(i) *Relationship to Flood Disaster Protection Act of 1973*. If permitted by regulation under section 102(e) of the Flood Disaster Protection Act of 1973, a servicer subject to the requirements of this section may deliver to the borrower or place in the mail any notice required by this section and the notice required by section 102(e) of the Flood Disaster Protection Act of 1973 on separate pieces of paper in the same transmittal.

[78 FR 10876, Feb. 14, 2013, as amended at 81 FR 72372, Oct. 19, 2016]

§ 1024.38 General servicing policies, procedures, and requirements.

(a) *Reasonable policies and procedures.* A servicer shall maintain policies and procedures that are reasonably designed to achieve the objectives set forth in paragraph (b) of this section.

(b) *Objectives*—(1) *Accessing and providing timely and accurate information.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) Provide accurate and timely disclosures to a borrower as required by this subpart or other applicable law;

(ii) Investigate, respond to, and, as appropriate, make corrections in response to complaints asserted by a borrower;

(iii) Provide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan;

(iv) Provide owners or assignees of mortgage loans with accurate and current information and documents about all mortgage loans they own;

(v) Submit documents or filings required for a foreclosure process, including documents or filings required by a court of competent jurisdiction, that reflect accurate and current information and that comply with applicable law; and

(vi)(A) Upon receiving notice of the death of a borrower 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;

(B) Upon receiving notice of the existence of a potential successor in interest, promptly determine the documents the servicer reasonably requires 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); and

(C) Upon the receipt of such documents, promptly make a confirmation determination and promptly notify the person, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest.

(2) *Properly evaluating loss mitigation applications.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) Provide accurate information regarding loss mitigation options available to a borrower from the owner or assignee of the borrower's mortgage loan;

(ii) Identify with specificity all loss mitigation options for which borrowers may be eligible pursuant to any requirements established by an owner or assignee of the borrower's mortgage loan;

(iii) Provide prompt access to all documents and information submitted by a borrower in connection with a loss mitigation option to servicer personnel that are assigned to assist the borrower pursuant to § 1024.40;

(iv) Identify documents and information that a borrower is required to submit to complete a loss mitigation application and facilitate compliance with the notice required pursuant to § 1024.41(b)(2)(i)(B); and

(v) Properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan and, where applicable, in accordance with the requirements of § 1024.41.

(vi) 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).

(3) *Facilitating oversight of, and compliance by, service providers.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) Provide appropriate servicer personnel with access to accurate and current documents and information reflecting actions performed by service providers;

(ii) Facilitate periodic reviews of service providers, including by providing appropriate servicer personnel with documents and information necessary to audit compliance by service providers with the servicer's contractual obligations and applicable law; and

(iii) Facilitate the sharing of accurate and current information regarding the status of any evaluation of a borrower's loss mitigation application and the status of any foreclosure proceeding among appropriate servicer personnel, including any personnel assigned to a borrower's mortgage loan account as described in § 1024.40, and appropriate service provider personnel, including service provider personnel responsible for handling foreclosure proceedings.

(4) *Facilitating transfer of information during servicing transfers.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) As a transferor servicer, timely transfer all information and documents in the possession or control of the servicer relating to a transferred mortgage loan to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred and that enables a transferee servicer to comply with the terms of the transferee servicer's obligations to the owner or assignee of the mortgage loan and applicable law; and

(ii) As a transferee servicer, identify necessary documents or information that may not have been transferred by a transferor servicer and obtain such documents from the transferor servicer.

(iii) For the purposes of this paragraph (b)(4), transferee servicer means a servicer, including a master servicer or a subservicer, that performs or will perform servicing of a mortgage loan and transferor servicer means a servicer, including a master servicer or a subservicer, that transfers or will transfer the servicing of a mortgage loan.

(5) *Informing borrowers of the written error resolution and information request procedures.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer informs borrowers of the procedures for submitting written notices of error set forth in § 1024.35 and written information requests set forth in § 1024.36.

(c) *Standard requirements*—(1) *Record retention.* A servicer shall retain records that document actions taken with respect to a borrower's mortgage loan account until one year after the date a mortgage loan is discharged or servicing of a mortgage loan is transferred by the servicer to a transferee servicer.

(2) *Servicing file.* A servicer shall maintain the following documents and data on each mortgage loan account serviced by the servicer in a manner that facilitates compiling such documents and data into a servicing file within five days:

(i) A schedule of all transactions credited or debited to the mortgage loan account, including any escrow account as defined in § 1024.17(b) and any suspense account;

(ii) A copy of the security instrument that establishes the lien securing the mortgage loan;

(iii) Any notes created by servicer personnel reflecting communications with the borrower about the mortgage loan account;

(iv) To the extent applicable, a report of the data fields relating to the borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices; and

(v) Copies of any information or documents provided by the borrower to the servicer in accordance with the procedures set forth in § 1024.35 or § 1024.41.

[78 FR 10876, Feb. 14, 2013, as amended at 81 FR 72372, Oct. 19, 2016]

§ 1024.39 Early intervention requirements for certain borrowers.

(a) *Live contact.* Except as otherwise provided in this section, a servicer

shall establish or make good faith efforts to establish live contact with a delinquent borrower no later than the 36th day of a borrower's delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent. Promptly after establishing live contact with a borrower, the servicer shall inform the borrower about the availability of loss mitigation options, if appropriate.

(b) *Written notice*—(1) *Notice required.* Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section no later than the 45th day of the borrower's delinquency and again no later than 45 days after each payment due date so long as the borrower remains delinquent. A servicer is not required to provide the written notice, however, more than once during any 180-day period. If a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 180 days after the provision of the prior written notice. If a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent.

(2) *Content of the written notice.* The notice required by paragraph (b)(1) of this section shall include:

(i) A statement encouraging the borrower to contact the servicer;

(ii) The telephone number to access servicer personnel assigned pursuant to § 1024.40(a) and the servicer's mailing address;

(iii) If applicable, a statement providing a brief description of examples of loss mitigation options that may be available from the servicer;

(iv) If applicable, either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer; and

(v) The Web site 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.

(3) *Model clauses.* Model clauses MS–4(A), MS–4(B), and MS–4(C), in appendix MS–4 to this part may be used to comply with the requirements of this paragraph (b).

(c) *Borrowers in bankruptcy*—(1) *Partial exemption.* While any borrower on a mortgage loan is a debtor in bankruptcy under title 11 of the United States Code, a servicer, with regard to that mortgage loan:

(i) Is exempt from the requirements of paragraph (a) of this section;

(ii) Is exempt from the requirements of paragraph (b) of this section if no loss mitigation option is available, or if any borrower on the mortgage loan has provided a notification pursuant to the Fair Debt Collection Practices Act (FDCPA) section 805(c) (15 U.S.C. 1692c(c)) with respect to that mortgage loan as referenced in paragraph (d) of this section; and

(iii) If the conditions of paragraph (c)(1)(ii) of this section are not met, must comply with the requirements of paragraph (b) of this section, as modified by this paragraph (c)(1)(iii):

(A) If a borrower is delinquent when the borrower becomes a debtor in bankruptcy, a servicer must provide the written notice required by paragraph (b) of this section not later than the 45th day after the borrower files a bankruptcy petition under title 11 of the United States Code. If the borrower is not delinquent when the borrower files a bankruptcy petition, but subsequently becomes delinquent while a debtor in bankruptcy, the servicer must provide the written notice not later than the 45th day of the borrower's delinquency. A servicer must comply with these timing requirements regardless of whether the servicer provided the written notice in the preceding 180-day period.

(B) The written notice required by paragraph (b) of this section may not contain a request for payment.

(C) A servicer is not required to provide the written notice required by paragraph (b) of this section more than once during a single bankruptcy case.

(2) *Resuming compliance.* (i) Except as provided in paragraph (c)(2)(ii) of this section, a servicer that was exempt from paragraphs (a) and (b) of this section pursuant to paragraph (c)(1) of this section must resume compliance with paragraphs (a) and (b) of this section after the next payment due date that follows the earliest of the following events:

(A) The bankruptcy case is dismissed;

(B) The bankruptcy case is closed; and

(C) The borrower reaffirms personal liability for the mortgage loan.

(ii) With respect to a mortgage loan for which the borrower has discharged personal liability pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, a servicer:

(A) Is not required to resume compliance with paragraph (a) of this section; and

(B) Must resume compliance with paragraph (b) of this section if the borrower has made any partial or periodic payment on the mortgage loan after the commencement of the borrower's bankruptcy case.

(d) *Fair Debt Collection Practices Act—partial exemption.* With regard to a mortgage loan for which any borrower has provided a notification pursuant to the Fair Debt Collection Practices Act (FDCPA) section 805(c) (15 U.S.C. 1692c(c)), a servicer subject to the FDCPA with respect to that borrower's loan:

(1) Is exempt from the requirements of paragraph (a) of this section;

(2) Is exempt from the requirements of paragraph (b) of this section if no loss mitigation option is available, or while any borrower on that mortgage loan is a debtor in bankruptcy under title 11 of the United States Code as referenced in paragraph (c) of this section; and

(3) If the conditions of paragraph (d)(2) of this section are not met, must comply with the requirements of paragraph (b) of this section, as modified by this paragraph (d)(3):

(i) In addition to the information required pursuant to paragraph (b)(2) of this section, the written notice must include a statement that the servicer may or intends to invoke its specified remedy of foreclosure. Model clause MS–4(D) in appendix MS–4 to this part may be used to comply with this requirement.

(ii) The written notice may not contain a request for payment.

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

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013; 78 FR 63004, Oct. 23, 2013; 81 FR 72373, Oct. 19, 2016; 82 FR 47957, Oct. 16, 2017]

§ 1024.40 Continuity of contact.

(a) *In general.* A servicer shall maintain policies and procedures that are reasonably designed to achieve the following objectives:

(1) Assign personnel to a delinquent borrower by the time the servicer provides the borrower with the written notice required by § 1024.39(b), but in any event, not later than the 45th day of the borrower's delinquency.

(2) Make available to a delinquent borrower, via telephone, personnel assigned to the borrower as described in paragraph (a)(1) of this section to respond to the borrower's inquiries, and as applicable, assist the borrower with available loss mitigation options until the borrower has made, without incurring a late charge, two consecutive mortgage payments in accordance with the terms of a permanent loss mitigation agreement.

(3) If a borrower contacts the personnel assigned to the borrower as described in paragraph (a)(1) of this section and does not immediately receive a live response from such personnel, ensure that the servicer can provide a live response in a timely manner.

(b) *Functions of servicer personnel.* A servicer shall maintain policies and procedures reasonably designed to ensure that servicer personnel assigned to a delinquent borrower as described in paragraph (a) of this section perform the following functions:

(1) Provide the borrower with accurate information about:

(i) Loss mitigation options available to the borrower from the owner or assignee of the borrower's mortgage loan;

(ii) Actions the borrower must take to be evaluated for such loss mitigation options, including actions the borrower must take to submit a complete loss mitigation application, as defined in § 1024.41, and, if applicable, actions the borrower must take to appeal the servicer's determination to deny a borrower's loss mitigation application for any trial or permanent loan modification program offered by the servicer;

(iii) The status of any loss mitigation application that the borrower has submitted to the servicer;

(iv) The circumstances under which the servicer may make a referral to foreclosure; and

(v) Applicable loss mitigation deadlines established by an owner or assignee of the borrower's mortgage loan or § 1024.41.

(2) Retrieve, in a timely manner:

(i) A complete record of the borrower's payment history; and

(ii) All written information the borrower has provided to the servicer, and if applicable, to prior servicers, in connection with a loss mitigation application;

(3) Provide the documents and information identified in paragraph (b)(2) of this section to other persons required to evaluate a borrower for loss mitigation options made available by the servicer, if applicable; and

(4) Provide a delinquent borrower with information about the procedures for submitting a notice of error pursuant to § 1024.35 or an information request pursuant to § 1024.36.

§ 1024.41 Loss mitigation procedures.

(a) *Enforcement and limitations.* A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. 2605(f)). Nothing in § 1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in § 1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any such right that may exist pursuant to applicable law.

(b) *Receipt of a loss mitigation application*—(1) *Complete loss mitigation application.* A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.

(2) *Review of loss mitigation application submission*—(i) *Requirements.* If a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, a servicer shall:

(A) Promptly upon receipt of a loss mitigation application, review the loss mitigation application to determine if the loss mitigation application is complete; and

(B) Notify the borrower in writing within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving the loss mitigation application that the servicer acknowledges receipt of the loss mitigation application and that the servicer has determined that the loss mitigation application is either complete or incomplete. If a loss mitigation application is incomplete, the notice shall state the additional documents and information the borrower must submit to make the loss mitigation application complete and the applicable date pursuant to paragraph (b)(2)(ii) of this section. The notice to the borrower shall include a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

(ii) *Time period disclosure.* The notice required pursuant to paragraph (b)(2)(i)(B) of this section must include

a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete.

(3) *Determining protections.* To the extent a determination of whether protections under this section apply to a borrower is made on the basis of the number of days between when a complete loss mitigation application is received and when a foreclosure sale occurs, such determination shall be made as of the date a complete loss mitigation application is received.

(c) *Evaluation of loss mitigation applications*—(1) *Complete loss mitigation application.* Except as provided in paragraph (c)(4)(ii) of this section, if a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, then, within 30 days of receiving the complete loss mitigation application, a servicer shall:

(i) Evaluate the borrower for all loss mitigation options available to the borrower; and

(ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section, if applicable, and a notification, if applicable, that the borrower has the right to appeal the denial of any loan modification option as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section.

(2) *Incomplete loss mitigation application evaluation*—(i) *In general.* Except as set forth in paragraphs (c)(2)(ii), (iii), and (v) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application 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 in connection with an incomplete loss mitigation application.

(ii) *Reasonable time.* Notwithstanding paragraph (c)(2)(i) of this section, if a servicer has exercised reasonable diligence in obtaining documents and information to complete a loss mitigation application, but a loss mitigation application remains incomplete for a significant period of time under the circumstances without further progress by a borrower to make the loss mitigation application complete, a servicer may, in its discretion, evaluate an incomplete loss mitigation application and offer a borrower a loss mitigation option. Any such evaluation and offer is not subject to the requirements of this section and shall not constitute an evaluation of a single complete loss mitigation application for purposes of paragraph (i) of this section.

(iii) *Short-term loss mitigation options.* Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a short-term payment forbearance program or a short-term repayment plan to a borrower based upon an evaluation of an incomplete loss mitigation application. Promptly after offering a payment forbearance program or a repayment plan under this paragraph (c)(2)(iii), unless the borrower has rejected the offer, the servicer must provide the borrower a written notice stating the specific payment terms and duration of the program or plan, that the servicer offered the program or plan based on an evaluation of an incomplete application, that other loss mitigation options may be available, and that the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all loss mitigation options available to the borrower regardless of whether the borrower accepts the program or plan. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and shall not move for foreclosure judgment or order of sale or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a payment forbearance program or repayment plan offered pursuant to this paragraph (c)(2)(iii). A servicer may offer a short-term payment forbearance program in conjunction with a short-term repayment plan pursuant to this paragraph (c)(2)(iii).

(iv) *Facially complete application.* A loss mitigation application shall be considered facially complete when a borrower submits all the missing documents and information as stated in the notice required under paragraph (b)(2)(i)(B) of this section, when no additional information is requested in such notice, or once the servicer is required to provide the borrower a written notice pursuant to paragraph (c)(3)(i) of this section. If the servicer later discovers that additional information or corrections to a previously submitted document are required to complete the application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for the purposes of paragraphs (f)(2) and (g) of this section until the borrower is given a reasonable opportunity to complete the application. If the borrower completes the application within this period, the application shall be considered complete as of the date it first became facially complete, for the purposes of paragraphs (d), (e), (f)(2), (g), and (h) of this section, and as of the date the application was actually complete for the purposes of this paragraph (c). A servicer that complies with this paragraph (c)(2)(iv) will be deemed to have fulfilled its obligation to provide an accurate notice under paragraph (b)(2)(i)(B) of this section.

(v) *Certain COVID–19-related loss mitigation options.* (A) Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a borrower a loss mitigation option based upon evaluation of an incomplete application, provided that all of the following criteria are met:

(*1*) The loss mitigation option permits the borrower to delay paying covered amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage loan insured by the Federal Housing Administration, the mortgage insurance terminates. For purposes of this paragraph (c)(2)(v)(A)(*1*), ''covered amounts'' includes, without limitation, all principal and interest payments forborne under a payment forbearance program made available to borrowers experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency, including a payment forbearance program made pursuant to the Coronavirus Economic Stabilization Act, section 4022 (15 U.S.C. 9056); it also includes, without limitation, all other principal and interest payments that are due and unpaid by a borrower experiencing financial hardship due, directly or indirectly, to the COVID–19 emergency. For purposes of this paragraph (c)(2)(v)(A)(*1*), ''COVID–19 emergency'' has the same meaning as under the Coronavirus Economic Stabilization Act, section 4022(a)(1) (15 U.S.C. 9056(a)(1)). For purposes of this paragraph (c)(2)(v)(A)(*1*), ''the term of the mortgage loan'' means the term of the mortgage loan according to the obligation between the parties in effect when the borrower is offered the loss mitigation option.

(*2*) Any amounts that the borrower may delay paying as described in paragraph (c)(2)(v)(A)(*1*) of this section do not accrue interest; the servicer does not charge any fee in connection with the loss mitigation option; and the servicer waives all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower's acceptance of the loss mitigation option.

(*3*) The borrower's acceptance of an offer made pursuant to paragraph (c)(2)(v)(A) of this section ends any preexisting delinquency on the mortgage loan.

(B) Once the borrower accepts an offer made pursuant to paragraph (c)(2)(v)(A) of this section, the servicer is not required to comply with paragraph (b)(1) or (2) of this section with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the loss mitigation option described in paragraph (c)(2)(v)(A) of this section.

(3) *Notice of complete application.* (i) Except as provided in paragraph (c)(3)(ii) of this section, within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving a borrower's complete loss mitigation application, a servicer shall provide the borrower a written notice that sets forth the following information:

(A) That the loss mitigation application is complete;

(B) The date the servicer received the complete application;

(C) That the servicer expects to complete its evaluation within 30 days of the date it received the complete application;

(D) That the borrower is entitled to certain foreclosure protections because the servicer has received the complete application, and, as applicable, either:

(*1*) If the servicer has not made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that the servicer cannot make the first notice or filing required to commence or initiate the foreclosure process under applicable law before evaluating the borrower's complete application; or

(*2*) If the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that the servicer has begun the foreclosure process, and that the servicer cannot conduct a foreclosure sale before evaluating the borrower's complete application;

(E) That the servicer may need additional information at a later date to evaluate the application, in which case the servicer will request that information from the borrower and give the borrower a reasonable opportunity to submit it, the evaluation process may take longer, and the foreclosure protections could end if the servicer does not receive the information as requested; and

(F) That the borrower may be entitled to additional protections under State or Federal law.

(ii) A servicer is not required to provide a notice pursuant to paragraph (c)(3)(i) of this section if:

(A) The servicer has already provided the borrower a notice under paragraph (b)(2)(i)(B) of this section informing the borrower that the application is complete and the servicer has not subsequently requested additional information or a corrected version of a previously submitted document from the borrower pursuant to paragraph (c)(2)(iv) of this section;

(B) The application was not complete or facially complete more than 37 days before a foreclosure sale; or

(C) The servicer has already provided the borrower a notice regarding the application under paragraph (c)(1)(ii) of this section.

(4) *Information not in the borrower's control*—(i) *Reasonable diligence.* If a servicer requires documents or information not in the borrower's control to determine which loss mitigation options, if any, it will offer to the borrower, the servicer must exercise reasonable diligence in obtaining such documents or information.

(ii) *Effect in case of delay.* (A)(*1*) Except as provided in paragraph (c)(4)(ii)(A)(*2*) of this section, a servicer must not deny a complete loss mitigation application solely because the servicer lacks required documents or information not in the borrower's control.

(*2*) If a servicer has exercised reasonable diligence to obtain required documents or information from a party other than the borrower or the servicer, but the servicer has been unable to obtain such documents or information for a significant period of time following the 30-day period identified in paragraph (c)(1) of this section, and the servicer, in accordance with applicable requirements established by the owner or assignee of the borrower's mortgage loan, is unable to determine which loss mitigation options, if any, it will offer the borrower without such documents or information, the servicer may deny the application and provide the borrower with a written notice in accordance with paragraph (c)(1)(ii) of this section. When providing the written notice in accordance with paragraph (c)(1)(ii) of this section, the servicer must also provide the borrower with a copy of the written notice required by paragraph (c)(4)(ii)(B) of this section.

(B) If a servicer is unable to make a determination within the 30-day period identified in paragraph (c)(1) of this section as to which loss mitigation options, if any, it will offer to the borrower because the servicer lacks required documents or information from a party other than the borrower or the servicer, the servicer must, within such 30-day period or promptly thereafter, provide the borrower a written notice, informing the borrower:

(*1*) That the servicer has not received documents or information not in the

borrower's control that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage;

(*2*) Of the specific documents or information that the servicer lacks;

(*3*) That the servicer has requested such documents or information; and

(*4*) That the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the documents or information.

(C) If a servicer must provide a notice required by paragraph (c)(4)(ii)(B) of this section, the servicer must not provide the borrower a written notice pursuant to paragraph (c)(1)(ii) of this section until the servicer receives the required documents or information referenced in paragraph (c)(4)(ii)(B)(*2*) of this section, except as provided in paragraph (c)(4)(ii)(A)(*2*) of this section. Upon receiving such required documents or information, the servicer must promptly provide the borrower with the written notice pursuant to paragraph (c)(1)(ii) of this section.

(d) *Denial of loan modification options.* If a borrower's complete loss mitigation application is denied for any trial or permanent loan modification option available to the borrower pursuant to paragraph (c) of this section, a servicer shall state in the notice sent to the borrower pursuant to paragraph (c)(1)(ii) of this section the specific reason or reasons for the servicer's determination for each such trial or permanent loan modification option and, if applicable, that the borrower was not evaluated on other criteria.

(e) *Borrower response*—(1) *In general.* Subject to paragraphs (e)(2)(ii) and (iii) of this section, if a complete loss mitigation application is received 90 days or more before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 14 days after the servicer provides the offer of a loss mitigation option to the borrower. If a complete loss mitigation application is received less than 90 days before a foreclosure sale, but more than 37 days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 7 days after the servicer provides the offer of a loss mitigation option to the borrower.

(2) *Rejection*—(i) *In general.* Except as set forth in paragraphs (e)(2)(ii) and (iii) of this section, a servicer may deem a borrower that has not accepted an offer of a loss mitigation option within the deadline established pursuant to paragraph (e)(1) of this section to have rejected the offer of a loss mitigation option.

(ii) *Trial Loan Modification Plan.* A borrower who does not satisfy the servicer's requirements for accepting a trial loan modification plan, but submits the payments that would be owed pursuant to any such plan within the deadline established pursuant to paragraph (e)(1) of this section, shall be provided a reasonable period of time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan beyond the deadline established pursuant to paragraph (e)(1) of this section.

(iii) *Interaction with appeal process.* If a borrower makes an appeal pursuant to paragraph (h) of this section, the borrower's deadline for accepting a loss mitigation option offered pursuant to paragraph (c)(1)(ii) of this section shall be extended until 14 days after the servicer provides the notice required pursuant to paragraph (h)(4) of this section.

(f) *Prohibition on foreclosure referral*—(1) *Pre-foreclosure review period.* A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

(i) A borrower's mortgage loan obligation is more than 120 days delinquent;

(ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or

(iii) The servicer is joining the foreclosure action of a superior or subordinate lienholder.

(2) *Application received before foreclosure referral.* If a borrower submits a complete loss mitigation application during the pre-foreclosure review period set forth in paragraph (f)(1) of this section or before a servicer has made

the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

(i) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;

(ii) The borrower rejects all loss mitigation options offered by the servicer; or

(iii) The borrower fails to perform under an agreement on a loss mitigation option.

(g) *Prohibition on foreclosure sale.* If a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless:

(1) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;

(2) The borrower rejects all loss mitigation options offered by the servicer; or

(3) The borrower fails to perform under an agreement on a loss mitigation option.

(h) *Appeal process*—(1) *Appeal process required for loan modification denials.* If a servicer receives a complete loss mitigation application 90 days or more before a foreclosure sale or during the period set forth in paragraph (f) of this section, a servicer shall permit a borrower to appeal the servicer's determination to deny a borrower's loss mitigation application for any trial or permanent loan modification program available to the borrower.

(2) *Deadlines.* A servicer shall permit a borrower to make an appeal within 14 days after the servicer provides the offer of a loss mitigation option to the borrower pursuant to paragraph (c)(1)(ii) of this section.

(3) *Independent evaluation.* An appeal shall be reviewed by different personnel than those responsible for evaluating the borrower's complete loss mitigation application.

(4) *Appeal determination.* Within 30 days of a borrower making an appeal, the servicer shall provide a notice to the borrower stating the servicer's determination of whether the servicer will offer the borrower a loss mitigation option based upon the appeal and, if applicable, how long the borrower has to accept or reject such an offer or a prior offer of a loss mitigation option. A servicer may require that a borrower accept or reject an offer of a loss mitigation option after an appeal no earlier than 14 days after the servicer provides the notice to a borrower. A servicer's determination under this paragraph is not subject to any further appeal.

(i) *Duplicative requests.* A servicer must comply with the requirements of this section for a borrower's loss mitigation application, unless the servicer has previously complied with the requirements of this section for a complete loss mitigation application submitted by the borrower and the borrower has been delinquent at all times since submitting the prior complete application.

(j) *Small servicer requirements.* A small servicer shall be subject to the prohibition on foreclosure referral in paragraph (f)(1) of this section. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.

(k) *Servicing transfers*—(1) *In general*—(i) *Timing of compliance.* Except as provided in paragraphs (k)(2) through (4) of this section, if a transferee servicer

acquires the servicing of a mortgage loan for which a loss mitigation application is pending as of the transfer date, the transferee servicer must comply with the requirements of this section for that loss mitigation application within the timeframes that were applicable to the transferor servicer based on the date the transferor servicer received the loss mitigation application. All rights and protections under paragraphs (c) through (h) of this section to which a borrower was entitled before a transfer continue to apply notwithstanding the transfer.

(ii) *Transfer date defined.* For purposes of this paragraph (k), the transfer date is the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv).

(2) *Acknowledgment notices*—(i) *Transferee servicer timeframes.* If a transferee servicer acquires the servicing of a mortgage loan for which the period to provide the notice required by paragraph (b)(2)(i)(B) of this section has not expired as of the transfer date and the transferor servicer has not provided such notice, the transferee servicer must provide the notice within 10 days (excluding legal public holidays, Saturdays, and Sundays) of the transfer date.

(ii) *Prohibitions.* A transferee servicer that must provide the notice required by paragraph (b)(2)(i)(B) of this section under this paragraph (k)(2):

(A) Shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until a date that is after the reasonable date disclosed to the borrower pursuant to paragraph (b)(2)(ii) of this section, notwithstanding paragraph (f)(1) of this section. For purposes of paragraph (f)(2) of this section, a borrower who submits a complete loss mitigation application on or before the reasonable date disclosed to the borrower pursuant to paragraph (b)(2)(ii) of this section shall be treated as having done so during the pre-foreclosure review period set forth in paragraph (f)(1) of this section.

(B) Shall comply with paragraphs (c), (d), and (g) of this section if the borrower submits a complete loss mitigation application to the transferee or transferor servicer 37 or fewer days before the foreclosure sale but on or before the reasonable date disclosed to the borrower pursuant to paragraph (b)(2)(ii) of this section.

(3) *Complete loss mitigation applications pending at transfer.* If a transferee servicer acquires the servicing of a mortgage loan for which a complete loss mitigation application is pending as of the transfer date, the transferee servicer must comply with the applicable requirements of paragraphs (c)(1) and (4) of this section within 30 days of the transfer date.

(4) *Applications subject to appeal process.* If a transferee servicer acquires the servicing of a mortgage loan for which an appeal of a transferor servicer's determination pursuant to paragraph (h) of this section has not been resolved by the transferor servicer as of the transfer date or is timely filed after the transfer date, the transferee servicer must make a determination on the appeal if it is able to do so or, if it is unable to do so, must treat the appeal as a pending complete loss mitigation application.

(i) *Determining appeal.* If a transferee servicer is required under this paragraph (k)(4) to make a determination on an appeal, the transferee servicer must complete the determination and provide the notice required by paragraph (h)(4) of this section within 30 days of the transfer date or 30 days of the date the borrower made the appeal, whichever is later.

(ii) *Servicer unable to determine appeal.* A transferee servicer that is required to treat a borrower's appeal as a pending complete loss mitigation application under this paragraph (k)(4) must comply with the requirements of this section for such application, including evaluating the borrower for all loss mitigation options available to the borrower from the transferee servicer. For purposes of paragraph (c) or (k)(3) of this section, as applicable, such a pending complete loss mitigation application shall be considered complete as of the date the appeal was received by the transferor servicer or the transferee servicer, whichever occurs first. For purposes of paragraphs (e) through

(h) of this section, the transferee servicer must treat such a pending complete loss mitigation application as facially complete under paragraph (c)(2)(iv) as of the date it was first facially complete or complete, as applicable, with respect to the transferor servicer.

(5) *Pending loss mitigation offers.* A transfer does not affect a borrower's ability to accept or reject a loss mitigation option offered under paragraph (c) or (h) of this section. If a transferee servicer acquires the servicing of a mortgage loan for which the borrower's time period under paragraph (e) or (h) of this section for accepting or rejecting a loss mitigation option offered by the transferor servicer has not expired as of the transfer date, the transferee servicer must allow the borrower to accept or reject the offer during the unexpired balance of the applicable time period.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013; 81 FR 72373, Oct. 19, 2016; 85 FR 39065, June 30, 2020]

APPENDIX A TO PART 1024—INSTRUCTIONS FOR COMPLETING HUD–1 AND HUD–1A SETTLEMENT STATEMENTS; SAMPLE HUD–1 AND HUD–1A STATEMENTS

The following are instructions for completing the HUD–1 settlement statement, required under section 4 of RESPA and 12 CFR part 1024 (Regulation X) of the Bureau of Consumer Financial Protection (Bureau) regulations. This form is to be used as a statement of actual charges and adjustments paid by the borrower and the seller, to be given to the parties in connection with the settlement. The instructions for completion of the HUD–1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD–1. There is no objection to the use of the HUD–1 in transactions in which its use is not legally required. Refer to the definitions section of the regulations (12 CFR 1024.2) for specific definitions of many of the terms that are used in these instructions.

GENERAL INSTRUCTIONS

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to the Bureau's regulations (Regulation X) regarding rules applicable to reproduction of the HUD–1 for the purpose of including customary recitals and information used locally in settlements; for example, a breakdown of payoff figures, a breakdown of the Borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between Borrower and Seller, and the date funds are transferred.

The settlement agent shall complete the HUD–1 to itemize all charges imposed upon the Borrower and the Seller by the loan originator and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay at settlement. Charges for loan origination and title services should not be itemized except as provided in these instructions. For each separately identified settlement service in connection with the transaction, the name of the person ultimately receiving the payment must be shown together with the total amount paid to such person. Items paid to and retained by a loan originator are disclosed as required in the instructions for lines in the 800-series of the HUD–1 (and for per diem interest, in the 900-series of the HUD–1).

As a general rule, charges that are paid for by the seller must be shown in the seller's column on page 2 of the HUD–1 (unless paid outside closing), and charges that are paid for by the borrower must be shown in the borrower's column (unless paid outside closing). However, in order to promote comparability between the charges on the GFE and the charges on the HUD–1, if a seller pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD–1. That charge should also be offset by listing a credit in that amount to the borrower on lines 204–209 on page 1 of the HUD–1, and by a charge to the seller in lines 506–509 on page 1 of the HUD–1. If a loan originator (other than for no-cost loans), real estate agent, other settlement service provider, or other person pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD–1, with an offsetting credit reported on page 1 of the HUD–1, identifying the party paying the charge.

Charges paid outside of settlement by the borrower, seller, loan originator, real estate agent, or any other person, must be included on the HUD–1 but marked ''P.O.C.'' for ''Paid Outside of Closing'' (settlement) and must not be included in computing totals. However, indirect payments from a lender to a mortgage broker may not be disclosed as P.O.C., and must be included as a credit on Line 802. P.O.C. items must not be placed in the Borrower or Seller columns, but rather

on the appropriate line outside the columns. The settlement agent must indicate whether P.O.C. items are paid for by the Borrower, Seller, or some other party by marking the items paid for by whoever made the payment as ''P.O.C.'' with the party making the payment identified in parentheses, such as ''P.O.C. (borrower)'' or ''P.O.C. (seller)''.

In the case of ''no cost'' loans where ''no cost'' encompasses third party fees as well as the upfront payment to the loan originator, the third party services covered by the ''no cost'' provisions must be itemized and listed in the borrower's column on the HUD–1/1A with the charge for the third party service. These itemized charges must be offset with a negative adjusted origination charge on Line 803 and recorded in the columns.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided for additional insertions in sections J and K. The names of the recipients of the settlement charges in section L and the names of the recipients of adjustments described in section J or K should be included on the blank lines.

Lines and columns in section J which relate to the Borrower's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Seller. Lines and columns in section K which relate to the Seller's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Borrower.

LINE ITEM INSTRUCTIONS

Instructions for completing the individual items on the HUD–1 follow.

Section A. This section requires no entry of information.

Section B. Check appropriate loan type and complete the remaining items as applicable.

Section C. This section provides a notice regarding settlement costs and requires no additional entry of information.

Sections D and E. Fill in the names and current mailing addresses and zip codes of the Borrower and the Seller. Where there is more than one Borrower or Seller, the name and address of each one is required. Use a supplementary page if needed to list multiple Borrowers or Sellers.

Section F. Fill in the name, current mailing address and zip code of the Lender.

Section G. The street address of the property being sold should be listed. If there is no street address, a brief legal description or other location of the property should be inserted. In all cases give the zip code of the property.

Section H. Fill in name, address, zip code and telephone number of settlement agent, and address and zip code of ''place of settlement.''

Section I. Fill in date of settlement.

Section J. Summary of Borrower's Transaction. Line 101 is for the contract sales price of the property being sold, excluding the price of any items of tangible personal property if Borrower and Seller have agreed to a separate price for such items.

Line 102 is for the sales price of any items of tangible personal property excluded from Line 101. Personal property could include such items as carpets, drapes, stoves, refrigerators, *etc.* What constitutes personal property varies from State to State. Manufactured homes are not considered personal property for this purpose.

Line 103 is used to record the total charges to Borrower detailed in section L and totaled on Line 1400.

Lines 104 and 105 are for additional amounts owed by the Borrower, such as charges that were not listed on the GFE or items paid by the Seller prior to settlement but reimbursed by the Borrower at settlement. For example, the balance in the Seller's reserve account held in connection with an existing loan, if assigned to the Borrower in a loan assumption case, will be entered here. These lines will also be used when a tenant in the property being sold has not yet paid the rent, which the Borrower will collect, for a period of time prior to the settlement. The lines will also be used to indicate the treatment for any tenant security deposit. The Seller will be credited on Lines 404–405.

Lines 106 through 112 are for items which the Seller had paid in advance, and for which the Borrower must therefore reimburse the Seller. Examples of items for which adjustments will be made may include taxes and assessments paid in advance for an entire year or other period, when settlement occurs prior to the expiration of the year or other period for which they were paid. Additional examples include flood and hazard insurance premiums, if the Borrower is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; planned unit development or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the Seller, which the Borrower will use when Borrower takes possession of the property; and ground rent paid in advance.

Line 120 is for the total of Lines 101 through 112.

Line 201 is for any amount paid against the sales price prior to settlement.

Line 202 is for the amount of the new loan made by the Lender when a loan to finance construction of a new structure constructed for sale is used as or converted to a loan to finance purchase. Line 202 should also be used for the amount of the first user loan, when a loan to purchase a manufactured home for resale is converted to a loan to finance purchase by the first user. For other loans covered by 12 CFR part 1024 (Regulation X) which finance construction of a new

structure or purchase of a manufactured home, list the sales price of the land on Line 104, the construction cost or purchase price of manufactured home on Line 105 (Line 101 would be left blank in this instance) and amount of the loan on Line 202. The remainder of the form should be completed taking into account adjustments and charges related to the temporary financing and permanent financing and which are known at the date of settlement. For reverse mortgage transactions, the amount disclosed on Line 202 is the initial principal limit.

Line 203 is used for cases in which the Borrower is assuming or taking title subject to an existing loan or lien on the property.

Lines 204–209 are used for other items paid by or on behalf of the Borrower. Lines 204–209 should be used to indicate any financing arrangements or other new loan not listed in Line 202. For example, if the Borrower is using a second mortgage or note to finance part of the purchase price, whether from the same lender, another lender or the Seller, insert the principal amount of the loan with a brief explanation on Lines 204–209. Lines 204–209 should also be used where the Borrower receives a credit from the Seller for closing costs, including seller-paid GFE charges. They may also be used in cases in which a Seller (typically a builder) is making an ''allowance'' to the Borrower for items that the Borrower is to purchase separately. For reverse mortgages, the amount of any initial draw at settlement is disclosed on Line 204.

Lines 210 through 219 are for items which have not yet been paid, and which the Borrower is expected to pay, but which are attributable in part to a period of time prior to the settlement. In jurisdictions in which taxes are paid late in the tax year, most cases will show the proration of taxes in these lines. Other examples include utilities used but not paid for by the Seller, rent collected in advance by the Seller from a tenant for a period extending beyond the settlement date, and interest on loan assumptions.

Line 220 is for the total of Lines 201 through 219.

Lines 301 and 302 are summary lines for the Borrower. Enter total in Line 120 on Line 301. Enter total in Line 220 on Line 302.

Line 303 must indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction), or cash payable to the Borrower at settlement (if, for example, the Borrower's earnest money exceeds the Borrower's cash obligations in the transaction or there is a cash-out refinance). Subtract Line 302 from Line 301 and enter the amount of cash due to or from the Borrower at settlement on Line 303. The appropriate box should be checked. If the Borrower's earnest money is applied toward the charge for a settlement service, the amount so applied should not be included on Line 303 but instead should be shown on the appropriate line for the settlement service, marked ''P.O.C. (Borrower)'', and must not be included in computing totals.

Section K. Summary of Seller's Transaction. Instructions for the use of Lines 101 and 102 and 104–112 above, apply also to Lines 401–412. Line 420 is for the total of Lines 401 through 412.

Line 501 is used if the Seller's real estate broker or other party who is not the settlement agent has received and holds a deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party. If that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.

Line 502 is used to record the total charges to the Seller detailed in section L and totaled on Line 1400.

Line 503 is used if the Borrower is assuming or taking title subject to existing liens which are to be deducted from sales price.

Lines 504 and 505 are used for the amounts (including any accrued interest) of any first and/or second loans which will be paid as part of the settlement.

Line 506 is used for deposits paid by the Borrower to the Seller or other party who is not the settlement agent. Enter the amount of the deposit in Line 201 on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent, in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit that is being disbursed as proceeds and enter in the column for Line 506 the amount retained by the above-described party for settlement services. If the settlement agent holds the deposit, insert a note in Line 507 which indicates that the deposit is being disbursed as proceeds.

Lines 506 through 509 may be used to list additional liens which must be paid off through the settlement to clear title to the property. Other Seller obligations should be shown on Lines 506–509, including charges that were disclosed on the GFE but that are actually being paid for by the Seller. These Lines may also be used to indicate funds to be held by the settlement agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at settlement because the amounts used by the Seller prior to settlement are not yet known. Subsequent disclosure of the actual amount of these post-settlement items to be paid from settlement funds is optional. Any amounts entered on Lines 204–209 including Seller financing arrangements should also be entered on Lines 506–509.

Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above.

Line 520 is for the total of Lines 501 through 519.

Lines 601 and 602 are summary lines for the Seller. Enter the total in Line 420 on Line 601. Enter the total in Line 520 on Line 602.

Line 603 must indicate either the cash required to be paid to the Seller at settlement (the usual case in a purchase transaction), or the cash payable by the Seller at settlement. Subtract Line 602 from Line 601 and enter the amount of cash due to or from the Seller at settlement on Line 603. The appropriate box should be checked.

Section L. Settlement Charges.

Line 700 is used to enter the sales commission charged by the sales agent or real estate broker.

Lines 701–702 are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or real estate brokers.

Line 703 is used to enter the amount of sales commission disbursed at settlement. If the sales agent or real estate broker is retaining a part of the deposit against the sales price (earnest money) to apply towards the sales agent's or real estate broker's commission, include in Line 703 only that part of the commission being disbursed at settlement and insert a note on Line 704 indicating the amount the sales agent or real estate broker is retaining as a ''P.O.C.'' item.

Line 704 may be used for additional charges made by the sales agent or real estate broker, or for a sales commission charged to the Borrower, which will be disbursed by the settlement agent.

Line 801 is used to record ''Our origination charge,'' which includes all charges received by the loan originator, except any charge for the specific interest rate chosen (points). This number must not be listed in either the buyer's or seller's column. The amount shown in Line 801 must include any amounts received for origination services, including administrative and processing services, performed by or on behalf of the loan originator.

Line 802 is used to record ''Your credit or charge (points) for the specific interest rate chosen,'' which states the charge or credit adjustment as applied to ''Our origination charge,'' if applicable. This number must not be listed in either column or shown on page one of the HUD–1.

For a mortgage broker originating a loan in its own name, the amount shown on Line 802 will be the difference between the initial loan amount and the total payment to the mortgage broker from the lender. The total payment to the mortgage broker will be the sum of the price paid for the loan by the lender and any other payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments. For a mortgage broker originating a loan in another entity's name, the amount shown on Line 802 will be the sum of all payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments.

In either case, when the amount paid to the mortgage broker exceeds the initial loan amount, there is a credit to the borrower and it is entered as a negative amount. When the initial loan amount exceeds the amount paid to the mortgage broker, there is a charge to the borrower and it is entered as a positive amount. For a lender, the amount shown on Line 802 may include any credit or charge (points) to the Borrower.

Line 803 is used to record ''Your adjusted origination charges,'' which states the net amount of the loan origination charges, the sum of the amounts shown in Lines 801 and 802. This amount must be listed in the columns as either a positive number (for example, where the origination charge shown in Line 801 exceeds any credit for the interest rate shown in Line 802 or where there is an origination charge in Line 801 and a charge for the interest rate (points) is shown on Line 802) or as a negative number (for example, where the credit for the interest rate shown in Line 802 exceeds the origination charges shown in Line 801).

In the case of ''no cost'' loans, where ''no cost'' refers only to the loan originator's fees, the amounts shown in Lines 801 and 802 should offset, so that the charge shown on Line 803 is zero. Where ''no cost'' includes third party settlement services, the credit shown in Line 802 will more than offset the amount shown in Line 801. The amount shown in Line 803 will be a negative number to offset the settlement charges paid indirectly through the loan originator.

Lines 804–808 may be used to record each of the ''Required services that we select.'' Each settlement service provider must be identified by name and the amount paid recorded either inside the columns or as paid to the provider outside closing (''P.O.C.''), as described in the General Instructions.

Line 804 is used to record the appraisal fee.

Line 805 is used to record the fee for all credit reports.

Line 806 is used to record the fee for any tax service.

Line 807 is used to record any flood certification fee.

Lines 808 and additional sequentially numbered lines, as needed, are used to record other third party services required by the loan originator. These Lines may also be used to record other required disclosures from the loan originator. Any such disclosures must be listed outside the columns.

Lines 901–904. This series is used to record the items which the Lender requires to be paid at the time of settlement, but which are not necessarily paid to the lender (*e.g.*, FHA mortgage insurance premium), other than reserves collected by the Lender and recorded in the 1000-series.

Line 901 is used if interest is collected at settlement for a part of a month or other period between settlement and the date from which interest will be collected with the first regular monthly payment. Enter that amount here and include the per diem charges. If such interest is not collected until the first regular monthly payment, no entry should be made on Line 901.

Line 902 is used for mortgage insurance premiums due and payable at settlement, including any monthly amounts due at settlement and any upfront mortgage insurance premium, but not including any reserves collected by the Lender and recorded in the 1000-series. If a lump sum mortgage insurance premium paid at settlement is included on Line 902, a note should indicate that the premium is for the life of the loan.

Line 903 is used for homeowner's insurance premiums that the Lender requires to be paid at the time of settlement, except reserves collected by the Lender and recorded in the 1000-series.

Lines 904 and additional sequentially numbered lines are used to list additional items required by the Lender (except for reserves collected by the Lender and recorded in the 1000-series), including premiums for flood or other insurance. These lines are also used to list amounts paid at settlement for insurance not required by the Lender.

Lines 1000–1007. This series is used for amounts collected by the Lender from the Borrower and held in an account for the future payment of the obligations listed as they fall due. Include the time period (number of months) and the monthly assessment. In many jurisdictions this is referred to as an ''escrow'', ''impound'', or ''trust'' account. In addition to the property taxes and insurance listed, some Lenders may require reserves for flood insurance, condominium owners' association assessments, *etc.* The amount in line 1001 must be listed in the columns, and the itemizations in lines 1002 through 1007 must be listed outside the columns.

After itemizing individual deposits in the 1000 series, the servicer shall make an adjustment based on aggregate accounting. This adjustment equals the difference between the deposit required under aggregate accounting and the sum of the itemized deposits. The computation steps for aggregate accounting are set out in 12 CFR 1024.17(d). The adjustment will always be a negative number or zero (-0-), except for amounts due to rounding. The settlement agent shall enter the aggregate adjustment amount outside the columns on a final line of the 1000 series of the HUD–1 or HUD–1A statement. Appendix E to this part sets out an example of aggregate analysis.

Lines 1100–1108. This series covers title charges and charges by attorneys and closing or settlement agents. The title charges include a variety of services performed by title companies or others, and include fees directly related to the transfer of title (title examination, title search, document preparation), fees for title insurance, and fees for conducting the closing. The legal charges include fees for attorneys representing the lender, seller, or borrower, and any attorney preparing title work. The series also includes any settlement, notary, and delivery fees related to the services covered in this series. Disbursements to third parties must be broken out in the appropriate lines or in blank lines in the series, and amounts paid to these third parties must be shown outside of the columns if included in Line 1101. Charges not included in Line 1101 must be listed in the columns.

Line 1101 is used to record the total for the category of ''Title services and lender's title insurance.'' This amount must be listed in the columns.

Line 1102 is used to record the settlement or closing fee.

Line 1103 is used to record the charges for the owner's title insurance and related endorsements. This amount must be listed in the columns.

Line 1104 is used to record the lender's title insurance premium and related endorsements.

Line 1105 is used to record the amount of the lender's title policy limit. This amount is recorded outside of the columns.

Line 1106 is used to record the amount of the owner's title policy limit. This amount is recorded outside of the columns.

Line 1107 is used to record the amount of the total title insurance premium, including endorsements, that is retained by the title agent. This amount is recorded outside of the columns.

Line 1108 used to record the amount of the total title insurance premium, including endorsements, that is retained by the title underwriter. This amount is recorded outside of the columns.

Additional sequentially numbered lines in the 1100-series may be used to itemize title charges paid to other third parties, as identified by name and type of service provided.

Lines 1200–1206. This series covers government recording and transfer charges. Charges paid by the borrower must be listed in the columns as described for lines 1201 and 1203, with itemizations shown outside the columns. Any amounts that are charged to the seller and that were not included on the Good Faith Estimate must be listed in the columns.

Line 1201 is used to record the total ''Government recording charges,'' and the amount must be listed in the columns.

Line 1202 is used to record, outside of the columns, the itemized recording charges.

Line 1203 is used to record the transfer taxes, and the amount must be listed in the columns.

Line 1204 is used to record, outside of the columns, the amounts for local transfer taxes and stamps.

Line 1205 is used to record, outside of the columns, the amounts for state transfer taxes and stamps.

Line 1206 and additional sequentially numbered lines may be used to record specific itemized third party charges for government recording and transfer services, but the amounts must be listed outside the columns.

Line 1301 and additional sequentially numbered lines must be used to record required services that the borrower can shop for, such as fees for survey, pest inspection, or other similar inspections. These lines may also be used to record additional itemized settlement charges that are not included in a specific category, such as fees for structural and environmental inspections; pre-sale inspections of heating, plumbing or electrical equipment; or insurance or warranty coverage. The amounts must be listed in either the borrower's or seller's column.

Line 1400 must state the total settlement charges as calculated by adding the amounts within each column.

PAGE 3

Comparison of Good Faith Estimate (GFE) and HUD–1/1A Charges

The HUD–1/1–A is a statement of actual charges and adjustments. The comparison chart on page 3 of the HUD–1 must be prepared using the exact information and amounts for the services that were purchased or provided as part of the transaction, as that information and those amounts are shown on the GFE and in the HUD–1. If a service that was listed on the GFE was not obtained in connection with the transaction, pages 1 and 2 of the HUD–1 should not include any amount for that service, and the estimate on the GFE of the charge for the service should not be included in any amounts shown on the comparison chart on Page 3 of the HUD–1. The comparison chart is comprised of three sections: ''Charges That Cannot Increase,'' ''Charges That Cannot Increase More Than 10%,'' and ''Charges That Can Change''.

''Charges That Cannot Increase.'' The amounts shown in Blocks 1 and 2, in Line A, and in Block 8 on the borrower's GFE must be entered in the appropriate line in the Good Faith Estimate column. The amounts shown on Lines 801, 802, 803 and 1203 of the HUD–1/1A must be entered in the corresponding line in the HUD–1/1A column. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. If there is a credit in Block 2 of the GFE or Line 802 of the HUD–1/1A, the credit should be entered as a negative number.

''Charges That Cannot Increase More Than 10%.'' A description of each charge included in Blocks 3 and 7 on the borrower's GFE must be entered on separate lines in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. For each charge included in Blocks 4, 5 and 6 on the borrower's GFE for which the loan originator selected the provider or for which the borrower selected a provider identified by the loan originator, a description must be entered on a separate line in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. The loan originator must identify any third party settlement services for which the borrower selected a provider other than one identified by the loan originator so that the settlement agent can include those charges in the appropriate category. Additional lines may be added if necessary. The amounts shown on the HUD–1/1A for each line must be entered in the HUD–1/1A column next to the corresponding charge from the GFE, along with the appropriate HUD–1/1A line number. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower.

The amounts shown in the Good Faith Estimate and HUD–1/1A columns for this section must be separately totaled and entered in the designated line. If the total for the HUD–1/1A column is greater than the total for the Good Faith Estimate column, then the amount of the increase must be entered both as a dollar amount and as a percentage increase in the appropriate line.

''Charges That Can Change.'' The amounts shown in Blocks 9, 10 and 11 on the borrower's GFE must be entered in the appropriate lines in the Good Faith Estimate column. Any third party settlement services for which the borrower selected a provider other than one identified by the loan originator must also be included in this section. The amounts shown on the HUD–1/1A for each charge in this section must be entered in the corresponding line in the HUD–1/1A column, along with the appropriate HUD–1/1A line number. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C.

by or on behalf of the borrower. Additional lines may be added if necessary.

LOAN TERMS

This section must be completed in accordance with the information and instructions provided by the lender. The lender must provide this information in a format that permits the settlement agent to simply enter the necessary information in the appropriate spaces, without the settlement agent having to refer to the loan documents themselves. For reverse mortgages, the initial monthly amount owed for principal, interest, and any mortgage insurance must read ''N/A'' and the loan term is disclosed as ''N/A'' when the loan term is conditioned upon the occurrence of a specified event, such as the death of the borrower or the borrower no longer occupying the property for a certain period of time. Additionally, for reverse mortgages the question ''Even if you make payments on time, can your loan balance rise?'' must be answered as ''Yes'' and the maximum amount disclosed as ''Unknown.''

For reverse mortgages that establish an arrangement for the payment of property taxes, homeowner's insurance, or other recurring charges through draws from the principal limit, the second box in the ''Total monthly amount owed including escrow payments'' section must be checked. The blank following the first $ must be completed with ''0'' and an asterisk, and all items that will be paid using draws from the principal limit, such as for property taxes, must also be indicated. An asterisk must also be placed in this section with the following statement: ''Paid by or through draws from the principal limit.'' Reverse mortgage transactions are not considered to be balloon transactions for the purposes of the loan terms disclosed on page 3 of the HUD–1.

INSTRUCTIONS FOR COMPLETING HUD–1A

NOTE: The HUD–1A is an optional form that may be used for refinancing and subordinate-lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property. The HUD–1 form may also be used for such transactions, by utilizing the borrower's side of the HUD–1 and following the relevant parts of the instructions as set forth above. The use of either the HUD–1 or HUD–1A is not mandatory for open-end lines of credit (home-equity plans), as long as the provisions of Regulation Z are followed.

BACKGROUND

The HUD–1A settlement statement is to be used as a statement of actual charges and adjustments to be given to the borrower at settlement, as defined in this part. The instructions for completion of the HUD–1A are for the benefit of the settlement agent who prepares the statement; the instructions are not a part of the statement and need not be transmitted to the borrower. There is no objection to using the HUD–1A in transactions in which it is not required, and its use in open-end lines of credit transactions (home-equity plans) is encouraged. It may not be used as a substitute for a HUD–1 in any transaction that has a seller.

Refer to the ''definitions'' section (§1024.2) of 12 CFR part 1024 (Regulation X) for specific definitions of terms used in these instructions.

GENERAL INSTRUCTIONS

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to 12 CFR 1024.9 regarding rules for reproduction of the HUD–1A. Additional pages may be attached to the HUD–1A for the inclusion of customary recitals and information used locally for settlements or if there are insufficient lines on the HUD–1A. The settlement agent shall complete the HUD–1A in accordance with the instructions for the HUD–1 to the extent possible, including the instructions for disclosing items paid outside closing and for no cost loans.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided in section M for recipients of all or portions of the loan proceeds. The names of the recipients of the settlement charges in section L and the names of the recipients of the loan proceeds in section M should be set forth on the blank lines.

LINE-ITEM INSTRUCTIONS

Page 1

The identification information at the top of the HUD–1A should be completed as follows: The borrower's name and address is entered in the space provided. If the property securing the loan is different from the borrower's address, the address or other location information on the property should be entered in the space provided. The loan number is the lender's identification number for the loan. The settlement date is the date of settlement in accordance with 12 CFR 1024.2, not the end of any applicable rescission period. The name and address of the lender should be entered in the space provided.

Section L. Settlement Charges. This section of the HUD–1A is similar to section L of the HUD–1, with minor changes or omissions, including deletion of lines 700 through 704, relating to real estate broker commissions. The instructions for section L in the HUD–1 should be followed insofar as possible. Inapplicable charges should be ignored, as should any instructions regarding seller items.

Line 1400 in the HUD–1A is for the total settlement charges charged to the borrower. Enter this total on line 1601. This total should include section L amounts from additional pages, if any are attached to this HUD–1A.

Section M. Disbursement to Others. This section is used to list payees, other than the borrower, of all or portions of the loan proceeds (including the lender, if the loan is paying off a prior loan made by the same lender), when the payee will be paid directly out of the settlement proceeds. It is not used to list payees of settlement charges, nor to list funds disbursed directly to the borrower, even if the lender knows the borrower's intended use of the funds.

For example, in a refinancing transaction, the loan proceeds are used to pay off an existing loan. The name of the lender for the loan being paid off and the pay-off balance would be entered in section M. In a home improvement transaction when the proceeds are to be paid to the home improvement contractor, the name of the contractor and the amount paid to the contractor would be entered in section M. In a consolidation loan, or when part of the loan proceeds is used to pay off other creditors, the name of each creditor and the amount paid to that creditor would be entered in section M. If the proceeds are to be given directly to the borrower and the borrower will use the proceeds to pay off existing obligations, this would not be reflected in section M.

Section N. Net Settlement. Line 1600 normally sets forth the principal amount of the loan as it appears on the related note for this loan. In the event this form is used for an open-ended home equity line whose approved amount is greater than the initial amount advanced at settlement, the amount shown on Line 1600 will be the loan amount advanced at settlement. Line 1601 is used for all settlement charges that both are included in the totals for lines 1400 and 1602, and are not financed as part of the principal amount of the loan. This is the amount normally received by the lender from the borrower at settlement, which would occur when some or all of the settlement charges were paid in cash by the borrower at settlement, instead of being financed as part of the principal amount of the loan. Failure to include any such amount in line 1601 will result in an error in the amount calculated on line 1604. Items paid outside of closing (P.O.C.) should not be included in Line 1601.

Line 1602 is the total amount from line 1400.

Line 1603 is the total amount from line 1520.

Line 1604 is the amount disbursed to the borrower. This is determined by adding together the amounts for lines 1600 and 1601, and then subtracting any amounts listed on lines 1602 and 1603.

Page 2

This section of the HUD–1A is similar to page 3 of the HUD–1. The instructions for page 3 of the HUD–1 should be followed insofar as possible. The HUD–1/1A Column should include any amounts shown on page 1 of the HUD–1A in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by the borrower. Inapplicable charges should be ignored.

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A. Settlement Statement (HUD-1)

B. Type of Loan			
1. ☐ FHA 2. ☐ RHS 3. ☐ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower:	E. Name & Address of Seller:	F. Name & Address of Lender:
G. Property Location:	H. Settlement Agent:	I. Settlement Date:
	Place of Settlement:	

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due from Borrower		**400. Gross Amount Due to Seller**	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)		403.	
104.		404.	
105.		405.	
Adjustment for items paid by seller in advance		**Adjustments for items paid by seller in advance**	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due from Borrower		**420. Gross Amount Due to Seller**	
200. Amounts Paid by or in Behalf of Borrower		**500. Reductions in Amount Due to Seller**	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		**Adjustments for items unpaid by seller**	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid by/for Borrower		**520. Total Reduction Amount Due Seller**	
300. Cash at Settlement from/to Borrower		**600. Cash at Settlement to/from Seller**	
301. Gross amount due from borrower (line 120)		601. Gross amount due to seller (line 420)	
302. Less amounts paid by/for borrower (line 220)	( )	602. Less reductions in amount due seller (line 520)	( )
303. Cash ☐ **From** ☐ **To Borrower**		**603. Cash** ☐ **To** ☐ **From Seller**	

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

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L. Settlement Charges

700. Total Real Estate Broker Fees	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of commission (line 700) as follows:		
701. $ to		
702. $ to		
703. Commission paid at settlement		
704.		

800. Items Payable in Connection with Loan			
801. Our origination charge $ (from GFE #1)			
802. Your credit or charge (points) for the specific interest rate chosen $ (from GFE #2)			
803. Your adjusted origination charges (from GFE A)			
804. Appraisal fee to (from GFE #3)			
805. Credit report to (from GFE #3)			
806. Tax service to (from GFE #3)			
807. Flood certification (from GFE #3)			
808.			

900. Items Required by Lender to Be Paid in Advance			
901. Daily interest charges from to @ $ /day (from GFE #10)			
902. Mortgage insurance premium for months to (from GFE #3)			
903. Homeowner's insurance for years to (from GFE #11)			
904.			

1000. Reserves Deposited with Lender			
1001. Initial deposit for your escrow account (from GFE #9)			
1002. Homeowner's insurance months @ $ per month $			
1003. Mortgage insurance months @ $ per month $			
1004. Property taxes months @ $ per month $			
1005. months @ $ per month $			
1006. months @ $ per month $			
1007. Aggregate Adjustment –$			

1100. Title Charges			
1101. Title services and lender's title insurance (from GFE #4)			
1102. Settlement or closing fee $			
1103. Owner's title insurance (from GFE #5)			
1104. Lender's title insurance $			
1105. Lender's title policy limit $			
1106. Owner's title policy limit $			
1107. Agent's portion of the total title insurance premium $			
1108. Underwriter's portion of the total title insurance premium $			

1200. Government Recording and Transfer Charges			
1201. Government recording charges (from GFE #7)			
1202. Deed $ Mortgage $ Releases $			
1203. Transfer taxes (from GFE #8)			
1204. City/County tax/stamps Deed $ Mortgage $			
1205. State tax/stamps Deed $ Mortgage $			
1206.			

1300. Additional Settlement Charges			
1301. Required services that you can shop for (from GFE #6)			
1302. $			
1303. $			
1304.			
1305.			

1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)		

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Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
Charges That Cannot Increase	**HUD-1 Line Number**		
Our origination charge	# 801		
Your credit or charge (points) for the specific interest rate chosen	# 802		
Your adjusted origination charges	# 803		
Transfer taxes	#1203		

Charges That in Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
	Total		
	Increase between GFE and HUD-1 Charges	$ or %	

Charges That Can Change		Good Faith Estimate	HUD-1
Initial deposit for your escrow account	#1001		
Daily interest charges	# 901 $ /day		
Homeowner's insurance	# 903		
	#		
	#		
	#		

Loan Terms

Your initial loan amount is	$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and and any mortgage insurance is	$ includes ☐ Principal ☐ Interest ☐ Mortgage Insurance
Can your interest rate rise?	☐ No. ☐ Yes, it can rise to a maximum of %. The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by %. Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than %.
Even if you make payments on time, can your loan balance rise?	☐ No. ☐ Yes, it can rise to a maximum of $.
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	☐ No. ☐ Yes, the first increase can be on and the monthly amount owed can rise to $. The maximum it can ever rise to is $.
Does your loan have a prepayment penalty?	☐ No. ☐ Yes, your maximum prepayment penalty is $.
Does your loan have a balloon payment?	☐ No. ☐ Yes, you have a balloon payment of $ due in years on .
Total monthly amount owed including escrow account payments	☐ You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. ☐ You have an additional monthly escrow payment of $ that results in a total initial monthly amount owed of $. This includes principal, interest, any mortgage insurance and any items checked below: ☐ Property taxes ☐ Homeowner's insurance ☐ Flood Insurance ☐ ☐ ☐

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

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Settlement Statement (HUD-1A)

Optional Form for Transactions without Sellers

Name and Address of Borrower:	Name and Address of Lender:
Property Location: (if different from above)	Settlement Agent:
	Place of Settlement:
Loan Number:	Settlement Date:

L. Settlement Charges		
800. Items Payable in Connection with Loan		
801. Our origination charge	(from GFE #1) $	
802. Your credit or charge (points) for the specific interest rate chosen	(from GFE #2) $	
803. Your adjusted origination charges	(from GFE A)	
804. Appraisal fee to	(from GFE #3)	
805. Credit report to	(from GFE #3)	
806. Tax service to	(from GFE #3)	
807. Flood certification	(from GFE #3)	
808.		
900. Items Required by Lender to Be Paid in Advance		
901. Daily interest charges from to @ $ /day	(from GFE #10)	
902. Mortgage insurance premium for months to	(from GFE #3)	
903. Homeowner's insurance for years to	(from GFE #11)	
904.		
1000. Reserves Deposited with Lender		
1001. Initial deposit for your escrow account	(from GFE #9)	
1002. Homeowner's insurance months @ $ per month	$	
1003. Mortgage insurance months @ $ per month	$	
1004. Property taxes months @ $ per month	$	
1005. months @ $ per month	$	
1006. months @ $ per month	$	
1007. Aggregate Adjustment	–$	
1100. Title Charges		
1101. Title services and lender's title insurance	(from GFE #4)	
1102. Settlement or closing fee	$	
1103. Owner's title insurance	(from GFE #5)	
1104. Lender's title insurance	$	
1105. Lender's title policy limit $		
1106. Owner's title policy limit $		
1107. Agent's portion of the total title insurance premium	$	
1108. Underwriter's portion of the total title insurance premium	$	
1200. Government Recording and Transfer Charges		
1201. Government recording charges	(from GFE #7)	
1202. Deed $ Mortgage $ Releases $		
1203. Transfer taxes	(from GFE #8)	
1204. City/County tax/stamps Deed $ Mortgage $		
1205. State tax/stamps Deed $ Mortgage $		
1206.		
1300. Additional Settlement Charges		
1301. Required services that you can shop for	(from GFE #6)	
1302.	$	
1303.	$	
1304.		
1305.		
1400. Total Settlement Charges (enter on line 1602, Section N)		

M. Disbursements to Others	
1501.	
1502.	
1503.	
1504.	
1505.	
1506.	
1507.	
1508.	
1509	
1510.	
1511.	
1512.	
1513.	
1514.	
1515.	
1520. Total Disbursed (enter on line 1603)	

N. Net Settlement	
1600. Loan Amount	$
1601. **Plus** Cash/Check from Borrower	$
1602. **Minus** Total Settlement Charges (line 1400)	$
1603. **Minus** Total Disbursements to Others (line 1520)	$
1604. **Equals** Total Disbursements to Borrower (after expiration of any applicable rescission period required by law)	$

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

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Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
Charges That Cannot Increase	**HUD-1 Line Number**		
Our origination charge	# 801		
Your credit or charge (points) for the specific interest rate chosen	# 802		
Your adjusted origination charges	# 803		
Transfer taxes	#1203		

Charges That In Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
Total			
Increase between GFE and HUD-1 Charges		$ or %	

Charges That Can Change		Good Faith Estimate	HUD-1
Initial deposit for your escrow account	#1001		
Daily interest charges	# 901 $ /day		
Homeowner's insurance	# 903		
	#		
	#		
	#		

Loan Terms

Your initial loan amount is	$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and and any mortgage insurance is	$ includes ☐ Principal ☐ Interest ☐ Mortgage Insurance
Can your interest rate rise?	☐ No. ☐ Yes, it can rise to a maximum of %. The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by %. Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than %.
Even if you make payments on time, can your loan balance rise?	☐ No. ☐ Yes, it can rise to a maximum of $.
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	☐ No. ☐ Yes, the first increase can be on and the monthly amount owed can rise to $. The maximum it can ever rise to is $.
Does your loan have a prepayment penalty?	☐ No. ☐ Yes, your maximum prepayment penalty is $.
Does your loan have a balloon payment?	☐ No. ☐ Yes, you have a balloon payment of $ due in years on .
Total monthly amount owed including escrow account payments	☐ You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. ☐ You have an additional monthly escrow payment of $ that results in a total initial monthly amount owed of $. This includes principal, interest, any mortgage insurance and any items checked below: ☐ Property taxes ☐ Homeowner's insurance ☐ Flood insurance ☐ ☐ ☐

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

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[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 80104, Dec. 31, 2013]

EDITORIAL NOTE: At 78 FR 80105, Dec. 31, 2013, appendix A to part 1024 was amended; however, amendatory instructions E and F could not be incorporated due to inaccurate amendatory instructions.

APPENDIX B TO PART 1024—ILLUSTRATIONS OF REQUIREMENTS OF RESPA

The following illustrations provide additional guidance on the meaning and coverage of the provisions of RESPA. Other provisions of Federal or state law may also be applicable to the practices and payments discussed in the following illustrations.

1. *Facts:* A, a provider of settlement services, provides settlement services at abnormally low rates or at no charge at all to B, a builder, in connection with a subdivision being developed by B. B agrees to refer purchasers of the completed homes in the subdivision to A for the purchase of settlement services in connection with the sale of individual lots by B.

Comments: The rendering of services by A to B at little or no charge constitutes a thing of value given by A to B in return for the referral of settlement services business, and both A and B are in violation of section 8 of RESPA.

2. *Facts:* B, a lender, encourages persons who receive federally related mortgage loans from it to employ A, an attorney, to perform title searches and related settlement services in connection with their transaction. B and A have an understanding that in return for the referral of this business A provides legal services to B or B's officers or employees at abnormally low rates or for no charge.

Comments: Both A and B are in violation of section 8 of RESPA. Similarly, if an attorney gives a portion of his or her fees to another attorney, a lender, a real estate broker or any other provider of settlement services, who had referred prospective clients to the attorney, section 8 would be violated by both persons.

3. *Facts:* A, a real estate broker, obtains all necessary licenses under state law to act as a title insurance agent. A refers individuals who are purchasing homes in transactions in which A participates as a broker to B, an unaffiliated title company, for the purchase of title insurance services. A performs minimal, if any, title services in connection with the issuance of the title insurance policy (such as placing an application with the title company). B pays A a commission (or A retains a portion of the title insurance premium) for the transactions or alternatively B receives a portion of the premium paid directly from the purchaser.

Comments: The payment of a commission or portion of the title insurance premium by B to A, or receipt of a portion of the payment for title insurance under circumstances where no substantial services are being performed by A, is a violation of section 8 of RESPA. It makes no difference whether the payment comes from B or the purchaser. The amount of the payment must bear a reasonable relationship to the services rendered. Here A really is being compensated for a referral of business to B.

4. *Facts:* A is an attorney who, as a part of his legal representation of clients in residential real estate transactions, orders and reviews title insurance policies for his clients. A enters into a contract with B, a title company, to be an agent of B under a program set up by B. Under the agreement, A agrees to prepare and forward title insurance applications to B, to re-examine the preliminary title commitment for accuracy and if he chooses to attempt to clear exceptions to the title policy before closing. A agrees to assume liability for waiving certain exceptions to title, but never exercises this authority. B performs the necessary title search and examination work, determines insurability of title, prepares documents containing substantive information in title commitments, handles closings for A's clients and issues title policies. A receives a fee from his client for legal services and an additional fee for his title agent ''services'' from the client's title insurance premium to B.

Comments: A and B are violating section 8 of RESPA. Here, A's clients are being double billed because the work A performs as a ''title agent'' is that which he already performs for his client in his capacity as an attorney. For A to receive a separate payment as a title agent, A must perform necessary core title work and may not contract out the work. To receive additional compensation as a title agent for this transaction, A must provide his client with core title agent services for which he assumes liability, and which includes at a minimum, the evaluation of the title search to determine insurability of the title, and the issuance of a title commitment where customary, the clearance of underwriting objections, and the actual issuance of the policy or policies on behalf of the title company. A may not be compensated for the mere re-examination of work performed by B. Here, A is not performing these services and may not be compensated as a title agent under section 8(c)(1)(B). Referral fees or splits of fees may not be disguised as title agent commissions when the core title agent work is not performed. Further, because B created the program and gave A the opportunity to collect fees (a thing of value) in exchange for the referral of settlement service business, it has violated section 8 of RESPA.

5. *Facts:* A, a ''mortgage originator,'' receives loan applications, funds the loans with its own money or with a wholesale line of credit for which A is liable, and closes the loans in A's own name. Subsequently, B, a mortgage lender, purchases the loans and compensates A for the value of the loans, as well as for any mortgage servicing rights.

Comments: Compensation for the sale of a mortgage loan and servicing rights constitutes a secondary market transaction,

rather than a referral fee, and is beyond the scope of section 8 of RESPA. For purposes of section 8, in determining whether a *bona fide* transfer of the loan obligation has taken place, the Bureau examines the real source of funding, and the real interest of the named settlement lender.

6. *Facts.* A, a credit reporting company, places a facsimile transmission machine (FAX) in the office of B, a mortgage lender, so that B can easily transmit requests for credit reports and A can respond. A supplies the FAX machine at no cost or at a reduced rental rate based on the number of credit reports ordered.

Comments: Either situation violates section 8 of RESPA. The FAX machine is a thing of value that A provides in exchange for the referral of business from B. Copying machines, computer terminals, printers, or other like items which have general use to the recipient and which are given in exchange for referrals of business also violate RESPA.

7. *Facts:* A, a real estate broker, refers title business to B, a company that is a licensed title agent for C, a title insurance company. A owns more than 1% of B. B performs the title search and examination, makes determinations of insurability, issues the commitment, clears underwriting objections, and issues a policy of title insurance on behalf of C, for which C pays B a commission. B pays annual dividends to its owners, including A, based on the relative amount of business each of its owners refers to B.

Comments: The facts involve an affiliated business arrangement. The payment of a commission by C to B is not a violation of section 8 of RESPA if the amount of the commission constitutes reasonable compensation for the services performed by B for C. The payment of a dividend or the giving of any other thing of value by B to A that is based on the amount of business referred to B by A does not meet the affiliated business agreement exemption provisions and such actions violate section 8. Similarly, if the amount of stock held by A in B (or, if B were a partnership, the distribution of partnership profits by B to A) varies based on the amount of business referred or expected to be referred, or if B retained any funds for subsequent distribution to A where such funds were generally in proportion to the amount of business A referred to B relative to the amount referred by other owners, such arrangements would violate section 8. The exemption for controlled business arrangements would not be available because the payments here would not be considered returns on ownership interests. Further, the required disclosure of the affiliated business arrangement and estimated charges have not been provided.

8. *Facts:* Same as illustration 7, but B pays annual dividends in proportion to the amount of stock held by its owners, including A, and the distribution of annual dividends is not based on the amount of business referred or expected to be referred.

Comments: If A and B meet the requirements of the affiliated business arrangement exemption there is not a violation of RESPA. Since the payment is a return on ownership interests, A and B will be exempt from section 8 if (1) A also did not require anyone to use the services of B, and (2) A disclosed its ownership interest in B on a separate disclosure form and provided an estimate of B's charges to each person referred by A to B (see appendix D of this part), and (3) B makes no payment (nor is there any other thing of value exchanged) to A other than dividends.

9. *Facts:* A, a franchisor for franchised real estate brokers, owns B, a provider of settlement services. C, a franchisee of A, refers business to B.

Comments: This is an affiliated business arrangement. A, B and C will all be exempt from section 8 if C discloses its franchise relationship with the owner of B on a separate disclosure form and provides an estimate of B's charges to each person referred to B (see appendix D of this part) and C does not require anyone to use B's services and A gives no thing a value to C under the franchise agreement (such as an adjusted level of franchise payment based on the referrals), and B makes no payments to A other than dividends representing a return on ownership interest (rather than, *e.g.*, an adjusted level of payment being based on the referrals). Nor may B pay C anything of value for the referral.

10. *Facts:* A is a real estate broker who refers business to its affiliate title company B. A makes all required written disclosures to the homebuyer of the arrangement and estimated charges and the homebuyer is not required to use B. B refers or contracts out business to C who does all the title work and splits the fee with B. B passes its fee to A in the form of dividends, a return on ownership interest.

Comments: The relationship between A and B is an affiliated business arrangement. However, the affiliated business arrangement exemption does not provide exemption between an affiliated entity, B, and a third party, C. Here, B is a mere ''shell'' and provides no substantive services for its portion of the fee. The arrangement between B and C would be in violation of section 8(a) and (b). Even if B had an affiliate relationship with C, the required exemption criteria have not been met and the relationship would be subject to section 8.

11. *Facts:* A, a mortgage lender is affiliated with B, a title company, and C, an escrow company and offers consumers a package of mortgage title and escrow services at a discount from the prices at which such services

would be sold if purchased separately. Neither A, B, nor C requires consumers to purchase the services of their sister companies and each company sells such services separately and as part of the package. A also pays its employees (*e.g.*, loan officers, secretaries, *etc.*) a bonus for each loan, title insurance or closing that A's employees generate for A, B, or C respectively. A pays such employee bonuses out of its own funds and receives no payments or reimbursements for such bonuses from B or C. At or before the time that customers are told by A or its employees about the services offered by B and C and/or the package of services that is available, the customers are provided with an affiliated business disclosure form.

Comments: A's selling of a package of settlement services at a discount to a settlement service purchaser does not violate section 8 of RESPA. A's employees are making appropriate affiliated business disclosures and since the services are available separately and as part of a package, there is not ''required use'' of the additional services. A's payments of bonuses to its employees for the referral of business to A or A's affiliates, B and C, are exempt from section 8 under §1024.14(g)(1). However, if B or C reimbursed A for any bonuses that A paid to its employees for referring business to B or C, such reimbursements would violate section 8. Similarly, if B or C paid bonuses to A's employees directly for generating business for them, such payments would violate section 8.

12. *Facts*. A is a mortgage broker who provides origination services to submit a loan to a lender for approval. The mortgage broker charges the borrower a uniform fee for the total origination services, as well as a direct up-front charge for reimbursement of credit reporting, appraisal services, or similar charges.

Comment. The mortgage broker's fee must be reflected in the Good Faith Estimate and on the HUD–1 Settlement Statement. Other charges which are paid for by the borrower and paid in advance are listed as P.O.C. on the HUD–1 Settlement Statement, and reflect the actual provider charge for such services.

13. *Facts*. A is a dealer in home improvements who has established funding arrangements with several lenders. Customers for home improvements receive a proposed contract from A. The proposal requires that customers both execute forms authorizing a credit check and employment verification, and frequently, execute a dealer consumer credit contract secured by a lien on the customer's (borrower's) 1- to 4-family residential property. Simultaneously with the completion and certification of the home improvement work, the note is assigned by the dealer to a funding lender.

Comments. The loan that is assigned to the funding lender is a loan covered by RESPA, when a lien is placed on the borrower's 1- to 4-family residential structure. The dealer loan or consumer credit contract originated by a dealer is also a RESPA-covered transaction, except when the dealer is not a ''creditor'' under the definition of ''federally related mortgage loan'' in §1024.2. The lender to whom the loan will be assigned is responsible for assuring that the lender or the dealer delivers to the borrower a Good Faith Estimate of closing costs consistent with Regulation X, and that the HUD–1 or HUD–1A Settlement Statement is used in conjunction with the settlement of the loan to be assigned. A dealer who, under §1024.2, is covered by RESPA as a creditor is responsible for the Good Faith Estimate of Closing Costs and the use of the appropriate settlement statement in connection with the loan.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 80105, Dec. 31, 2013]

APPENDIX C TO PART 1024—INSTRUCTIONS FOR COMPLETING GOOD FAITH ESTIMATE (GFE) FORM

The following are instructions for completing the GFE required under section 5 of RESPA and 12 CFR 1024.7 of the Bureau regulations. The standardized form set forth in this Appendix is the required GFE form and must be provided exactly as specified; provided, however, preparers may replace HUD's OMB approval number listed on the form with the Bureau's OMB approval number when they reproduce the GFE form. The instructions for completion of the GFE are primarily for the benefit of the loan originator who prepares the form and need not be transmitted to the borrower(s) as an integral part of the GFE. The required standardized GFE form must be prepared completely and accurately. A separate GFE must be provided for each loan where a transaction will involve more than one mortgage loan.

GENERAL INSTRUCTIONS

The loan originator preparing the GFE may fill in information and amounts on the form by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Under these instructions, the ''form'' refers to the required standardized GFE form. Although the standardized GFE is a prescribed form, Blocks 3, 6, and 11 on page 2 may be adapted for use in particular loan situations, so that additional lines may be inserted there, and unused lines may be deleted.

All fees for categories of charges shall be disclosed in U.S. dollar and cent amounts.

SPECIFIC INSTRUCTIONS

Page 1

Top of the Form—The loan originator must enter its name, business address, telephone number, and email address, if any, on the top of the form, along with the applicant's name, the address or location of the property for which financing is sought, and the date of the GFE.

''*Purpose.*''—This section describes the general purpose of the GFE as well as additional information available to the applicant.

''*Shopping for your loan.*''—This section requires no loan originator action.

''*Important dates.*''—This section briefly states important deadlines after which the loan terms that are the subject of the GFE may not be available to the applicant. In Line 1, the loan originator must state the date and, if necessary, time until which the interest rate for the GFE will be available. In Line 2, the loan originator must state the date until which the estimate of all other settlement charges for the GFE will be available. This date must be at least 10 business days from the date of the GFE. In Line 3, the loan originator must state how many calendar days within which the applicant must go to settlement once the interest rate is locked. In Line 4, the loan originator must state how many calendar days prior to settlement the interest rate would have to be locked, if applicable.

''*Summary of your loan.*''—In this section, for all loans the loan originator must fill in, where indicated:

(i) The initial loan amount;

(ii) The loan term; and

(iii) The initial interest rate.

For reverse mortgage transactions:

(i) The initial loan amount disclosed on the GFE is the amount of the initial principal limit of the loan;

(ii) The loan term is disclosed as ''N/A'' when the loan term is conditioned upon the occurrence of a specified event, such as the death of the borrower or the borrower no longer occupying the property for a certain period of time; and

(iii) The initial interest rate is the interest rate indicated on the legal obligation.

The loan originator must fill in the initial monthly amount owed for principal, interest, and any mortgage insurance. The amount shown must be the greater of: (1) The required monthly payment for principal and interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment; or (2) the accrued interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment. For reverse mortgage transactions where there are no regular payment periods, the loan originator must disclose ''Not Applicable'' or ''N/A'' for the initial monthly amount owed for principal, interest, and any mortgage insurance.

The loan originator must indicate whether the interest rate can rise, and, if it can, must insert the maximum rate to which it can rise over the life of the loan. The loan originator must also indicate the period of time after which the interest rate can first change.

The loan originator must indicate whether the loan balance can rise even if the borrower makes payments on time, for example in the case of a loan with negative amortization. If it can, the loan originator must insert the maximum amount to which the loan balance can rise over the life of the loan. For Federal, State, local, or tribal housing programs that provide payment assistance, any repayment of such program assistance should be excluded from consideration in completing this item. If the loan balance will increase only because escrow items are being paid through the loan balance, the loan originator is not required to check the box indicating that the loan balance can rise. For reverse mortgage transactions, the loan originator must indicate that the loan balance can rise even if the borrower makes payments on time and the maximum amount to which the loan balance can rise must be disclosed as ''Unknown.''

The loan originator must indicate whether the monthly amount owed for principal, interest, and any mortgage insurance can rise even if the borrower makes payments on time. If the monthly amount owed can rise even if the borrower makes payments on time, the loan originator must indicate the period of time after which the monthly amount owed can first change, the maximum amount to which the monthly amount owed can rise at the time of the first change, and the maximum amount to which the monthly amount owed can rise over the life of the loan. The amount used for the monthly amount owed must be the greater of: (1) The required monthly payment for principal and interest for that month, plus any monthly mortgage insurance payment; or (2) the accrued interest for that month, plus any monthly mortgage insurance payment. For reverse mortgage transactions, the loan originator must disclose that the monthly amount owed for principal, interest, and any mortgage insurance cannot rise.

The loan originator must indicate whether the loan includes a prepayment penalty, and, if so, the maximum amount that it could be.

The loan originator must indicate whether the loan requires a balloon payment and, if so, the amount of the payment and in how many years it will be due. Reverse mortgage transactions are not considered to be balloon transactions for the purposes of this disclosure on the GFE.

''*Escrow account information.*''—The loan originator must indicate whether the loan includes an escrow account for property

taxes and other financial obligations. The amount shown in the ''Summary of your loan'' section for ''Your initial monthly amount owed for principal, interest, and any mortgage insurance'' must be entered in the space for the monthly amount owed in this section. For reverse mortgage transactions where the lender will establish an arrangement to pay for such items as property taxes and homeowner's insurance through draws from the principal limit, the loan originator must indicate that an escrow account is included and the amount shown in this section must be disclosed as 'N/A.'

''*Summary of your settlement charges.*''—On this line, the loan originator must state the Adjusted Origination Charges from subtotal A of page 2, the Charges for All Other Settlement Services from subtotal B of page 2, and the Total Estimated Settlement Charges from the bottom of page 2.

Page 2

''*Understanding your estimated settlement charges.*''—This section details 11 settlement cost categories and amounts associated with the mortgage loan. For purposes of determining whether a tolerance has been met, the amount on the GFE should be compared with the total of any amounts shown on the HUD–1 in the borrower's column and any amounts paid outside closing by or on behalf of the borrower.

''Your Adjusted Origination Charges''

Block 1, ''*Our origination charge.*''—The loan originator must state here all charges that all loan originators involved in this transaction will receive, except for any charge for the specific interest rate chosen (points). A loan originator may not separately charge any additional fees for getting this loan, including for application, processing, or underwriting. The amount stated in Block 1 is subject to zero tolerance, *i.e.*, the amount may not increase at settlement.

Block 2, ''*Your credit or charge (points) for the specific interest rate chosen.*''—For transactions involving mortgage brokers, the mortgage broker must indicate through check boxes whether there is a credit to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of the credit, or whether there is an additional charge (points) to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of that charge. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For transactions without a mortgage broker, the lender may choose not to separately disclose in this block any credit or charge for the interest rate chosen on the loan; however, if this block does not include any positive or negative figure, the lender must check the first box to indicate that ''The credit or charge for the interest rate you have chosen'' is included in ''Our origination charge'' above (see Block 1 instructions above), must insert the interest rate, and must also insert ''0'' in Block 2. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For a mortgage broker, the credit or charge for the specific interest rate chosen is the net payment to the mortgage broker from the lender (*i.e.*, the sum of all payments to the mortgage broker from the lender, including payments based on the loan amount, a flat rate, or any other computation, and in a table funded transaction, the loan amount less the price paid for the loan by the lender). When the net payment to the mortgage broker from the lender is positive, there is a credit to the borrower and it is entered as a negative amount in Block 2 of the GFE. When the net payment to the mortgage broker from the lender is negative, there is a charge to the borrower and it is entered as a positive amount in Block 2 of the GFE. If there is no net payment (*i.e.*, the credit or charge for the specific interest rate chosen is zero), the mortgage broker must insert '0' in Block 2 and may check either the box indicating there is a credit of '0' or the box indicating there is a charge of '0.'

The amount stated in Block 2 is subject to zero tolerance while the interest rate is locked, *i.e.*, any credit for the interest rate chosen cannot decrease in absolute value terms and any charge for the interest rate chosen cannot increase. (NOTE: An increase in the credit is allowed since this increase is a reduction in cost to the borrower. A decrease in the credit is not allowed since it is an increase in cost to the borrower.)

Line A, ''*Your Adjusted Origination Charges.*''—The loan originator must add the numbers in Blocks 1 and 2 and enter this subtotal at highlighted Line A. The subtotal at Line A will be a negative number if there is a credit in Block 2 that exceeds the charge in Block 1. The amount stated in Line A is subject to zero tolerance while the interest rate is locked.

In the case of ''no cost'' loans, where ''no cost'' refers only to the loan originator's fees, Line A must show a zero charge as the adjusted origination charge. In the case of ''no cost'' loans where ''no cost'' encompasses third party fees as well as the upfront payment to the loan originator, all of the third party fees listed in Block 3 through Block 11 to be paid for by the loan originator (or borrower, if any) must be itemized and listed on the GFE. The credit for the interest rate chosen must be large enough that the total for Line A will result in a negative number to cover the third party fees.

''Your Charges for All Other Settlement Services''

There is a 10 percent tolerance applied to the sum of the prices of each service listed in Block 3, Block 4, Block 5, Block 6, and Block 7, where the loan originator requires the use of a particular provider or the borrower uses a provider selected or identified by the loan originator. Any services in Block 4, Block 5, or Block 6 for which the borrower selects a provider other than one identified by the loan originator are not subject to any tolerance and, at settlement, would not be included in the sum of the charges on which the 10 percent tolerance is based. Where a loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time of the GFE, on a separate sheet of paper.

Block 3, ''*Required services that we select.*''—In this block, the loan originator must identify each third party settlement service required and selected by the loan originator (excluding title services), along with the estimated price to be paid to the provider of each service. Examples of such third party settlement services might include provision of credit reports, appraisals, flood checks, tax services, and any upfront mortgage insurance premium. The loan originator must identify the specific required services and provide an estimate of the price of each service. Loan originators are also required to add the individual charges disclosed in this block and place that total in the column of this block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 4, ''*Title services and lender's title insurance.*''—In this block, the loan originator must state the estimated total charge for third party settlement service providers for all closing services, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator. The loan originator must also include any lender's title insurance premiums, when required, regardless of whether the provider is selected or paid for by the borrower, seller, or loan originator. All fees for title searches, examinations, and endorsements, for example, would be included in this total. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 5, ''*Owner's title insurance.*''—In this block, for all purchase transactions the loan originator must provide an estimate of the charge for the owner's title insurance and related endorsements, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator. For nonpurchase transactions, the loan originator may enter ''NA'' or ''Not Applicable'' in this Block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 6, ''*Required services that you can shop for.*''—In this block, the loan originator must identify each third party settlement service required by the loan originator where the borrower is permitted to shop for and select the settlement service provider (excluding title services), along with the estimated charge to be paid to the provider of each service. The loan originator must identify the specific required services (*e.g.*, survey, pest inspection) and provide an estimate of the charge of each service. The loan originator must also add the individual charges disclosed in this block and place the total in the column of this block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 7, ''*Government recording charge.*''—In this block, the loan originator must estimate the State and local government fees for recording the loan and title documents that can be expected to be charged at settlement. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 8, ''*Transfer taxes.*''—In this block, the loan originator must estimate the sum of all State and local government fees on mortgages and home sales that can be expected to be charged at settlement, based upon the proposed loan amount or sales price and on the property address. A zero tolerance applies to the sum of these estimated fees.

Block 9, ''*Initial deposit for your escrow account.*''—In this block, the loan originator must estimate the amount that it will require the borrower to place into a reserve or escrow account at settlement to be applied to recurring charges for property taxes, homeowner's and other similar insurance, mortgage insurance, and other periodic charges. The loan originator must indicate through check boxes if the reserve or escrow account will cover future payments for all tax, all hazard insurance, and other obligations that the loan originator requires to be paid as they fall due. If the reserve or escrow account includes some, but not all, property taxes or hazard insurance, or if it includes mortgage insurance, the loan originator should check ''other'' and then list the items included.

Block 10, ''*Daily interest charges.*''—In this block, the loan originator must estimate the total amount that will be due at settlement for the daily interest on the loan from the date of settlement until the first day of the first period covered by scheduled mortgage payments. The loan originator must also indicate how this total amount is calculated by providing the amount of the interest charges per day and the number of days used in the calculation, based on a stated projected closing date.

Block 11, ''*Homeowner's insurance*.''—The loan originator must estimate in this block the total amount of the premiums for any hazard insurance policy and other similar insurance, such as fire or flood insurance that must be purchased at or before settlement to meet the loan originator's requirements. The loan originator must also separately indicate the nature of each type of insurance required along with the charges. To the extent a loan originator requires that such insurance be part of an escrow account, the amount of the initial escrow deposit must be included in Block 9.

Line B, ''*Your Charges for All Other Settlement Services*.''—The loan originator must add the numbers in Blocks 3 through 11 and enter this subtotal in the column at highlighted Line B.

Line A + B, ''*Total Estimated Settlement Charges*.''—The loan originator must add the subtotals in the right-hand column at highlighted Lines A and B and enter this total in the column at highlighted Line A + B.

Page 3

''*Instructions*''

''*Understanding which charges can change at settlement*.''—This section informs the applicant about which categories of settlement charges can increase at closing, and by how much, and which categories of settlement charges cannot increase at closing. This section requires no loan originator action.

''*Using the tradeoff table*.''—This section is designed to make borrowers aware of the relationship between their total estimated settlement charges on one hand, and the interest rate and resulting monthly payment on the other hand. The loan originator must complete the left hand column using the loan amount, interest rate, monthly payment figure, and the total estimated settlement charges from page 1 of the GFE. The loan originator, at its option, may provide the borrower with the same information for two alternative loans, one with a higher interest rate, if available, and one with a lower interest rate, if available, from the loan originator. The loan originator should list in the tradeoff table only alternative loans for which it would presently issue a GFE based on the same information the loan originator considered in issuing this GFE. The alternative loans must use the same loan amount and be otherwise identical to the loan in the GFE. The alternative loans must have, for example, the identical number of payment periods; the same margin, index, and adjustment schedule if the loans are adjustable rate mortgages; and the same requirements for prepayment penalty and balloon payments. If the loan originator fills in the tradeoff table, the loan originator must show the borrower the loan amount, alternative interest rate, alternative monthly payment, the change in the monthly payment from the loan in this GFE to the alternative loan, the change in the total settlement charges from the loan in this GFE to the alternative loan, and the total settlement charges for the alternative loan. If these options are available, an applicant may request a new GFE, and a new GFE must be provided by the loan originator.

''*Using the shopping chart*.''—This chart is a shopping tool to be provided by the loan originator for the borrower to complete, in order to compare GFEs.

''*If your loan is sold in the future*.''—This section requires no loan originator action.

OMB Approval No. 2502-0265

Good Faith Estimate (GFE)

Name of Originator	Borrower
Originator Address	Property Address
Originator Phone Number	
Originator Email	Date of GFE

Purpose

This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at www.hud.gov/respa. If you decide you would like to proceed with this loan, contact us.

Shopping for your loan

Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

Important dates

1. The interest rate for this GFE is available through _____. After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through _____.
3. After you lock your interest rate, you must go to settlement within ☐ days (your rate lock period) to receive the locked interest rate.
4. You must lock the interest rate at least ☐ days before settlement.

Summary of your loan

Your initial loan amount is	$	
Your loan term is	years	
Your initial interest rate is	%	
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	$ per month	
Can your interest rate rise?	☐ No	☐ Yes, it can rise to a maximum of %. The first change will be in .
Even if you make payments on time, can your loan balance rise?	☐ No	☐ Yes, it can rise to a maximum of $
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	☐ No	☐ Yes, the first increase can be in and the monthly amount owed can rise to $. The maximum it can ever rise to is $.
Does your loan have a prepayment penalty?	☐ No	☐ Yes, your maximum prepayment penalty is $.
Does your loan have a balloon payment?	☐ No	☐ Yes, you have a balloon payment of $ due in years.

Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of $ _____.

Do we require you to have an escrow account for your loan?

☐ No, you do not have an escrow account. You must pay these charges directly when due.

☐ Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

Summary of your settlement charges

A	Your Adjusted Origination Charges *(See page 2)*	$
B	Your Charges for All Other Settlement Services *(See page 2)*	$
A + B	Total Estimated Settlement Charges	$

Understanding your estimated settlement charges

Your Adjusted Origination Charges	
1. **Our origination charge** This charge is for getting this loan for you.	
2. **Your credit or charge (points) for the specific interest rate chosen** ☐ The credit or charge for the interest rate of [ ] % is included in "Our origination charge." (See item 1 above.) ☐ You receive a credit of $ [ ] for this interest rate of [ ] %. This credit **reduces** your settlement charges. ☐ You pay a charge of $ [ ] for this interest rate of [ ] %. This charge (points) **increases** your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	
A Your Adjusted Origination Charges	$

Some of these charges can change at settlement. See the top of page 3 for more information.

Your Charges for All Other Settlement Services	
3. **Required services that we select** These charges are for services we require to complete your settlement. We will choose the providers of these services. *Service* / *Charge*	
4. **Title services and lender's title insurance** This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.	
5. **Owner's title insurance** You may purchase an owner's title insurance policy to protect your interest in the property.	
6. **Required services that you can shop for** These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below. *Service* / *Charge*	
7. **Government recording charges** These charges are for state and local fees to record your loan and title documents.	
8. **Transfer taxes** These charges are for state and local fees on mortgages and home sales.	
9. **Initial deposit for your escrow account** This charge is held in an escrow account to pay future recurring charges on your property and includes ☐ all property taxes, ☐ all insurance, and ☐ other [ ].	
10. **Daily interest charges** This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is $ [ ] per day for [ ] days (if your settlement is [ ]).	
11. **Homeowner's insurance** This charge is for the insurance you must buy for the property to protect from a loss, such as fire. *Policy* / *Charge*	
B Your Charges for All Other Settlement Services	$
A + B Total Estimated Settlement Charges	$

Good Faith Estimate (HUD-GFE) 2

Instructions

Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

These charges **cannot increase** at settlement:	The total of these charges **can increase up to 10%** at settlement:	These charges **can change** at settlement:
▪ Our origination charge ▪ Your credit or charge (points) for the specific interest rate chosen *(after you lock in your interest rate)* ▪ Your adjusted origination charges *(after you lock in your interest rate)* ▪ Transfer taxes	▪ Required services that we select ▪ Title services and lender's title insurance *(if we select them or you use companies we identify)* ▪ Owner's title insurance *(if you use companies we identify)* ▪ Required services that you can shop for *(if you use companies we identify)* ▪ Government recording charges	▪ Required services that you can shop for *(if you do not use companies we identify)* ▪ Title services and lender's title insurance *(if you do not use companies we identify)* ▪ Owner's title insurance *(if you do not use companies we identify)* ▪ Initial deposit for your escrow account ▪ Daily interest charges ▪ Homeowner's insurance

Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with **lower settlement charges,** then you will have a **higher interest rate.**
- If you want to choose this same loan with a **lower interest rate,** then you will have **higher settlement charges.**

If you would like to choose an available option, you must ask us for a new GFE.

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

	The loan in this GFE	**The same loan with lower settlement charges**	**The same loan with a lower interest rate**
Your initial loan amount	$	$	$
Your initial interest rate[1]	%	%	%
Your initial monthly amount owed	$	$	$
Change in the monthly amount owed from this GFE	No change	You will pay $ **more** every month	You will pay $ **less** every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be **reduced** by $	Your settlement charges will **increase** by $
How much your total estimated settlement charges will be	$	$	$

[1] *For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.*

Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

	This loan	**Loan 2**	**Loan 3**	**Loan 4**
Loan originator name				
Initial loan amount				
Loan term				
Initial interest rate				
Initial monthly amount owed				
Rate lock period				
Can interest rate rise?				
Can loan balance rise?				
Can monthly amount owed rise?				
Prepayment penalty?				
Balloon payment?				
Total Estimated Settlement Charges				

If your loan is sold in the future

Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 80105, Dec. 31, 2013]

APPENDIX D TO PART 1024—AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT FORMAT NOTICE

To: _____
From: _____
(Entity Making Statement)
Property: _____
Date: _____

This is to give you notice that [*referring party*] has a business relationship with [*settlement services provider(s)*]. [Describe the nature of the relationship between the referring party and the provider(s), including percentage of ownership interest, if applicable.] Because of this relationship, this referral may provide [*referring party*] a financial or other benefit.

[A.] Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for [settlement of your loan on] [or] [purchase, sale, or refinance of] the subject property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

[*provider and settlement service*] _____

_____

_____

[*charge or range of charges*] _____

_____

_____

[B.] Set forth below is the estimated charge or range of charges for the settlement services of an attorney, credit reporting agency, or real estate appraiser that we, as your lender, will require you to use, as a condition of your loan on this property, to represent our interests in the transaction.

[*provider and settlement service*] _____

_____

_____

[*charge or range of charges*] _____

_____

_____

ACKNOWLEDGMENT

I/we have read this disclosure form, and understand that *referring party* is referring me/us to purchase the above-described settlement service(s) and may receive a financial or other benefit as the result of this referral.

_____
Signature

[INSTRUCTIONS TO PREPARER:] [Use paragraph A for referrals other than those by a lender to an attorney, a credit reporting agency, or a real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. Use paragraph B for those referrals to an attorney, credit reporting agency, or real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. When applicable, use both paragraphs. Specific timing rules for delivery of the affiliated business disclosure statement are set forth in 12 CFR 1024.15(b)(1) of Regulation X). These INSTRUCTIONS TO PREPARER should not appear on the statement.]

APPENDIX E TO PART 1024—ARITHMETIC STEPS

I. EXAMPLE ILLUSTRATING AGGREGATE ANALYSIS

Assumptions

Disbursements:

$360 for school taxes disbursed on September 20
$1,200 for county property taxes:
$500 disbursed on July 25
$700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

STEP 1—INITIAL TRIAL BALANCE

	Aggregate		
	pmt	disb	bal
Jun	0	0	0
Jul	130	500	−370
Aug	130	0	−240
Sep	130	360	−470
Oct	130	0	−340
Nov	130	0	−210
Dec	130	700	−780
Jan	130	0	−650
Feb	130	0	−520
Mar	130	0	−390
Apr	130	0	−260
May	130	0	−130
Jun	130	0	0

STEP 2—ADJUSTED TRIAL BALANCE

[Increase monthly balances to eliminate negative balances]

	Aggregate		
	pmt	disb	bal
Jun	0	0	780
Jul	130	500	410
Aug	130	0	540
Sep	130	360	310
Oct	130	0	440
Nov	130	0	570
Dec	130	700	0

STEP 2—ADJUSTED TRIAL BALANCE—Continued

[Increase monthly balances to eliminate negative balances]

	Aggregate		
	pmt	disb	bal
Jan	130	0	130
Feb	130	0	260
Mar	130	0	390
Apr	130	0	520
May	130	0	650
Jun	130	0	780

STEP 3—TRIAL BALANCE WITH CUSHION

	Aggregate		
	pmt	disb	bal
Jun	0	0	1040
Jul	130	500	670
Aug	130	0	800
Sep	130	360	570
Oct	130	0	700
Nov	130	0	830
Dec	130	700	260
Jan	130	0	390
Feb	130	0	520
Mar	130	0	650
Apr	130	0	780

STEP 3—TRIAL BALANCE WITH CUSHION—Continued

	Aggregate		
	pmt	disb	bal
May	130	0	910
Jun	130	0	1040

II. EXAMPLE ILLUSTRATING SINGLE-ITEM ANALYSIS

Assumptions

Disbursements:

$360 for school taxes disbursed on September 20

$1,200 for county property taxes:
$500 disbursed on July 25
$700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

STEP 1—INITIAL TRIAL BALANCE

	Single-item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
June	0	0	0	0	0	0
July	100	500	−400	30	0	30
August	100	0	−300	30	0	60
September	100	0	−200	30	360	−270
October	100	0	−100	30	0	−240
November	100	0	0	30	0	−210
December	100	700	−600	30	0	−180
January	100	0	−500	30	0	−150
February	100	0	−400	30	0	−120
March	100	0	−300	30	0	−90
April	100	0	−200	30	0	−60
May	100	0	−100	30	0	−30
June	100	0	0	30	0	0

STEP 2—ADJUSTED TRIAL BALANCE

[Increase monthly balances to eliminate negative balances]

	Single-item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
Jun	0	0	600	0	0	270
Jul	100	500	200	30	0	300
Aug	100	0	300	30	0	330
Sep	100	0	400	30	360	0
Oct	100	0	500	30	0	30
Nov	100	0	600	30	0	60
Dec	100	700	0	30	0	90
Jan	100	0	100	30	0	120
Feb	100	0	200	30	0	150
Mar	100	0	300	30	0	180
Apr	100	0	400	30	0	210
May	100	0	500	30	0	240

STEP 2—ADJUSTED TRIAL BALANCE—Continued

[Increase monthly balances to eliminate negative balances]

	Single-item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
Jun	100	0	600	30	0	270

STEP 3—TRIAL BALANCE WITH CUSHION

	Single-item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
Jun	0	0	800	0	0	330
Jul	100	500	400	30	0	360
Aug	100	0	500	30	0	390
Sep	100	0	600	30	360	60
Oct	100	0	700	30	0	90
Nov	100	0	800	30	0	120
Dec	100	700	200	30	0	150
Jan	100	0	300	30	0	180
Feb	100	0	400	30	0	210
Mar	100	0	500	30	0	240
Apr	100	0	600	30	0	270
May	100	0	700	30	0	300
Jun	100	0	800	30	0	330

APPENDIX MS TO PART 1024—MORTGAGE SERVICING

APPENDIX MS–1 TO PART 1024

[Sample language; use business stationery or similar heading]

[Date]

SERVICING DISCLOSURE STATEMENT NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 *et seq.*). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. ''Servicing'' refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

Servicing Transfer Information

[We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.]

[or]

[We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.]

[or]

[The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.]

[INSTRUCTIONS TO PREPARER: Insert the date and select the appropriate language under ''Servicing Transfer Information.'' The model format may be annotated with further information that clarifies or enhances the model language.]

APPENDIX MS–2 TO PART 1024

NOTICE OF SERVICING TRANSFER

The servicing of your mortgage loan is being transferred, effective [Date]. This means that after this date, a new servicer will be collecting your mortgage loan payments from you. Nothing else about your mortgage loan will change.

[Name of present servicer] is now collecting your payments. [Name of present servicer] will stop accepting payments received from you after [Date].

[Name of new servicer] will collect your payments going forward. Your new servicer will start accepting payments received from you on [Date].

SEND ALL PAYMENTS DUE ON OR AFTER [DATE] TO [NAME OF NEW SERVICER] AT THIS ADDRESS: [NEW SERVICER ADDRESS].

If you have any questions for either your present servicer, [Name of present servicer] or your new servicer [Name of new servicer], about your mortgage loan or this transfer, please contact them using the information below:

Current Servicer:	New Servicer:
[Name of present servicer]	[Name of new servicer]
[Individual or Department]	[Individual or Department]
[Telephone Number]	[Telephone Number]
[Address]	[Address]

[Use this paragraph if appropriate; otherwise omit.] Important note about insurance: If you have mortgage life or disability insurance or any other type of optional insurance, the transfer of servicing rights may affect your insurance in the following way:

_____

You should do the following to maintain coverage:

_____

Under Federal law, during the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer on or before its due date may not be treated by the new servicer as late, and a late fee may not be imposed on you.

_____

[NAME OF PRESENT SERVICER]

_____

Date

[and] [or]

_____

[NAME OF NEW SERVICER]

_____

Date

[78 FR 10886, Feb. 14, 2013]

APPENDIX MS–3 TO PART 1024

MODEL FORCE-PLACED INSURANCE NOTICE FORMS

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MS–3(A)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY §1024.37(C)(2)

[Name and Mailing Address of Servicer]
[Date of Notice]
[Borrower's Name]
[Borrower's Mailing Address]
Subject: PLEASE PROVIDE INSURANCE INFORMATION FOR [Property Address]
Dear [Borrower's Name]:

Our records show that your [hazard] [Insurance Type] insurance [is expiring] [expired] [provides insufficient coverage], and we do not have evidence that you have obtained new coverage. BECAUSE [HAZARD] [INSURANCE TYPE] INSURANCE IS REQUIRED ON YOUR PROPERTY, [WE BOUGHT INSURANCE FOR YOUR PROPERTY] [WE PLAN TO BUY INSURANCE FOR YOUR PROPERTY]. You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

• MAY BE SIGNIFICANTLY MORE EXPENSIVE THAN THE INSURANCE YOU CAN BUY YOURSELF.

• MAY NOT PROVIDE AS MUCH COVERAGE AS AN INSURANCE POLICY YOU BUY YOURSELF.

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS–3(B)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY §1024.37(D)(2)(I)

[Name and Mailing Address of Servicer]
[Date of Notice]
[Borrower's Name]
[Borrower's Mailing Address]
Subject: SECOND AND FINAL NOTICE—PLEASE PROVIDE INSURANCE INFORMATION FOR [Property Address]
Dear [Borrower's Name]:

This is your second and final notice that our records show that your [hazard] [Insurance Type] insurance [is expiring] [expired] [provides insufficient coverage], and we do not have evidence that you have obtained new coverage. BECAUSE [HAZARD] [INSURANCE TYPE] INSURANCE IS REQUIRED ON YOUR PROPERTY, [WE BOUGHT INSURANCE FOR YOUR PROPERTY] [WE PLAN TO BUY INSURANCE FOR YOUR PROPERTY]. You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

• [COSTS $[PREMIUM CHARGE]] [WILL COST AN ESTIMATED $[PREMIUM CHARGE]] ANNUALLY, WHICH MAY BE SIGNIFICANTLY MORE EXPENSIVE THAN INSURANCE YOU CAN BUY YOURSELF.

• MAY NOT PROVIDE AS MUCH COVERAGE AS AN INSURANCE POLICY YOU BUY YOURSELF.

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS–3(C)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY §1024.37(D)(2)(II)

[Name and Mailing Address of Servicer]
[Date of Notice]
[Borrower's Name]
[Borrower's Mailing Address]
Subject: SECOND AND FINAL NOTICE—PLEASE PROVIDE INSURANCE INFORMATION FOR [Property Address]
Dear [Borrower's Name]:

We received the insurance information you provided, but we are unable to verify coverage from [Date Range].

PLEASE PROVIDE US WITH INSURANCE INFORMATION FOR [DATE RANGE] IMMEDIATELY.

We will charge you for insurance we [bought] [plan to buy] for [Date Range] unless we can verify that you have insurance coverage for [Date Range].

The insurance we [bought] [buy]:

• [COSTS $[PREMIUM CHARGE]] [WILL COST AN ESTIMATED $[PREMIUM CHARGE]] ANNUALLY, WHICH MAY BE SIGNIFICANTLY MORE EXPENSIVE THAN INSURANCE YOU CAN BUY YOURSELF.

• MAY NOT PROVIDE AS MUCH COVERAGE AS AN INSURANCE POLICY YOU BUY YOURSELF.

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS–3(D)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY §1024.37(E)(2)

[Name and Mailing Address of Servicer]
[Date of Notice]
[Borrower's Name]
[Borrower's Mailing Address]
Subject: PLEASE UPDATE INSURANCE INFORMATION FOR [Property Address]
Dear [Borrower's Name]:

Because we did not have evidence that you had [hazard] [Insurance Type] insurance on the property listed above, we bought insurance on your property and added the cost to your mortgage loan account.

The policy that we bought [expired] [is scheduled to expire]. BECAUSE [HAZARD][INSURANCE TYPE] INSURANCE] IS REQUIRED ON YOUR PROPERTY, WE INTEND TO MAINTAIN INSURANCE ON YOUR PROPERTY BY RENEWING OR REPLACING THE INSURANCE WE BOUGHT.

The insurance we buy:

• [COSTS $[PREMIUM CHARGE]] [WILL COST AN ESTIMATED $[PREMIUM CHARGE]] ANNUALLY, WHICH MAY BE SIGNIFICANTLY MORE EXPENSIVE THAN INSURANCE YOU CAN BUY YOURSELF.

• MAY NOT PROVIDE AS MUCH COVERAGE AS AN INSURANCE POLICY YOU BUY YOURSELF.

If you buy [hazard] [Insurance Type] insurance, you should immediately provide us with your insurance information.

[Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

[81 FR 72376, Oct. 19, 2016]

APPENDIX MS–4 TO PART 1024—MODEL CLAUSES FOR THE WRITTEN EARLY INTERVENTION NOTICE

MS–4(A)—STATEMENT ENCOURAGING THE BORROWER TO CONTACT THE SERVICER AND ADDITIONAL INFORMATION ABOUT LOSS MITIGATION OPTIONS (§1024.39(b)(2)(i), (ii) AND (iv))

Call us today to learn more about your options and instructions for how to apply. [The longer you wait, or the further you fall behind on your payments, the harder it will be to find a solution.]
[Servicer Name]
[Servicer Address]
[Servicer Telephone Number]
[For more information, visit [Servicer Web site] [and][or] [Email Address]].

MS–4(B)—AVAILABLE LOSS MITIGATION OPTIONS (§1024.39(b)(2)(iii))

[If you need help, the following options may be possible (most are subject to lender approval):]

• [Refinance your loan with us or another lender;]

• [Modify your loan terms with us;]

• [Payment forbearance temporarily gives you more time to pay your monthly payment;] [or]

• [If you are not able to continue paying your mortgage, your best option may be to find more affordable housing. As an alternative to foreclosure, you may be able to sell your home and use the proceeds to pay off your current loan.]

MS–4(C)—HOUSING COUNSELORS (§1024.39(b)(2)(v))

For help exploring your options, the Federal government provides contact information for housing counselors, which you can

access by contacting [the Consumer Financial Protection Bureau at [Bureau Housing Counselor List Web site]] [the Department of Housing and Urban Development at [HUD Housing Counselor List Web site]] or by calling [HUD Housing Counselor List Telephone Number].

MS–4(D)—WRITTEN EARLY INTERVENTION NOTICE FOR SERVICERS SUBJECT TO FDCPA (§ 1024.39(d)(2)(iii))

This is a legally required notice. We are sending this notice to you because you are behind on your mortgage payment. We want to notify you of possible ways to avoid losing your home. We have a right to invoke foreclosure based on the terms of your mortgage contract. Please read this letter carefully.

[78 FR 10887, Feb. 14, 2013, as amended at 81 FR 72376, Oct. 19, 2016; 82 FR 30948, July 5, 2017]

SUPPLEMENT I TO PART 1024—OFFICIAL BUREAU INTERPRETATIONS

Introduction

1. *Official status*. This commentary is the primary vehicle by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation X. Good faith compliance with this commentary affords protection from liability under section 19(b) of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2617(b).

2. *Requests for official interpretations*. A request for an official interpretation shall be in writing and addressed to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552. A request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents. Except in unusual circumstances, such official interpretations will not be issued separately but will be incorporated in the official commentary to this part, which will be amended periodically. No official interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

3. *Unofficial oral interpretations*. Unofficial oral interpretations may be provided at the discretion of Bureau staff. Written requests for such interpretations should be sent to the address set forth for official interpretations. Unofficial oral interpretations provide no protection under section 19(b) of RESPA. Ordinarily, staff will not issue unofficial oral interpretations on matters adequately covered by this part or the official Bureau interpretations.

4. *Rules of construction*. (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as ''including, but not limited to,'' ''among other things,'' ''for example,'' or ''such as.''

(b) Throughout the commentary, reference to ''this section'' or ''this paragraph'' means the section or paragraph in the regulation that is the subject of the comment.

5. *Comment designations*. Each comment in the commentary is identified by a number and the regulatory section or paragraph that the comment interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 1024.37(c)(1) are further divided by subparagraph, such as comment 37(c)(1)(i)–1. In other cases, comments have more general application and are designated, for example, as comment 40(a)–1. This introduction may be cited as comments I–1 through I–5.

SUBPART A—GENERAL PROVISIONS

Section 1024.5 Coverage of RESPA

5(c) Relation to State laws.

Paragraph 5(c)(1).

1. State laws that are inconsistent with the requirements of RESPA or Regulation X may be preempted by RESPA or Regulation X. State laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X. In addition, nothing in RESPA or Regulation X should be construed to preempt the entire field of regulation of the practices covered by RESPA or Regulation X, including the regulations in Subpart C with respect to mortgage servicers or mortgage servicing.

SUBPART B—MORTGAGE SETTLEMENT AND ESCROW ACCOUNTS [RESERVED]

Section 1024.17 Escrow Accounts

17(k) Timely payments.

17(k)(5) Timely payment of hazard insurance.

17(k)(5)(ii) Inability to disburse funds.

17(k)(5)(ii)(A) When inability exists.

1. *Examples of reasonable basis to believe that a policy has been cancelled or not renewed*. The following are examples of where a servicer has a reasonable basis to believe that a borrower's hazard insurance policy has been canceled or not renewed for reasons other than the nonpayment of premium charges:

i. A borrower notifies a servicer that the borrower has cancelled the hazard insurance coverage, and the servicer has not received

notification of other hazard insurance coverage.

ii. A servicer receives a notification of cancellation or non-renewal from the borrower's insurance company before payment is due on the borrower's hazard insurance.

iii. A servicer does not receive a payment notice by the expiration date of the borrower's hazard insurance policy.

17(k)(5)(ii)(C) Recoupment for advances.

1. *Month-to-month advances.* A servicer that advances the premium payment to be disbursed from an escrow account may advance the payment on a month-to-month basis, if permitted by State or other applicable law and accepted by the borrower's hazard insurance company.

SUBPART C—MORTGAGE SERVICING

§ 1024.30—Scope

30(b) Exemptions.

1. *Exemption for Farm Credit System institutions.* Pursuant to 12 CFR 617.7000, certain servicers may be considered ''qualified lenders'' only with respect to loans discounted or pledged pursuant to 12 U.S.C. 2015(b)(1). To the extent a servicer, as defined in RESPA, services a mortgage loan that has not been discounted or pledged pursuant to 12 U.S.C. 2015(b)(1), and is not subject to the requirements set forth in 12 CFR 617, the servicer may be required to comply with the requirements of §§ 1024.38 through 41 with respect to that mortgage loan.

Paragraph 30(c)(2).

1. *Principal residence.* If a property ceases to be a borrower's principal residence, the procedures set forth in §§ 1024.39 through 1024.41 do not apply to a mortgage loan secured by that property. Determination of principal residence status will depend on the specific facts and circumstances regarding the property and applicable State law. For example, a vacant property may still be a borrower's principal residence.

30(d) Successors in interest.

1. *Treatment of confirmed successors in interest.* Under § 1024.30(d), a confirmed successor in interest must be considered a borrower for purposes of this subpart and § 1024.17, regardless of whether the successor in interest assumes the mortgage loan obligation under State law. For example, if a servicer receives a loss mitigation application from a confirmed successor in interest, the servicer 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. Treatment of a confirmed successor in interest as a borrower for purposes of this subpart and § 1024.17 does not affect whether the confirmed successor in interest is subject to the contractual obligations of the mortgage loan agreement, which is determined by applicable State law. 2Communications in compliance with this part to a confirmed successor in interest as defined in § 1024.31 do not violate section 805(b) of the Fair Debt Collection Practices Act (FDCPA) because consumer for purposes of FDCPA section 805 includes any person who meets the definition in this part of confirmed successor in interest.

2. *Assumption of the mortgage loan obligation.* A servicer may not require a confirmed successor in interest to assume the mortgage loan obligation under State law to be considered a borrower for purposes of § 1024.17 and this subpart. If a successor in interest assumes a mortgage loan obligation under State law or is otherwise liable on the mortgage loan obligation, the protections that the successor in interest enjoys under this part are not limited to the protections that apply under § 1024.30(d) to a confirmed successor in interest.

3. *Treatment of transferor borrowers.* Even after a servicer's confirmation of a successor in interest, the servicer is still required to comply with all applicable requirements of this subpart with respect to the transferor borrower.

§ 1024.31—Definitions

Delinquency.

1. *Length of delinquency.* A borrower's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and, if applicable, escrow becomes due and unpaid, and lasts until such time as no periodic payment is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee.

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

3. *Payment tolerance.* For any given billing cycle for which a borrower's payment is less than the periodic payment due, if a servicer chooses not to treat a borrower as delinquent for purposes of any section of this subpart, that borrower is not delinquent as defined in § 1024.31.

4. *Creditor's contract rights.* This subpart does not prevent a creditor from exercising a

right provided by a mortgage loan contract to accelerate payment for a breach of that contract. Failure to pay the amount due after the creditor accelerates the mortgage loan obligation in accordance with the mortgage loan contract would begin or continue delinquency.

Loss mitigation application.

1. *Borrower's representative.* A loss mitigation application is deemed to be submitted by a borrower if the loss mitigation application is submitted by an agent of the borrower. Servicers may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf.

Loss mitigation option.

1. *Types of loss mitigation options.* Loss mitigation options include temporary and long-term relief, including options that allow borrowers who are behind on their mortgage payments to remain in their homes or to leave their homes without a foreclosure, such as, without limitation, refinancing, trial or permanent modification, repayment of the amount owed over an extended period of time, forbearance of future payments, short-sale, deed-in-lieu of foreclosure, and loss mitigation programs sponsored by a locality, a State, or the Federal government.

2. *Available through the servicer.* A loss mitigation option available through the servicer refers to an option for which a borrower may apply, even if the borrower ultimately does not qualify for such option.

Qualified written request.

1. A qualified written request is a written notice a borrower provides to request a servicer either correct an error relating to the servicing of a mortgage loan or to request information relating to the servicing of the mortgage loan. A qualified written request is not required to include both types of requests. For example, a qualified written request may request information relating to the servicing of a mortgage loan but not assert that an error relating to the servicing of a loan has occurred.

2. A qualified written request is just one form that a written notice of error or information request may take. Thus, the error resolution and information request requirements in §§1024.35 and 1024.36 apply as set forth in those sections irrespective of whether the servicer receives a qualified written request.

Service provider.

1. Service providers may include attorneys retained to represent a servicer or an owner or assignee of a mortgage loan in a foreclosure proceeding, as well as other professionals retained to provide appraisals or inspections of properties.

Successor in interest.

1. *Joint tenants and tenants by the entirety.* If a borrower who has an ownership interest as a joint tenant or tenant by the entirety in a property securing a mortgage loan subject to this subpart dies, a surviving joint tenant or tenant by the entirety with a right of survivorship in the property is a successor in interest as defined in §1024.31.

2. *Beneficiaries of* inter vivos *trusts.* In the event of 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, the beneficiaries of the *inter vivos* trust rather than the *inter vivos* trust itself are considered to be the successors in interest for purposes of §1024.31. For example, assume Borrower A transfers her home into such an *inter vivos* trust for the benefit of her spouse and herself. As of the transfer date, Borrower A and her spouse would be considered successors in interest and, upon confirmation, would be borrowers for purposes of certain provisions of Regulation X. If the lender has not released Borrower A from the loan obligation, Borrower A would also remain a borrower more generally for purposes of Regulation X.

§1024.32—General Disclosure Requirements.

32(c) Confirmed successors in interest.

32(c)(1) Optional notice with acknowledgment form.

1. A servicer may identify in the acknowledgment form examples of the types of notices and communications identified in §1024.32(c)(1)(iii), such as periodic statements and mortgage servicing transfer notices. Any examples provided should be the types of notices or communications that would be available to a confirmed successor in interest if the confirmed successor in interest executed the acknowledgment and returned it to the servicer.

32(c)(2) Effect of failure to execute acknowledgment.

1. *No time limit to return acknowledgment.* A confirmed successor in interest may provide an executed acknowledgment that complies with §1024.32(c)(1)(iv) to the servicer at any time after confirmation.

2. *Effect of revocation of acknowledgment.* If a confirmed successor in interest who is not liable on the mortgage loan obligation executes and then later revokes an acknowledgment pursuant to §1024.32(c)(1)(iv), the servicer is not required to provide to the confirmed successor in interest any written disclosure required by §1024.17, §1024.33, §1024.34, §1024.37, or §1024.39 or to comply with the live contact requirements in §1024.39(a) with respect to the confirmed successor in interest from the date the revocation is received until the confirmed successor in interest either assumes the mortgage loan obligation under State law or executes a new acknowledgment that complies with §1024.32(c)(1)(iv) and provides it to the servicer.

32(c)(4) Multiple notices unnecessary.

1. *Specific written disclosure.* A servicer may rely on §1024.32(c)(4) if the servicer provides a specific written disclosure required by §1024.17, §1024.33, §1024.34, §1024.37, or §1024.39(b) to another borrower. For example, a servicer is not required to provide a force-placed insurance notice required under §1024.37 to a confirmed successor in interest if the servicer is providing the same force-placed insurance notice to a transferor borrower or to another confirmed successor in interest.

§1024.33—Mortgage Servicing Transfers

33(a) Servicing disclosure statement.

1. *Terminology.* Although the servicing disclosure statement must be clear and conspicuous pursuant to §1024.32(a), §1024.33(a) does not set forth any specific rules for the format of the statement, and the specific language of the servicing disclosure statement in appendix MS–1 is not required to be used. The model format may be supplemented with additional information that clarifies or enhances the model language.

2. *Delivery to co-applicants.* If co-applicants indicate the same address on their application, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants on the application, a copy must be delivered to each of the co-applicants.

3. *Lender servicing.* If the lender, mortgage broker who anticipates using table funding, or dealer in a first lien dealer loan knows at the time of making the disclosure whether it will service the mortgage loan for which the applicant has applied, the disclosure must, as applicable, state that such entity will service such loan and does not intend to sell, transfer, or assign the servicing of the loan, or that such entity intends to assign, sell, or transfer servicing of such mortgage loan before the first payment is due. In all other instances, a disclosure that states that the servicing of the loan may be assigned, sold, or transferred while the loan is outstanding complies with §1024.33(a).

33(b) Notices of transfer of loan servicing.

Paragraph 33(b)(3).

1. *Delivery.* A servicer mailing the notice of transfer must deliver the notice to the mailing address (or addresses) listed by the borrower in the mortgage loan documents, unless the borrower has notified the servicer of a new address (or addresses) pursuant to the servicer's requirements for receiving a notice of a change of address.

33(c) Borrower payments during transfer of servicing.

33(c)(1) Payments not considered late.

1. *Late fees prohibited.* The prohibition in §1024.33(c)(1) on treating a payment as late for any purpose would prohibit a late fee from being imposed on the borrower with respect to any payment on the mortgage loan. *See* RESPA section 6(d) (12 U.S.C. 2605(d)).

2. *Compliance with §1024.39.* A transferee servicer's compliance with §1024.39 during the 60-day period beginning on the effective date of a servicing transfer does not constitute treating a payment as late for purposes of §1024.33(c)(1).

§1024.34—Timely Escrow Payments and Treatment of Escrow Balances

Paragraph 34(b)(1).

1. *Netting of funds.* Section 1024.34(b)(1) does not prohibit a servicer from netting any remaining funds in an escrow account against the outstanding balance of the borrower's mortgage loan.

Paragraph 34(b)(2).

1. *Refund always permissible.* A servicer is not required to credit funds in an escrow account to an escrow account for a new mortgage loan and may, in all circumstances, comply with the requirements of §1024.34(b) by refunding the funds in the escrow account to the borrower pursuant to §1024.34(b)(1).

2. *Borrower agreement.* A borrower may agree either orally or in writing to a servicer's crediting of any remaining balance in an escrow account to a new escrow account for a new mortgage loan pursuant to §1024.34(b)(2).

§1024.35—Error Resolution Procedures

35(a) Notice of error.

1. *Borrower's representative.* A notice of error is submitted by a borrower if the notice of error is submitted by an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the notice of error as having been submitted by the borrower.

2. *Information request.* A servicer should not rely solely on the borrower's description of a submission to determine whether the submission constitutes a notice of error under §1024.35(a), an information request under §1024.36(a), or both. For example, a borrower may submit a letter that claims to be a ''Notice of Error'' that indicates that the borrower wants to receive the information set forth in an annual escrow account statement and asserts an error for the servicer's failure to provide the borrower an annual escrow statement. Such a letter may constitute an information request under §1024.36(a) that triggers an obligation by the

servicer to provide an annual escrow statement. A servicer should not rely on the borrower's characterization of the letter as a ''Notice of Error,'' but must evaluate whether the letter fulfills the substantive requirements of a notice of error, information request, or both.

35(b) Scope of error resolution.

1. *Noncovered errors.* A servicer is not required to comply with §1024.35(d), (e) and (i) with respect to a borrower's assertion of an error that is not defined as an error in §1024.35(b). For example, the following are not errors for purposes of §1024.35:

i. An error relating to the origination of a mortgage loan;

ii. An error relating to the underwriting of a mortgage loan;

iii. An error relating to a subsequent sale or securitization of a mortgage loan;

iv. An error relating to a determination to sell, assign, or transfer the servicing of a mortgage loan. However, an error relating to the failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer is an error for purposes of §1024.35.

2. *Unreasonable basis.* For purposes of §1024.35(b)(5), a servicer lacks a reasonable basis to impose fees that are not bona fide, such as:

i. A late fee for a payment that was not late;

ii. A charge imposed by a service provider for a service that was not actually rendered;

iii. A default property management fee for borrowers that are not in a delinquency status that would justify the charge; or

iv. A charge for force-placed insurance in a circumstance not permitted by §1024.37.

35(c) Contact information for borrowers to assert errors.

1. *Exclusive address not required.* A servicer is not required to designate a specific address that a borrower must use to assert an error. If a servicer does not designate a specific address that a borrower must use to assert an error, a servicer must respond to a notice of error received by any office of the servicer.

2. *Notice of an exclusive address.* A notice establishing an address that a borrower must use to assert an error may be included with a different disclosure, such as a notice of transfer. The notice is subject to the clear and conspicuous requirement in §1024.32(a)(1). If a servicer establishes an address that a borrower must use to assert an error, a servicer must provide that address to the borrower in the following contexts:

i. The written notice designating the specific address, required pursuant to §1024.35(c) and §1024.36(b).

ii. Any periodic statement or coupon book required pursuant to 12 CFR 1026.41.

iii. Any Web site the servicer maintains in connection with the servicing of the loan.

iv. Any notice required pursuant to §§1024.39 or .41 that includes contact information for assistance.

3. *Multiple offices.* A servicer may designate multiple office addresses for receiving notices of errors. However, a servicer is required to comply with the requirements of §1024.35 with respect to a notice of error received at any such designated address regardless of whether that specific address was provided to a specific borrower asserting an error. For example, a servicer may designate an address to receive notices of error for borrowers located in California and a separate address to receive notices of errors for borrowers located in Texas. If a borrower located in California asserts an error through the address used by the servicer for borrowers located in Texas, the servicer is still considered to have received a notice of error and must comply with the requirements of §1024.35.

4. *Internet intake of notices of error.* A servicer may, but need not, establish a process for receiving notices of error through email, Web site form, or other online intake methods. Any such online intake process shall be in addition to, and not in lieu of, any process for receiving notices of error by mail. The process or processes established by the servicer for receiving notices of error through an online intake method shall be the exclusive online intake process or processes for receiving notices of error. A servicer is not required to provide a separate notice to a borrower to establish a specific online intake process as an exclusive online process for receiving such notices of error.

35(e) Response to notice of error.

35(e)(1) Investigation and response requirements.

Paragraph 35(e)(1)(i).

1. *Notices alleging multiple errors; separate responses permitted.* A servicer may respond to a notice of error that alleges multiple errors through either a single response or separate responses that address each asserted error.

Paragraph 35(e)(1)(ii).

1. *Different or additional errors; separate responses permitted.* A servicer may provide the response required by §1024.35(e)(1)(ii) for different or additional errors identified by the servicer in the same notice that responds to errors asserted by the borrower pursuant to §1024.35(e)(1)(i) or in a separate response that addresses the different or additional errors identified by the servicer.

35(e)(3) Time limits.

35(e)(3)(i) In general.

Paragraph 35(e)(3)(i)(B).

1. *Foreclosure sale timing.* If a servicer cannot comply with its obligations pursuant to §1024.35(e) by the earlier of a foreclosure sale or 30 days after receipt of the notice of error,

a servicer may cancel or postpone a foreclosure sale, in which case the servicer would meet the time limit in §1024.35(e)(3)(i)(B) by complying with the requirements of §1024.35(e) before the earlier of 30 days after receipt of the notice of error (excluding legal public holidays, Saturdays, and Sundays) or the date of the rescheduled foreclosure sale.

35(e)(3)(ii) Extension of time limit.

1. *Notices alleging multiple errors; extension of time.* A servicer may treat a notice of error that alleges multiple errors as separate notices of error and may extend the time period for responding to each asserted error for which an extension is permissible under §1024.35(e)(3)(ii).

35(e)(4) Copies of documentation.

1. *Types of documents to be provided.* A servicer is required to provide only those documents actually relied upon by the servicer to determine that no error occurred. Such documents may include documents reflecting information entered in a servicer's collection system. For example, in response to an asserted error regarding payment allocation, a servicer may provide a printed screen-capture showing amounts credited to principal, interest, escrow, or other charges in the servicer's system for the borrower's mortgage loan account.

35(g) Requirements not applicable.

35(g)(1) In general.

Paragraph 35(g)(1)(i).

1. *New and material information.* A dispute between a borrower and a servicer with respect to whether information was previously reviewed by a servicer or with respect to whether a servicer properly determined that information reviewed was not material to its determination of the existence of an error, does not itself constitute new and material information.

Paragraph 35(g)(1)(ii).

1. *Examples of overbroad notices of error.* The following are examples of notices of error that are overbroad:

i. Assertions of errors regarding substantially all aspects of a mortgage loan, including errors relating to all aspects of mortgage origination, mortgage servicing, and foreclosure, as well as errors relating to the crediting of substantially every borrower payment and escrow account transaction;

ii. Assertions of errors in the form of a judicial action complaint, subpoena, or discovery request that purports to require servicers to respond to each numbered paragraph; and

iii. Assertions of errors in a form that is not reasonably understandable or is included with voluminous tangential discussion or requests for information, such that a servicer cannot reasonably identify from the notice of error any error for which §1024.35 requires a response.

35(h) Payment requirements prohibited.

1. *Borrower obligation to make payments.* Section 1024.35(h) prohibits a servicer from requiring a borrower to make a payment that may be owed on a borrower's account as a prerequisite to investigating or responding to a notice of error submitted by a borrower, but does not alter or otherwise affect a borrower's obligation to make payments owed pursuant to the terms of a mortgage loan. For example, if a borrower makes a monthly payment in February for a mortgage loan, but asserts an error relating to the servicer's acceptance of the February payment, §1024.35(h) does not alter a borrower's obligation to make a monthly payment that the borrower owes for March. A servicer, however, may not require that a borrower make the March payment as a condition for complying with its obligations under §1024.35 with respect to the notice of error on the February payment.

§1024.36—Requests for Information

36(a) Information request.

1. *Borrower's representative.* An information request is submitted by a borrower if the information request is submitted by an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the request for information as having been submitted by the borrower.

2. *Owner or assignee of a mortgage loan.* i. When a loan is not held in a trust for which an appointed trustee receives payments on behalf of the trust, a servicer complies 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. A servicer is not the owner or assignee for purposes of §1024.36(d) if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the mortgage loan obligation. The Government National Mortgage Association is not the owner or assignee for purposes of such requests for information solely as a result of its role as the guarantor of the security in which the loan serves as the collateral.

ii. When the loan is held in a trust for which an appointed trustee receives payments on behalf of the trust, a servicer complies with §1024.36(d) by responding to a borrower's request for information regarding the owner, assignee, or trust of the mortgage

loan with the following information, as applicable:

A. For any request for information where the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is not the owner of the loan or the trustee of the securitization trust in which the loan is held: The name of the trust, and the name, address, and appropriate contact information for the trustee. Assume, for example, a mortgage loan is owned by Mortgage Loan Trust, Series ABC–1, for which XYZ Trust Company is the trustee. The servicer complies with §1024.36(d) by identifying the owner as Mortgage Loan Trust, Series ABC–1, and providing the name, address, and appropriate contact information for XYZ Trust Company as the trustee.

B. If the request for information did not expressly request the name or number of the trust or pool and the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is the owner of the loan or the trustee of the securitization trust in which the loan is held: The name and contact information for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, as applicable, without also providing the name of the trust.

C. If the request for information did expressly request the name or number of the trust or pool and the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is the owner of the loan or the trustee of the securitization trust in which the loan is held: The name of the trust, and the name, address, and appropriate contact information for the trustee, as in comment 36(a)–2.ii.A above.

36(b) Contact information for borrowers to request information.

1. *Exclusive address not required.* A servicer is not required to designate a specific address that a borrower must use to request information. If a servicer does not designate a specific address that a borrower must use to request information, a servicer must respond to an information request received by any office of the servicer.

2. *Notice of an exclusive address.* A notice establishing an address that a borrower must use to request information may be included with a different disclosure, such as a notice of transfer. The notice is subject to the clear and conspicuous requirement in §1024.32(a)(1). If a servicer establishes an address that a borrower must use to request information, a servicer must provide that address to the borrower in the following contexts:

i. The written notice designating the specific address, required pursuant to §1024.35(c) and §1024.36(b).

ii. Any periodic statement or coupon book required pursuant to 12 CFR 1026.41.

iii. Any Web site the servicer maintains in connection with the servicing of the loan.

iv. Any notice required pursuant to §§1024.39 or .41 that includes contact information for assistance.

3. *Multiple offices.* A servicer may designate multiple office addresses for receiving information requests. However, a servicer is required to comply with the requirements of §1024.36 with respect to an information request received at any such address regardless of whether that specific address was provided to a specific borrower requesting information. For example, a servicer may designate an address to receive information requests for borrowers located in California and a separate address to receive information requests for borrowers located in Texas. If a borrower located in California requests information through the address used by the servicer for borrowers located in Texas, the servicer is still considered to have received an information request and must comply with the requirements of §1024.36.

4. *Internet intake of information requests.* A servicer may, but need not, establish a process for receiving information requests through email, Web site form, or other online intake methods. Any such online intake process shall be in addition to, and not in lieu of, any process for receiving information requests by mail. The process or processes established by the servicer for receiving information requests through an online intake method shall be the exclusive online intake process or processes for receiving information requests. A servicer is not required to provide a separate notice to a borrower to establish a specific online intake process as an exclusive online process for receiving information requests.

36(d) Response to information request.

36(d)(1) Investigation and response requirements.

Paragraph 36(d)(1)(ii).

1. *Information not available.* Information is not available if:

i. The information is not in the servicer's control or possession, or

ii. The information cannot be retrieved in the ordinary course of business through reasonable efforts.

2. *Examples.* The following examples illustrate when information is available (or not available) to a servicer under §1024.36(d)(1)(ii):

i. A borrower requests a copy of a telephonic communication with a servicer. The servicer's 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 the servicer.

ii. A borrower requests information stored on electronic back-up media. Information on electronic back-up media is not accessible by the servicer's personnel in the ordinary course of business without undertaking extraordinary efforts to identify and restore the information from the electronic back-up media. The information requested by the borrower is not available to the servicer.

iii. A borrower requests information stored at an offsite document storage facility. A servicer has a right to access documents at the offsite document storage facility and servicer personnel can access those documents through reasonable efforts in the ordinary course of business. The information requested by the borrower is available to the servicer assuming that the information can be found within the offsite documents with reasonable efforts.

36(f) Requirements not applicable.

36(f)(1) In general.

Paragraph 36(f)(1)(i).

1. A borrower's request for a type of information that can change over time is not substantially the same as a previous information request for the same type of information if the subsequent request covers a different time period than the prior request.

Paragraph 36(f)(1)(ii).

1. *Confidential, proprietary or privileged information.* A request for confidential, proprietary or privileged information of a servicer is not an information request for which the servicer is required to comply with the requirements of §1024.36(c) and (d). Confidential, proprietary or privileged information may include information requests relating to, for example:

i. Information regarding management or profitability of a servicer, including information provided to investors in the servicer.

ii. Compensation, bonuses, or personnel actions relating to servicer personnel, including personnel responsible for servicing a borrower's mortgage loan account;

iii. Records of examination reports, compliance audits, borrower complaints, and internal investigations or external investigations; or

iv. Information protected by the attorney-client privilege.

Paragraph 36(f)(1)(iii).

1. *Examples of irrelevant information.* The following are examples of irrelevant information:

i. Information that relates to the servicing of mortgage loans other than a borrower's mortgage loan, including information reported to the owner of a mortgage loan regarding individual or aggregate collections for mortgage loans owned by that entity;

ii. The servicer's training program for servicing personnel;

iii. The servicer's servicing program guide; or

iv. Investor instructions or requirements for servicers regarding criteria for negotiating or approving any program with a borrower, including any loss mitigation option.

Paragraph 36(f)(1)(iv).

1. *Examples of overbroad or unduly burdensome requests for information.* The following are examples of requests for information that are overbroad or unduly burdensome:

i. Requests for information that seek documents relating to substantially all aspects of mortgage origination, mortgage servicing, mortgage sale or securitization, and foreclosure, including, for example, requests for all mortgage loan file documents, recorded mortgage instruments, servicing information and documents, and sale or securitization information and documents;

ii. Requests for information that are not reasonably understandable or are included with voluminous tangential discussion or assertions of errors;

iii. Requests for information that purport to require servicers to provide information in specific formats, such as in a transcript, letter form in a columnar format, or spreadsheet, when such information is not ordinarily stored in such format; and

iv. Requests for information that are not reasonably likely to assist a borrower with the borrower's account, including, for example, a request for copies of the front and back of all physical payment instruments (such as checks, drafts, or wire transfer confirmations) that show payments made by the borrower to the servicer and payments made by a servicer to an owner or assignee of a mortgage loan.

36(i) Potential successors in interest.

1. *Requests that indicate that the person may be a successor in interest.* Section 1024.36(i) requires a servicer to respond to certain written requests received from a person that indicate the person may be a successor in interest. Examples of written requests that indicate that the person may be a successor in interest include, without limitation, a written statement from a person other than a borrower indicating that there has been a transfer of ownership or of an ownership interest in the property to the person or that a borrower has been divorced, legally separated, or died, or a written loss mitigation application received from a person other than a borrower.

2. *Time limits.* A servicer must respond to a request under §1024.36(i) not later than the time limits set forth in §1024.36(d)(2). Servicers subject to §1024.38(b)(1)(vi)(B) must also maintain policies and procedures reasonably designed to ensure that, upon receiving notice of the existence of a potential successor in interest, the servicer can promptly determine the documents the servicer reasonably requires 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). Depending on the facts and circumstances of the request, responding promptly may require a servicer to respond more quickly than the time limits established in §1024.36(d)(2).

3. *Potential successor in interest's representative.* An information request pursuant to §1024.36(i) is submitted by a potential successor in interest if the information request is submitted by an agent of the potential successor in interest. A servicer may undertake reasonable 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 a person that claims to be an agent of the potential successor in interest 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, the servicer shall treat the request for information as having been submitted by the potential successor in interest.

§1024.37—Force-Placed Insurance

37(a) Definition of force-placed insurance.

37(a)(2) Types of insurance not considered force-placed insurance.

Paragraph 37(a)(2)(iii).

1. *Servicer's discretion.* Hazard insurance paid by a servicer at its discretion refers to circumstances in which a servicer pays a borrower's hazard insurance even though the servicer is not required by §1024.17(k)(1), (2), or (5) to do so.

37(b) Basis for charging force-placed insurance.

1. *Reasonable basis to believe.* Section §1024.37(b) prohibits a servicer from assessing on a borrower a premium charge or fee related to force-placed insurance unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the loan contract's requirement to maintain hazard insurance. Information about a borrower's hazard insurance received by a servicer from the borrower, the borrower's insurance provider, or the borrower's insurance agent, may provide a servicer with a reasonable basis to believe that the borrower has either complied with or failed to comply with the loan contract's requirement to maintain hazard insurance. If a servicer receives no such information, the servicer may satisfy the reasonable basis to believe standard if the servicer acts with reasonable diligence to ascertain a borrower's hazard insurance status and does not receive from the borrower, or otherwise have evidence of insurance coverage as provided in §1024.37(c)(1)(iii). A servicer that complies with the notification requirements set forth in §1024.37(c)(1)(i) and (ii) has acted with reasonable diligence.

37(c) Requirements before charging borrower for force-placed insurance.

37(c)(1) In general.

Paragraph 37(c)(1)(i).

1. *Assessing premium charge or fee.* Subject to the requirements of §1024.37(c)(1)(i) through (iii), if not prohibited by State or other applicable law, a servicer may charge a borrower for force-placed insurance the servicer purchased, retroactive to the first day of any period of time in which the borrower did not have hazard insurance in place.

Paragraph 37(c)(1)(iii).

1. *Extension of time.* Applicable law, such as State law or the terms and conditions of a borrower's insurance policy, may provide for an extension of time to pay the premium on a borrower's hazard insurance after the due date. If a premium payment is made within such time, and the insurance company accepts the payment with no lapse in insurance coverage, then the borrower's hazard insurance is deemed to have had hazard insurance coverage continuously for purposes of §1024.37(c)(1)(iii).

2. *Evidence demonstrating insurance.* As evidence of continuous hazard insurance coverage that complies with the loan contract's requirements, a servicer may require a copy of the borrower's hazard insurance policy declaration page, the borrower's insurance certificate, the borrower's insurance policy, or other similar forms of written confirmation. A servicer 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 insurance information submitted by the borrower, or if the terms and conditions of the borrower's hazard insurance policy do not comply with the borrower's loan contract requirements.

Paragraph 37(c)(2)(v).

1. *Identifying type of hazard insurance.* If the terms of a mortgage loan contract requires a borrower to purchase both a homeowners' insurance policy and a separate hazard insurance policy to insure against loss resulting from hazards not covered under the borrower's homeowners' insurance policy, a servicer must disclose whether it is the borrower's homeowners' insurance policy or the separate hazard insurance policy for which it lacks evidence of coverage to comply with §1024.37(c)(2)(v).

37(d) Reminder notice.

37(d)(1) In general.

1. When a servicer is required to deliver or place in the mail the written notice pursuant to §1024.37(d)(1), the content of the reminder notice will be different depending on the insurance information the servicer has received from the borrower. For example:

i. Assume that, on June 1, the servicer places in the mail the written notice required by §1024.37(c)(1)(i) to Borrower A. The servicer does not receive any insurance information from Borrower A. The servicer must deliver to Borrower A or place in the mail a reminder notice, with the information required by §1024.37(d)(2)(i), at least 30 days after June 1 and at least 15 days before the servicer charges Borrower A for force-placed insurance.

ii. Assume the same example, except that Borrower A provides the servicer with insurance information on June 18, but the servicer cannot verify that Borrower A has hazard insurance in place continuously based on the information Borrower A provided (*e.g.*, the servicer cannot verify that Borrower A had coverage between June 10 and June 15). The servicer must either deliver to Borrower A or place in the mail a reminder notice, with the information required by in §1024.37(d)(2)(ii), at least 30 days after June 1 and at least 15 days before charging Borrower A for force-placed insurance it obtains for the period between June 10 and June 15.

37(d)(2) Content of reminder notice.

37(d)(2)(i) Servicer receiving no insurance information.

Paragraph 37(d)(2)(i)(D).

1. *Reasonable estimate of the cost of force-placed insurance.* Differences between the amount of the estimated cost disclosed under §1024.37(d)(2)(i)(D) and the actual cost later assessed to the borrower are permissible, so long as the estimated cost is based on the information reasonably available to the servicer at the time the disclosure is provided. For example, a mortgage investor's requirements may provide that the amount of coverage for force-placed insurance depends on the borrower's delinquency status (the number of days the borrower's mortgage payment is past due). The amount of coverage affects the cost of force-placed insurance. A servicer that provides an estimate of the cost of force-placed insurance based on the borrower's delinquency status at the time the disclosure is made complies with §1024.37(d)(2)(i)(D).

37(d)(5) Updating notice with borrower information.

1. *Reasonable time.* If the written notice required by §1024.37(c)(1)(ii) was put into production a reasonable time prior to the servicer delivering or placing the notice in the mail, the servicer is not required to update the notice with new insurance information received. For purposes of §1024.37(d)(5), a reasonable time is no more than five days (excluding legal holidays, Saturdays, and Sundays).

37(e) Renewal or replacing force-placed insurance.

37(e)(1) In general.

1. For purposes of §1024.37(e)(1), as evidence that the borrower has purchased hazard insurance coverage that complies with the loan contract's requirements, a servicer may require a borrower to provide a form of written confirmation as described in comment 37(c)(1)(iii)–2, and may reject evidence of coverage submitted by the borrower for the reasons described in comment 37(c)(1)(iii)–2.

37(e)(1)(iii) Charging before end of notice period.

1. *Example.* Section 1024.37(e)(1)(iii) permits a servicer to assess on a borrower a premium charge or fee related to renewing or replacing existing force-placed insurance promptly after the servicer receives evidence demonstrating that the borrower lacked hazard insurance coverage in compliance with the loan contract's requirements to maintain hazard insurance for any period of time following the expiration of the existing force-placed insurance. To illustrate, assume that on January 2, the servicer sends the notice required by §1024.37(e)(1)(i). At 12:01 a.m. on January 12, the existing force-placed insurance the servicer had purchased on the borrower's property expires and the servicer replaces the expired force-placed insurance policy with a new policy. On February 5, the servicer receives evidence demonstrating the borrower has hazard insurance effective since 12:01 a.m. on January 31. The servicer may charge the borrower for force-placed insurance covering the period from 12:01 a.m. January 12 to 12:01 a.m. January 31, as early as February 5.

Paragraph 37(e)(2)(vii).

1. *Reasonable estimate of the cost of force-placed insurance.* The reasonable estimate requirement set forth in §1024.37(e)(2)(vii) is the same reasonable estimate requirement set forth in §1024.37(d)(2)(i)(D). See comment 37(d)(2)(i)(D)–1 regarding the reasonable estimate.

37(g) Cancellation of force-placed insurance.

Paragraph 37(g)(2).

1. *Period of overlapping insurance coverage.* Section 1024.37(g)(2) requires a servicer to refund to a borrower all force-placed insurance premium charges and related fees paid by the borrower for any period of overlapping insurance coverage and remove from the borrower's account all force-placed insurance charges and related fees for such period. A period of overlapping insurance coverage means the period of time during which the force-placed insurance purchased by a servicer and the hazard insurance purchased by a borrower were in effect at the same time.

Section 1024.38—General servicing policies, procedures, and requirements.

38(a) Reasonable policies and procedures.

1. *Policies and procedures.* A servicer may determine the specific policies and procedures it will adopt and the methods by which

it will implement those policies and procedures so long as they are reasonably designed to achieve the objectives set forth in §1024.38(b). A servicer has flexibility to determine such policies and procedures and methods in light of the size, nature, and scope of the servicer's operations, including, for example, the volume and aggregate unpaid principal balance of mortgage loans serviced, the credit quality, including the default risk, of the mortgage loans serviced, and the servicer's history of consumer complaints.

2. *Procedures used*. The term ''procedures'' refers to the actual practices followed by a servicer for achieving the objectives set forth in §1024.38(b).

38(b) Objectives.

38(b)(1) Accessing and providing timely and accurate information.

Paragraph 38(b)(1)(ii).

1. *Errors committed by service providers*. A servicer's policies and procedures must be reasonably designed to provide for promptly obtaining information from service providers to facilitate achieving the objective of correcting errors resulting from actions of service providers, including obligations arising pursuant to §1024.35.

Paragraph 38(b)(1)(iv).

1. *Accurate and current information for owners or assignees of mortgage loans relating to loan modifications*. The relevant current information to owners or assignees of mortgage loans includes, among other things, information about a servicer's evaluation of borrowers for loss mitigation options and a servicer's agreements with borrowers on loss mitigation options, including loan modifications. Such information includes, for example, information regarding the date, terms, and features of loan modifications, the components of any capitalized arrears, the amount of any servicer advances, and any assumptions regarding the value of a property used in evaluating any loss mitigation options.

Paragraph 38(b)(1)(vi).

1. *Identification of potential successors in interest*. A servicer may be notified of the existence of a potential successor in interest in a variety of ways. For example, a person could indicate that there has been a transfer of ownership or of an ownership interest in the property or that a borrower has been divorced, legally separated, or died, or a person other than a borrower could submit a loss mitigation application. A servicer must maintain policies and procedures reasonably designed to ensure that the servicer can retain this information and promptly facilitate communication with potential successors in interest when a servicer is notified of their existence. A servicer is not required to conduct a search for potential successors in interest if the servicer has not received actual notice of their existence.

2. *Documents reasonably required*. The documents a servicer requires to confirm a potential successor in interest's identity and ownership interest in the property 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 the servicer's possession. The required documents may, where appropriate, include, for example, a death certificate, an executed will, or a court order. The required documents may also include documents that the servicer reasonably believes are necessary to prevent fraud or other criminal activity (for example, if a servicer has reason to believe that documents presented are forged).

3. *Examples of reasonable requirements*. Because the relevant law governing each situation may vary from State to State, the following examples are illustrative only. The examples illustrate what documents it would generally be reasonable for a servicer to require to confirm a potential successor in interest's identity and ownership interest in the property under the specific circumstances described.

i. *Tenancy by the entirety or joint tenancy*. Assume that a servicer knows that the potential successor in interest and the transferor borrower owned the property as tenants by the entirety or joint tenants and that the transferor borrower has died. Assume further that, upon the death of the transferor borrower, the applicable law of the relevant jurisdiction does not require a probate proceeding to establish that the potential successor in interest has sole interest in the property but requires only that there be a prior recorded deed listing both the potential successor in interest and the transferor borrower as tenants by the entirety (*e.g.*, married grantees) or joint tenants. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the recorded instrument, if the servicer does not already have it, and the death certificate of the transferor borrower. Because in this situation a probate proceeding is not required under the applicable law of the relevant jurisdiction, it generally would not be reasonable for the servicer to require documentation of a probate proceeding.

ii. *Affidavits of heirship*. Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest upon the death of the transferor borrower through intestate succession and offers an affidavit of heirship as confirmation. Assume further that, upon the death of the transferor borrower, the applicable law of the relevant jurisdiction does not require a probate proceeding to establish that the potential successor in interest has an interest in the

property but requires only an appropriate affidavit of heirship. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide the affidavit of heirship and the death certificate of the transferor borrower. Because a probate proceeding is not required under the applicable law of the relevant jurisdiction to recognize the transfer of title, it generally would not be reasonable for the servicer to require documentation of a probate proceeding.

iii. *Divorce or legal separation.* 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 the servicer 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 the servicer to require a deed.

iv. *Living spouses or parents.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest from a living spouse or parent who is a borrower by quitclaim deed or act of donation. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide the quitclaim deed or act of donation. It generally would not be reasonable, however, for the servicer to require additional documents.

4. *Additional documentation required for confirmation determination.* Section 1024.38(b)(1)(vi)(C) requires a servicer to maintain policies and procedures reasonably designed to ensure that, upon receipt of the documents identified by the servicer, the servicer promptly notifies a potential successor in interest that, as applicable, the servicer has confirmed the potential successor in interest's status, has determined that additional documents are required, or has determined that the potential successor in interest is not a successor in interest. If a servicer reasonably determines that it cannot make a determination of the potential successor in interest's status based on the documentation provided, it must specify what additional documentation is required. For example, if there is pending litigation involving the potential successor in interest and other claimants regarding who has title to the property at issue, a servicer may specify that documentation of a court determination or other resolution of the litigation is required.

5. *Prompt confirmation and loss mitigation.* A servicer's policies and procedures must be reasonably designed to ensure that the servicer can promptly notify the potential successor in interest that the servicer has confirmed the potential successor in interest's status. Notification is not prompt for purposes of this requirement 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.

38(b)(2) Properly evaluating loss mitigation applications.

Paragraph 38(b)(2)(ii).

1. *Means of identifying all available loss mitigation options.* Servicers must develop policies and procedures that are reasonably designed to enable servicer personnel to identify all loss mitigation options available for mortgage loans currently serviced by the mortgage servicer. For example, a servicer's policies and procedures must be reasonably designed to address how a servicer specifically identifies, with respect to each owner or assignee, all of the loss mitigation options that the servicer may consider when evaluating any borrower for a loss mitigation option and the criteria that should be applied by a servicer when evaluating a borrower for such options. In addition, a servicer's policies and procedures must be reasonably designed to address how the servicer will apply any specific thresholds for eligibility for a particular loss mitigation option established by an owner or assignee of a mortgage loan (*e.g.*, if the owner or assignee requires that a servicer only make a particular loss mitigation option available to a certain percentage of the loans that the servicer services for that owner or assignee, then the servicer's policies and procedures must be reasonably designed to determine in advance how the servicer will apply that threshold to those mortgage loans). A servicer's policies and procedures must also be reasonably designed to ensure that such information is readily accessible to the servicer personnel involved with loss mitigation, including personnel made available to the borrower as described in § 1024.40.

Paragraph 38(b)(2)(v).

1. *Owner or assignee requirements.* A servicer must have policies and procedures reasonably designed to evaluate a borrower for a loss mitigation option consistent with any owner or assignee requirements, even where the requirements of § 1024.41 may be inapplicable. For example, an owner or assignee may require that a servicer implement certain procedures to review a loss mitigation application submitted by a borrower less than 37 days before a foreclosure sale. Further, an owner or assignee may require that

a servicer implement certain procedures to re-evaluate a borrower who has demonstrated a material change in the borrower's financial circumstances for a loss mitigation option after the servicer's initial evaluation. A servicer must have policies and procedures reasonably designed to implement these requirements even if such loss mitigation evaluations may not be required pursuant to §1024.41.

38(b)(3) Facilitating oversight of, and compliance by, service providers.

Paragraph 38(b)(3)(iii).

1. *Sharing information with service provider personnel handling foreclosure proceedings.* A servicer's policies and procedures must be reasonably designed to ensure that servicer personnel promptly inform service provider personnel handling foreclosure proceedings that the servicer has received a complete loss mitigation application and promptly instruct foreclosure counsel to take any step required by §1024.41(g) sufficiently timely to avoid violating the prohibition against moving for judgment or order of sale, or conducting a foreclosure sale.

38(b)(4) Facilitating transfer of information during servicing transfers.

Paragraph 38(b)(4)(i).

1. *Electronic document transfers.* A transferor servicer's policies and procedures may provide for transferring documents and information electronically, provided that the transfer is conducted in a manner that is reasonably designed to ensure the accuracy of the information and documents transferred and that enables a transferee servicer to comply with its obligations to the owner or assignee of the loan and with applicable law. For example, a transferor servicer must have policies and procedures reasonably designed to ensure that data can be properly and promptly boarded by a transferee servicer's electronic systems and that all necessary documents and information are available to, and can be appropriately identified by, a transferee servicer.

2. *Loss mitigation documents.* A transferor servicer's policies and procedures must be reasonably designed to ensure that the transfer includes any information reflecting the current status of discussions with a borrower regarding loss mitigation options, any agreements entered into with a borrower on a loss mitigation option, and any analysis by a servicer with respect to potential recovery from a non-performing mortgage loan, as appropriate.

Paragraph 38(b)(4)(ii).

1. *Missing loss mitigation documents and information.* A transferee servicer must have policies and procedures reasonably designed to ensure, in connection with a servicing transfer, that the transferee servicer receives information regarding any loss mitigation discussions with a borrower, including any copies of loss mitigation agreements. Further, the transferee servicer's policies and procedures must address obtaining any such missing information or documents from a transferor servicer before attempting to obtain such information from a borrower. For example, assume a servicer receives documents or information from a transferor servicer indicating that a borrower has made payments consistent with a trial or permanent loan modification but has not received information about the existence of a trial or permanent loan modification agreement. The servicer must have policies and procedures reasonably designed to identify whether any such loan modification agreement exists with the transferor servicer and to obtain any such agreement from the transferor servicer.

38(b)(5) Informing borrowers of written error resolution and information request procedures.

1. *Manner of informing borrowers.* A servicer may comply with the requirement to maintain policies and procedures reasonably designed to inform borrowers of the procedures for submitting written notices of error set forth in §1024.35 and written information requests set forth in §1024.36 by informing borrowers, through a notice (mailed or delivered electronically) or a Web site. For example, a servicer may comply with §1024.38(b)(5) by including in the periodic statement required pursuant to §1026.41 a brief statement informing borrowers that borrowers have certain rights under Federal law related to resolving errors and requesting information about their account, and that they may learn more about their rights by contacting the servicer, and a statement directing borrowers to a Web site that provides a description of the procedures set forth in §§1024.35 and 1024.36. Alternatively, a servicer may also comply with §1024.38(b)(5) by including a description of the procedures set forth in §§1024.35 and 1024.36 in the written notice required by §1024.35(c) and §1024.36(b).

2. *Oral complaints and requests.* A servicer's policies and procedures must be reasonably designed to provide information to borrowers who are not satisfied with the resolution of a complaint or request for information submitted orally about the procedures for submitting written notices of error set forth in §1024.35 and for submitting written requests for information set forth in §1024.36.

3. *Notices of error incorrectly sent to addresses associated with submission of loss mitigation applications or the continuity of contact.* A servicer's policies and procedures must be reasonably designed to ensure that if a borrower incorrectly submits an assertion of an error to any address given to the borrower in connection with submission of a loss mitigation application or the continuity of contact pursuant to §1024.40, the servicer will inform the borrower of the procedures for submitting written notices of error set forth in

§ 1024.35, including the correct address. Alternatively, the servicer could redirect such notices to the correct address.

38(c) Standard requirements.

38(c)(1)Record retention.

1. Methods of retaining records. Retaining records that document actions taken with respect to a borrower's mortgage loan account does not necessarily mean actual paper copies of documents. The records may be retained by any method that reproduces the records accurately (including computer programs) and that ensures that the servicer can easily access the records (including a contractual right to access records possessed by another entity).

38(c)(2) Servicing file.

1. *Timing.* A servicer complies with § 1024.38(c)(2) if it maintains information in a manner that facilitates compliance with § 1024.38(c)(2) beginning on or after January 10, 2014. A servicer is not required to comply with § 1024.38(c)(2) with respect to information created prior to January 10, 2014. For example, if a mortgage loan was originated on January 1, 2013, a servicer is not required by § 1024.38(c)(2) to maintain information regarding transactions credited or debited to that mortgage loan account in any particular manner for payments made prior to January 10, 2014. However, for payments made on or after January 10, 2014, a servicer must maintain such information in a manner that facilitates compiling such information into a servicing file within five days.

2. *Borrower requests for servicing file.* Section 1024.38(c)(2) does not confer upon any borrower an independent right to access information contained in the servicing file. Upon receipt of a borrower's request for a servicing file, a servicer shall provide the borrower with a copy of the information contained in the servicing file for the borrower's mortgage loan, subject to the procedures and limitations set forth in § 1024.36.

Paragraph 38(c)(2)(iv).

1. *Report of data fields.* A report of the data fields relating to a borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices means a report listing the relevant data fields by name, populated with any specific data relating to the borrower's mortgage loan account. Examples of data fields relating to a borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices include fields used to identify the terms of the borrower's mortgage loan, fields used to identify the occurrence of automated or manual collection calls, fields reflecting the evaluation of a borrower for a loss mitigation option, fields used to identify the owner or assignee of a mortgage loan, and any credit reporting history.

§ 1024.39—Early Intervention Requirements for Certain Borrowers

39(a) Live contact.

1. *Delinquency.* Section 1024.39 requires a servicer to establish or attempt to establish live contact no later than the 36th day of a borrower's delinquency. This provision is illustrated as follows:

i. Assume a mortgage loan obligation with a monthly billing cycle and monthly payments of $2,000 representing principal, interest, and escrow due on the first of each month.

A. The borrower fails to make a payment of $2,000 on, and makes no payment during the 36-day period after, January 1. The servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1—*i.e.*, on or before February 6.

B. The borrower makes no payments during the period January 1 through April 1, although payments of $2,000 each on January 1, February 1, and March 1 are due. Assuming it is not a leap year, the borrower is 90 days delinquent as of April 1. The servicer may time its attempts to establish live contact such that a single attempt will meet the requirements of § 1024.39(a) for two missed payments. To illustrate, the servicer complies with § 1024.39(a) if the servicer makes a good faith effort to establish live contact with the borrower, for example, on February 5 and again on March 25. The February 5 attempt meets the requirements of § 1024.39(a) for both the January 1 and February 1 missed payments. The March 25 attempt meets the requirements of § 1024.39(a) for the March 1 missed payment.

ii. A borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment is not delinquent for purposes of § 1024.39.

iii. During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, a borrower is not delinquent for purposes of § 1024.39 if the transferee servicer learns that the borrower has made a timely payment that has been misdirected to the transferor servicer and the transferee servicer documents its files accordingly. *See* § 1024.33(c)(1) and comment 33(c)(1)–2.

iv. A servicer need not establish live contact with a borrower unless the borrower is delinquent during the 36 days after a payment due date. If the borrower satisfies a payment in full before the end of the 36-day period, the servicer need not establish live contact with the borrower. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not establish or make good faith efforts to establish live contact by February 6.

2. *Establishing live contact*. Live contact provides servicers an opportunity to discuss the circumstances of a borrower's delinquency. Live contact with a borrower includes speaking on the telephone or conducting an in-person meeting with the borrower but not leaving a recorded phone message. A servicer may rely on live contact established at the borrower's initiative to satisfy the live contact requirement in §1024.39(a). Servicers may also combine contacts made pursuant to §1024.39(a) with contacts made with borrowers for other reasons, for instance, by telling borrowers on collection calls that loss mitigation options may be available.

3. *Good faith efforts*. Good faith efforts to establish live contact consist of reasonable steps, under the circumstances, to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer. The length of a borrower's delinquency, as well as a borrower's failure to respond to a servicer's repeated attempts at communication pursuant to §1024.39(a), are relevant circumstances to consider. For example, whereas ''good faith efforts'' to establish live contact with regard to a borrower with two consecutive missed payments might require a telephone call, ''good faith efforts'' to establish live contact with regard to an unresponsive borrower with six or more consecutive missed payments might require no more than including a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication. Comment 39(a)–6 discusses the relationship between live contact and the loss mitigation procedures set forth in §1024.41.

4. *Promptly inform if appropriate*. i. *Servicer's determination*. It is within a servicer's reasonable discretion to determine whether informing a borrower about the availability of loss mitigation options is appropriate under the circumstances. The following examples demonstrate when a servicer has made a reasonable determination regarding the appropriateness of providing information about loss mitigation options.

A. A servicer provides information about the availability of loss mitigation options to a borrower who notifies a servicer during live contact of a material adverse change in the borrower's financial circumstances that is likely to cause the borrower to experience a long-term delinquency for which loss mitigation options may be available.

B. A servicer does not provide information about the availability of loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.

ii. *Promptly inform*. If appropriate, a servicer may inform borrowers about the availability of loss mitigation options orally, in writing, or through electronic communication, but the servicer must provide such information promptly after the servicer establishes live contact. A servicer need not notify a borrower about any particular loss mitigation options at this time; if appropriate, a servicer need only inform borrowers generally that loss mitigation options may be available. If appropriate, a servicer may satisfy the requirement in §1024.39(a) to inform a borrower about loss mitigation options by providing the written notice required by §1024.39(b)(1), but the servicer must provide such notice promptly after the servicer establishes live contact.

5. *Borrower's representative*. Section 1024.39 does not prohibit a servicer from satisfying its requirements by establishing live contact with and, if applicable, providing information about loss mitigation options to a person authorized by the borrower to communicate with the servicer on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring a person that claims to be an agent of the borrower to provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.

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

39(b) Written notice.

39(b)(1) Notice required.

1. *Delinquency*. For guidance on the circumstances under which a borrower is delinquent for purposes of §1024.39, see comment 39(a)–1. For example, if a payment due date is January 1 and the payment remains unpaid during the 45-day period after January 1, the servicer must provide the written notice within 45 days after January 1—*i.e.*, by February 15. However, if a borrower satisfies a late payment in full before the end of the 45-day period, the servicer need not provide

the written notice. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not provide the written notice by February 15.

2. *Frequency of the written notice.* A servicer need not provide the written notice under §1024.39(b) more than once during a 180-day period beginning on the date on which the written notice is provided. A servicer must provide the written notice under §1024.39(b) at least once every 180 days to a borrower who is 45 days or more delinquent. This provision is illustrated as follows: Assume a borrower becomes delinquent on March 1, the amount due is not fully paid during the 45 days after March 1, and the servicer provides the written notice on the 45th day after March 1, which is April 15. Assume the borrower also fails to make the payment due on April 1 and the amount due is not fully paid during the 45 days after April 1. The servicer need not provide the written notice again until after 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.

i. If the borrower is 45 days or more delinquent on October 12, the date that is 180 days after the prior provision of the written notice, the servicer is required to provide the written notice again on October 12.

ii. If the borrower is less than 45 days delinquent on October 12, the servicer must again provide the written notice 45 days after the payment due date for which the borrower remains delinquent. For example, if the borrower becomes delinquent on October 1, and the amount due is not fully paid during the 45 days after October 1, the servicer will need to provide the written notice again no later than 45 days after October 1—*i.e.*, by November 15.

3. *Borrower's representative.* Comment 39(a)–5 explains how a servicer may satisfy the requirements under §1024.39 with a person authorized by the borrower to communicate with the servicer on the borrower's behalf.

4. *Relationship to §1024.39(a).* The written notice required under §1024.39(b)(1) must be provided even if the servicer provided information about loss mitigation and foreclosure previously during an oral communication with the borrower under §1024.39(a).

5. *Servicing transfers.* A transferee servicer is required to comply with the requirements of §1024.39(b) regardless of whether the transferor servicer provided a written notice to the borrower in the preceding 180-day period. However, a transferee servicer is not required to provide a written notice under §1024.39(b) if the transferor servicer provided the written notice under §1024.39(b) 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, the transferee servicer is not required to provide another written notice until 45 days after May 1, the first post-transfer payment due date—*i.e.*, by June 15.

39(b)(2) Content of the written notice.

1. *Minimum requirements.* Section 1024.39(b)(2) contains minimum content requirements for the written notice. A servicer may provide additional information that the servicer determines would be helpful or which may be required by applicable law or the owner or assignee of the mortgage loan.

2. *Format.* Any color, number of pages, size and quality of paper, size and type of print, and method of reproduction may be used, provided each of the statements required by §1024.39(b)(2) satisfies the clear and conspicuous standard in §1024.32(a)(1).

3. *Delivery.* A servicer may satisfy the requirement to provide the written notice by combining other notices that satisfy the content requirements of §1024.39(b)(2) into a single mailing, provided each of the statements required by §1024.39(b)(2) satisfies the clear and conspicuous standard in §1024.32(a)(1).

Paragraph 39(b)(2)(iii).

1. *Number of examples.* Section 1024.39(b)(2)(iii) does not require that a specific number of examples be disclosed, but 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 borrowers to end their ownership to avoid foreclosure. The servicer may include a generic list of loss mitigation options that it offers to borrowers. The servicer may include a statement that not all borrowers will qualify for the listed options.

2. *Brief description.* An example of a loss mitigation option may be described in one or more sentences. If a servicer offers a loss mitigation option comprising several loss mitigation programs, the servicer may provide a generic description of the option without providing detailed descriptions of each program. For example, if the servicer offers several loan modification programs, the servicer may provide a generic description of ''loan modification.''

Paragraph 39(b)(2)(iv).

1. *Explanation of how the borrower may obtain more information about loss mitigation options.* A servicer may comply with §1024.39(b)(2)(iv) by directing the borrower to contact the servicer for more detailed information on how to apply for loss mitigation options. For example, a general statement such as, ''contact us for instructions on how to apply'' would satisfy the requirement to inform the borrower how to obtain more information about loss mitigation options. However, to expedite the borrower's timely application for any loss mitigation options,

servicers may provide more detailed instructions, such as by listing representative documents the borrower should make available to the servicer (such as tax filings or income statements), and an estimate of how quickly the servicer expects to evaluate a completed application and make a decision on loss mitigation options. Servicers may also supplement the written notice required by §1024.39(b)(1) with a loss mitigation application form.

39(c) Borrowers in bankruptcy.

1. *Borrower's representative.* If the borrower is represented by a person authorized by the borrower to communicate with the servicer on the borrower's behalf, the servicer may provide the written notice required by §1024.39(b), as modified by §1024.39(c)(1)(iii), to the borrower's representative. *See* comment 39(a)–5. In general, bankruptcy counsel is the borrower's representative. A servicer's procedures for determining whether counsel is the 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.

2. *Adapting requirements in bankruptcy.* Section 1024.39(c) does not require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. If necessary to comply with such law or court order, a servicer may adapt the requirements of §1024.39 as appropriate.

39(c)(1) Borrowers in bankruptcy—Partial exemption.

1. *Commencing a case.* Section 1024.39(c)(1) applies once a petition is filed under title 11 of the United States Code, commencing a case in which the borrower is a debtor in bankruptcy.

Paragraph 39(c)(1)(ii).

1. *Availability of loss mitigation options.* In part, §1024.39(c)(1)(ii) exempts a servicer from the requirements of §1024.39(b) if no loss mitigation option is available. A loss mitigation option is available if the owner or assignee of a mortgage loan offers an alternative to foreclosure that is made available through the servicer and for which a borrower may apply, even if the borrower ultimately does not qualify for such option.

2. *Fair Debt Collections Practices Act.* i. *Exemption.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer's communications with a borrower in bankruptcy and any borrower on the mortgage loan has provided a notification pursuant to FDCPA section 805(c) notifying the servicer that the borrower refuses to pay a debt or that the borrower wishes the servicer to cease further communications, with regard to that mortgage loan, §1024.39(c)(1)(ii) exempts a servicer from providing the written notice required by §1024.39(b).

ii. *Example.* For example, assume that two spouses jointly own a home and are both primarily liable on the mortgage loan. Further assume that the servicer is subject to the FDCPA with respect to that mortgage loan. One spouse is a debtor in bankruptcy under title 11 of the United States Code subject to §1024.39(c). The other spouse provided the servicer a notification pursuant to FDCPA section 805(c). Section 1024.39(c)(1)(ii) exempts the servicer from providing the written notice required by §1024.39(b) with respect to that mortgage loan.

Paragraph 39(c)(1)(iii).

1. *Joint obligors.* When two or more borrowers are joint obligors with primary liability on a mortgage loan subject to §1024.39, if any of the borrowers is a debtor in bankruptcy, a servicer may provide the written notice required by §1024.39(b), as modified by §1024.39(c)(1)(iii), to any borrower.

39(c)(2) Resuming compliance.

1. *Bankruptcy case revived.* If the borrower's bankruptcy case is revived, for example if the court reinstates a previously dismissed case or reopens the case, §1024.39(c)(1) once again applies. However, §1024.39(c)(1)(iii)(C) provides that a servicer is not required to provide the written notice more than once during a single bankruptcy case. For example, assume a borrower's bankruptcy case commences on June 1, the servicer provides the written notice on July 10 in compliance with §1024.39(b) as modified by §1024.39(c)(1)(iii), and the bankruptcy case is dismissed on August 1. If the court subsequently reopens or reinstates the borrower's bankruptcy case and the servicer does not provide a second written notice for that bankruptcy case, the servicer has complied with §1024.39(b) and (c)(1)(iii).

39(d) Fair Debt Collection Practices Act—partial exemption.

1. *Availability of loss mitigation options.* In part, §1024.39(d)(2) exempts a servicer from providing the written notice required by §1024.39(b) if no loss mitigation option is available. A loss mitigation option is available if the owner or assignee of a mortgage loan offers an alternative to foreclosure that is made available through the servicer and for which a borrower may apply, even if the borrower ultimately does not qualify for such option.

2. *Early intervention communications under the FDCPA.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer's communications with a borrower, a servicer does not violate FDCPA section 805(c) by providing the written notice required by §1024.39(b) as modified by §1024.39(d)(3) after a borrower has provided a notification pursuant to FDCPA section 805(c) with respect to that borrower's loan. Nor does a servicer violate

FDCPA section 805(c) by providing loss mitigation information or assistance in response to a borrower-initiated communication after the borrower has invoked the cease communication right under FDCPA section 805(c). A servicer subject to the FDCPA must continue to comply with all other applicable provisions of the FDCPA, including restrictions on communications and prohibitions on harassment or abuse, false or misleading representations, and unfair practices as contained in FDCPA sections 805 through 808 (15 U.S.C. 1692c through 1692f).

Paragraph 39(d)(2).

1. *Borrowers in bankruptcy.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer's communications with a borrower and the borrower has provided a notification pursuant to FDCPA section 805(c) notifying the servicer that the borrower refuses to pay a debt or that the borrower wishes the servicer to cease communications, with regard to that mortgage loan, §1024.39(d)(2) exempts a servicer from providing the written notice required by §1024.39(d) while any borrower on the mortgage loan is also a debtor in bankruptcy under title 11 of the United States Code. For an example, see comment 39(c)(1)(ii)–2.ii.

§1024.40—Continuity of Contact

40(a) In general.

1. *Delinquent borrower.* A borrower is not considered delinquent if the borrower has refinanced the mortgage loan, paid off the mortgage loan, brought the mortgage loan current by paying all amounts owed in arrears, or if title to the borrower's property has been transferred to a new owner through, for example, a deed-in-lieu of foreclosure, a sale of the borrower's property, including, as applicable, a short sale, or a foreclosure sale. For purposes of responding to a borrower's inquiries and assisting a borrower with loss mitigation options, the term ''borrower'' includes a person authorized by the borrower to act on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example by requiring that a person who claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.

2. *Assignment of personnel.* A servicer has discretion to determine whether to assign a single person or a team of personnel to respond to a delinquent borrower. The personnel a servicer assigns to the borrower as described in §1024.40(a)(1) may be single-purpose or multi-purpose personnel. Single-purpose personnel are personnel whose primary responsibility is to respond to a delinquent borrower's inquiries, and as applicable, assist the borrower with available loss mitigation options. Multi-purpose personnel can be personnel that do not have a primary responsibility at all, or personnel for whom responding to a delinquent borrower's inquiries, and as applicable, assisting the borrower with available loss mitigation options is not the personnel's primary responsibility. If the delinquent borrower files for bankruptcy, a servicer may assign personnel with specialized knowledge in bankruptcy law to assist the borrower.

3. *Delinquency.* See §1024.31 for the definition of delinquency applicable to subpart C of Regulation X.

§1024.41—Loss Mitigation Procedures

41(b) Receipt of a loss mitigation application.

1. *Successors in interest.* i. If a servicer receives a loss mitigation application from a potential successor in interest before confirming that person's identity and ownership interest in the property, the servicer may, but need not, review and evaluate the loss mitigation application in accordance with the procedures set forth in §1024.41. If a servicer complies with the requirements of §1024.41 for a complete loss mitigation application submitted by a potential successor in interest before confirming that person's identity and ownership interest in the property, §1024.41(i)'s limitation on duplicative requests applies to that person, provided the servicer's evaluation of loss mitigation options available to the person would not have resulted in a different determination due to the person's confirmation as a successor in interest if it had been conducted after the servicer confirmed the person's status as a successor in interest.

ii. If a servicer receives a loss mitigation application from a potential successor in interest and elects not to review and evaluate the loss mitigation application before confirming that person's identity and ownership interest in the property, the servicer must preserve the loss mitigation application and all documents submitted in connection with the application, and, upon such confirmation, the servicer must review and evaluate the loss mitigation application 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. For purposes of §1024.41, the servicer must treat the loss mitigation application as if it had been received on the date that the servicer confirmed the successor in interest's status. If the loss mitigation application is incomplete at the time of confirmation because documents submitted by the successor in interest became stale or invalid after they were submitted and confirmation is 45 days or more before a foreclosure sale,

the servicer must identify the stale or invalid documents that need to be updated in a notice pursuant to §1024.41(b)(2).

41(b)(1) Complete loss mitigation application.

1. *In general.* A servicer has flexibility to establish its own application requirements and to decide the type and amount of information it will require from borrowers applying for loss mitigation options. In the course of gathering documents and information from a borrower to complete a loss mitigation application, a servicer may stop collecting documents and information for a particular loss mitigation option after receiving information confirming that, pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan, the borrower is ineligible for that option. A servicer may not stop collecting documents and information for any loss mitigation option based solely upon the borrower's stated preference but may stop collecting documents and information for any loss mitigation option based on the borrower's stated preference in conjunction with other information, as prescribed by any requirements established by the owner or assignee. A servicer must continue to exercise reasonable diligence to obtain documents and information from the borrower that the servicer requires to evaluate the borrower as to all other loss mitigation options available to the borrower. For example:

i. Assume a particular loss mitigation option is only available for borrowers whose mortgage loans were originated before a specific date. Once a servicer receives documents or information confirming that a mortgage loan was originated after that date, the servicer may stop collecting documents or information from the borrower that the servicer would use to evaluate the borrower for that loss mitigation option, but the servicer must continue its efforts to obtain documents and information from the borrower that the servicer requires to evaluate the borrower for all other available loss mitigation options.

ii. Assume applicable requirements established by the owner or assignee of the mortgage loan provide that a borrower is ineligible for home retention loss mitigation options if the borrower states a preference for a short sale and provides evidence of another applicable hardship, such as military Permanent Change of Station orders or an employment transfer more than 50 miles away. If the borrower indicates a preference for a short sale or, more generally, not to retain the property, the servicer may not stop collecting documents and information from the borrower pertaining to available home retention options solely because the borrower has indicated such a preference, but the servicer may stop collecting such documents and information once the servicer receives information confirming that the borrower has an applicable hardship under requirements established by the owner or assignee, such as military Permanent Change of Station orders or employment transfer.

2. *When an inquiry or prequalification request becomes an application.* A servicer is encouraged to provide borrowers with information about loss mitigation programs. If in giving information to the borrower, the borrower expresses an interest in applying for a loss mitigation option and provides information the servicer would evaluate in connection with a loss mitigation application, the borrower's inquiry or prequalification request has become a loss mitigation application. A loss mitigation application is considered expansively and includes any ''prequalification'' for a loss mitigation option. For example, if a borrower requests that a servicer determine if the borrower is ''prequalified'' for a loss mitigation program by evaluating the borrower against preliminary criteria to determine eligibility for a loss mitigation option, the request constitutes a loss mitigation application.

3. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place and no loss mitigation application has been submitted:

i. A borrower calls to ask about loss mitigation options and servicer personnel explain the loss mitigation options available to the borrower and the criteria for determining the borrower's eligibility for any such loss mitigation option. The borrower does not, however, provide any information that a servicer would consider for evaluating a loss mitigation application.

ii. A borrower calls to ask about the process for applying for a loss mitigation option but the borrower does not provide any information that a servicer would consider for evaluating a loss mitigation application.

4. Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation application, the servicer must act with reasonable diligence to collect information needed to complete the application. A servicer must request information necessary to make a loss mitigation application complete promptly after receiving the loss mitigation application. Reasonable diligence for purposes of §1024.41(b)(1) includes, without limitation, the following actions:

i. A servicer requires additional information from the applicant, such as an address or a telephone number to verify employment; the servicer contacts the applicant promptly to obtain such information after receiving a loss mitigation application;

ii. Servicing for a mortgage loan is transferred to a servicer and the borrower makes an incomplete loss mitigation application to the transferee servicer after the transfer; the

transferee servicer reviews documents provided by the transferor servicer to determine if information required to make the loss mitigation application complete is contained within documents transferred by the transferor servicer to the servicer; and

iii. A servicer offers a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application and provides the borrower the written notice pursuant to §1024.41(c)(2)(iii). If the borrower remains in compliance with the short-term payment forbearance program or short-term repayment plan, and the borrower does not request further assistance, the servicer may suspend reasonable diligence efforts until near the end of the payment forbearance program or repayment plan. However, if the borrower fails to comply with the program or plan or requests further assistance, the servicer must immediately resume reasonable diligence efforts. Near the end of a short-term payment forbearance program offered based on an evaluation of an incomplete loss mitigation application pursuant to §1024.41(c)(2)(iii), and prior to the end of the forbearance period, if the borrower remains delinquent, a servicer must contact the borrower to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation.

5. *Information not in the borrower's control.* A loss mitigation application is complete when a borrower provides all information required from the borrower notwithstanding that additional information may be required by a servicer that is not in the control of a borrower. For example, if a servicer requires a consumer report for a loss mitigation evaluation, a loss mitigation application is considered complete if a borrower has submitted all information required from the borrower without regard to whether a servicer has obtained a consumer report that a servicer has requested from a consumer reporting agency.

41(b) Receipt of loss mitigation application.

41(b)(1) Complete loss mitigation application.

41(b)(2)Review of loss mitigation application submission.

41(b)(2)(i) Requirements.

1. *Foreclosure sale not scheduled.* For purposes of §1024.41(b)(2)(i), if no foreclosure sale has been scheduled as of the date a servicer receives a loss mitigation application, the servicer must treat the application as having been received 45 days or more before any foreclosure sale.

Paragraph 41(b)(2)(i)(B).

1. *Later discovery of additional information required to evaluate application.* Even if a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information or a corrected version of a previously submitted document is required, the servicer must promptly request the additional information or corrected document from the borrower pursuant to the reasonable diligence obligation in §1024.41(b)(1). See §1024.41(c)(2)(iv) addressing facially complete applications.

41(b)(2)(ii) Time period disclosure.

1. *Thirty days is generally reasonable.* In general and subject to the restrictions described in comments 41(b)(2)(ii)–2 and –3, a servicer complies with the requirement to include a reasonable date in the written notice required under §1024.41(b)(2)(i)(B) by including a date that is 30 days after the date the servicer provides the written notice.

2. *No later than the next milestone.* For purposes of §1024.41(b)(2)(ii), subject to the restriction described in comment 41(b)(2)(ii)–3, the reasonable date must be no later than the earliest of:

i. 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;

ii. The date that is the 120th day of the borrower's delinquency;

iii. The date that is 90 days before a foreclosure sale;

iv. The date that is 38 days before a foreclosure sale.

3. *Seven-day minimum.* A reasonable date for purposes of §1024.41(b)(2)(ii) must never be less than seven days from the date on which the servicer provides the written notice pursuant to §1024.41(b)(2)(i)(B).

41(b)(3) Determining Protections.

1. *Foreclosure sale not scheduled.* If no foreclosure sale has been scheduled as of the date that a complete loss mitigation application is received, the application is considered to have been received more than 90 days before any foreclosure sale.

2. *Foreclosure sale re-scheduled.* The protections under §1024.41 that have been determined to apply to a borrower pursuant to §1024.41(b)(3) remain in effect thereafter, even if a foreclosure sale is later scheduled or rescheduled.

41(c) Evaluation of loss mitigation applications.

41(c)(1) Complete loss mitigation application.

1. *Definition of ''evaluation.''* The conduct of a servicer's evaluation with respect to any loss mitigation option is in the sole discretion of a servicer. A servicer meets the requirements of §1024.41(c)(1)(i) if the servicer makes a determination regarding the borrower's eligibility for a loss mitigation program. Consistent with §1024.41(a), because nothing in section 1024.41 should be construed to permit a borrower to enforce the terms of any agreement between a servicer

and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or provision of, any loss mitigation option, §1024.41(c)(1) does not require that an evaluation meet any standard other than the discretion of the servicer.

2. *Loss mitigation options available to a borrower*. The loss mitigation options available to a borrower are those options offered by an owner or assignee of the borrower's mortgage loan. Loss mitigation options administered by a servicer for an owner or assignee of a mortgage loan other than the owner or assignee of the borrower's mortgage loan are not available to the borrower solely because such options are administered by the servicer. For example:

i. A servicer services mortgage loans for two different owners or assignees of mortgage loans. Those entities each have different loss mitigation programs. loss mitigation options not offered by the owner or assignee of the borrower's mortgage loan are not available to the borrower; or

ii. The owner or assignee of a borrower's mortgage loan has established pilot programs, temporary programs, or programs that are limited by the number of participating borrowers. Such loss mitigation options are available to a borrower. However, a servicer evaluates whether a borrower is eligible for any such program consistent with criteria established by an owner or assignee of a mortgage loan. For example, if an owner or assignee has limited a pilot program to a certain geographic area or to a limited number of participants, and the servicer determines that a borrower is not eligible based on any such requirement, the servicer shall inform the borrower that the investor requirement for the program is the basis for the denial.

3. *Offer of a non-home retention option*. A servicer's offer of a non-home retention option may be conditional upon receipt of further information not in the borrower's possession and necessary to establish the parameters of a servicer's offer. For example, a servicer complies with the requirement for evaluating the borrower for a short sale option if the servicer offers the borrower the opportunity to enter into a listing or marketing period agreement but indicates that specifics of an acceptable short sale transaction may be subject to further information obtained from an appraisal or title search.

4. *Other notices*. A servicer may combine other notices required by applicable law, including, without limitation, a notice with respect to an adverse action required by Regulation B, 12 CFR part 1002, or a notice required pursuant to the Fair Credit Reporting Act, with the notice required pursuant to §1024.41(c)(1), unless otherwise prohibited by applicable law.

41(c)(2) Incomplete loss mitigation application evaluation.

41(c)(2)(i) In general.

1. *Offer of a loss mitigation option without an evaluation of a loss mitigation application*. Nothing in §1024.41(c)(2)(i) prohibits a servicer from offering loss mitigation options to a borrower who has not submitted a loss mitigation application. Further, nothing in §1024.41(c)(2)(i) prohibits a servicer from offering a loss mitigation option to a borrower who has submitted an incomplete loss mitigation application where the offer of the loss mitigation option is not based on any evaluation of information submitted by the borrower in connection with such loss mitigation application. For example, if a servicer offers trial loan modification programs to all borrowers who become 150 days delinquent without an application or consideration of any information provided by a borrower in connection with a loss mitigation application, the servicer's offer of any such program does not violate §1024.41(c)(2)(i), and a servicer is not required to comply with §1024.41 with respect to any such program, because the offer of the loss mitigation option is not based on an evaluation of a loss mitigation application.

2. *Servicer discretion*. Although a review of a borrower's incomplete loss mitigation application is within a servicer's discretion, and is not required by §1024.41, a servicer may be required separately, in accordance with policies and procedures maintained pursuant to §1024.38(b)(2)(v), to properly evaluate 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. Such evaluation may be subject to requirements applicable to loss mitigation applications otherwise considered incomplete pursuant to §1024.41.

41(c)(2)(ii) Reasonable time.

1. *Significant period of time*. A significant period of time under the circumstances may include consideration of the timing of the foreclosure process. For example, if a borrower is 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.

41(c)(2)(iii) Short-term loss mitigation options.

1. *Short-term payment forbearance program*. The exemption in §1024.41(c)(2)(iii) applies to, among other things, short-term payment forbearance programs. For purposes of §1024.41(c)(2)(iii), a payment forbearance program is a loss mitigation option pursuant to which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short-term payment forbearance program for purposes of §1024.41(c)(2)(iii) allows the forbearance of

payments due over periods of no more than six months. Such a program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments.

2. *Short-term loss mitigation options and incomplete applications.* Section 1024.41(c)(2)(iii) allows a servicer to offer a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application. The servicer must still comply with the other requirements of §1024.41 with respect to the incomplete loss mitigation application, including the requirement in §1024.41(b)(2) to review the application to determine if it is complete, the requirement in §1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application (*see* comment 41(b)(1)–4.iii), and the requirement in §1024.41(b)(2)(i)(B) to provide the borrower with written notice that the servicer acknowledges the receipt of the application and has determined that the application is incomplete.

3. *Short-term loss mitigation options and complete applications.* Even if a servicer offers a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application, the servicer must still comply with all applicable requirements in §1024.41 if the borrower completes a loss mitigation application.

4. *Short-term repayment plan.* The exemption in §1024.41(c)(2)(iii) applies to, among other things, short-term repayment plans. For purposes of §1024.41(c)(2)(iii), a repayment plan is a loss mitigation option with terms under which a borrower would repay all past due payments over a specified period of time to bring the mortgage loan account current. A short-term repayment plan for purposes of §1024.41(c)(2)(iii) allows for the repayment of no more than three months of past due payments and allows a borrower to repay the arrearage over a period lasting no more than six months.

5. *Specific payment terms and duration.* i. *General requirement.* Section 1024.41(c)(2)(iii) requires a servicer to provide the borrower a written notice stating, among other things, the specific payment terms and duration of a short-term payment forbearance program or a short-term repayment plan offered based on an evaluation of an incomplete application. Generally, a servicer complies with these requirements if the written notice states the amount of each payment due during the program or plan, the date by which the borrower must make each payment, and whether the mortgage loan will be current at the end of the program or plan if the borrower complies with the program or plan.

ii. *Disclosure of payment amounts that may change.* At the time a servicer provides the written notice pursuant to §1024.41(c)(2)(iii), if the servicer lacks information necessary to determine the amount of a specific payment due during the program or plan (for example, because the borrower's interest rate will change to an unknown rate based on an index or because an escrow account computation year as defined in §1024.17(b) will end and the borrower's escrow payment might change), the servicer complies with the requirement to disclose the specific payment terms and duration of a short-term payment forbearance program or short-term repayment plan if the disclosures are based on the best information reasonably available to the servicer at the time the notice is provided and the written notice identifies which payment amounts may change, states that such payment amounts are estimates, and states the general reason that such payment amounts might change. For example, if an escrow account computation year as defined in §1024.17(b) will end during a borrower's short-term repayment plan, the written notice complies with §1024.41(c)(2)(iii) if it identifies the payment amounts that may change, states that those payment amounts are estimates, and states that the affected payments might change because the borrower's escrow payment might change.

6. *Timing of notice.* Generally, a servicer acts promptly to provide the written notice required by §1024.41(c)(2)(iii) if the servicer provides such written notice no later than five days (excluding legal public holidays, Saturdays, and Sundays) after offering the borrower a short-term payment forbearance program or short-term repayment plan. A servicer may provide the written notice at the same time the servicer offers the borrower the program or plan. A written offer that contains all the required elements of the written notice also satisfies §1024.41(c)(2)(iii).

41(c)(2)(iv) Facially complete application.

1. *Reasonable opportunity.* Section 1024.41(c)(2)(iv) requires a servicer to treat a facially complete application as complete for the purposes of paragraphs (f)(2) and (g) until the borrower has been given a reasonable opportunity to complete the application. A reasonable opportunity requires the servicer to notify the borrower of what additional information or corrected documents are required, and to afford the borrower sufficient time to gather the information and documentation necessary to complete the application and submit it to the servicer. The amount of time that is sufficient for this purpose will depend on the facts and circumstances.

2. *Borrower fails to complete the application.* If the borrower fails to complete the application within the timeframe provided under §1024.41(c)(2)(iv), the application shall be considered incomplete.

41(c)(3) Notice of complete application.

Paragraph 41(c)(3)(i).

1. *Completion date.* A servicer complies with §1024.41(c)(3)(i)(B) by disclosing on the notice the most recent date the servicer received the complete loss mitigation application. For example, assume that a borrower first submits a complete loss mitigation application on March 1. The servicer must disclose March 1 as the date the servicer received the application under §1024.41(c)(3)(i)(B). Assume the servicer discovers on March 10 that it requires additional information or corrected documents to complete the application and promptly requests such additional information or documents from the borrower pursuant to §1024.41(c)(2)(iv). If the borrower subsequently completes the application on March 21, the servicer must provide another notice in accordance with §1024.41(c)(3)(i) and disclose March 21 as the date the servicer received the complete application. *See* comment 41(c)(3)(i)–3.

2. *First notice or filing.* Section 1024.41(c)(3)(i)(D)(*1*) and (*2*) sets forth different requirements depending on whether the servicer has made the first notice or filing under applicable law for any judicial or non-judicial foreclosure process at the time the borrower submits a complete loss mitigation application. See comment 41(f)–1 for a description of whether a document is considered the first notice or filing under applicable law.

3. *Additional notices.* Except as provided in §1024.41(c)(3)(ii), §1024.41(c)(3)(i) requires a servicer to provide a written notice every time a loss mitigation application becomes complete. For example, assume that a borrower first submits a complete loss mitigation application on March 1, and the servicer provides the notice under §1024.41(c)(3)(i). Assume the servicer discovers on March 10 that it requires additional information or corrected documents regarding a source of income that the borrower previously identified. The servicer must promptly request such additional information or documents from the borrower pursuant to §1024.41(c)(2)(iv). If the borrower subsequently completes the application on March 21, the servicer must provide another notice in accordance with §1024.41(c)(3)(i), unless an exception applies under §1024.41(c)(3)(ii). *See* comment 41(c)(3)(i)–1.

41(c)(4) Information not in the borrower's control.

41(c)(4)(i) Diligence requirements.

1. *During the first 30 days following receipt of a complete loss mitigation application.* Section 1024.41(c)(4)(i) requires a servicer to act with reasonable diligence to obtain documents or information not in the borrower's control, which includes information in the servicer's control, that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower. At a minimum and without limitation, a servicer must request such documents or information from the appropriate party:

i. Promptly upon determining that the servicer requires the documents or information to determine which loss mitigation options, if any, the servicer will offer the borrower; and

ii. By a date that will enable the servicer to complete the evaluation within 30 days of receiving the complete loss mitigation application, as set forth in §1024.41(c)(1), to the extent practicable.

2. *More than 30 days following receipt of a complete loss mitigation application.* If a servicer has not, within 30 days of receiving a complete loss mitigation application, received the required documents or information from a party other than the borrower or the servicer, the servicer acts with reasonable diligence pursuant to §1024.41(c)(4)(i) by heightening efforts to obtain the documents or information promptly, to minimize delay in making a determination of which loss mitigation options, if any, it will offer to the borrower. Such heightened efforts include, for example, promptly verifying that it has contacted the appropriate party and determining whether it should obtain the required documents or information from a different party.

41(c)(4)(ii) Effect in case of delay.

1. *Third-party delay.* Notwithstanding delay in receiving required documents or information from any party other than the borrower or the servicer, §1024.41(c)(1)(i) requires a servicer to complete all possible steps in the process of evaluating a complete loss mitigation application within 30 days of receiving the complete loss mitigation application. Such steps may include requirements imposed on the servicer by third parties, such as mortgage insurance companies, guarantors, owners, or assignees. For example, if a servicer can determine a borrower's eligibility for all available loss mitigation options based on an evaluation of the borrower's complete loss mitigation application subject only to approval from the mortgage insurance company, §1024.41(c)(1)(i) requires the servicer to do so within 30 days of receiving the complete loss mitigation application notwithstanding the need to obtain such approval before offering the borrower any loss mitigation options.

2. *Offers not prohibited.* Section 1024.41(c)(4)(ii)(A)(*2*) permits a servicer to deny a complete loss mitigation application (in accordance with applicable investor requirements) if, after exercising reasonable diligence to obtain the required documents or information from a party other than the borrower or the servicer, the servicer has been unable to obtain such documents or information for a significant period of time and the servicer cannot complete its determination without the required documents or information. Section 1024.41(c)(4)(ii)(A)(*2*)

does not require a servicer to deny a complete loss mitigation application and permits a servicer to offer a borrower a loss mitigation option, even if the servicer does not obtain the requested documents or information.

41(d) Denial of loan modification options.

1. *Investor requirements.* If a trial or permanent loan modification option is denied because of a requirement of an owner or assignee of a mortgage loan, the specific reasons in the notice provided to the borrower must identify the owner or assignee of the mortgage loan and the requirement that is the basis of the denial. A statement that the denial of a loan modification option is based on an investor requirement, without additional information specifically identifying the relevant investor or guarantor and the specific applicable requirement, is insufficient. However, where an owner or assignee has established an evaluation criteria that sets an order ranking for evaluation of loan modification options (commonly known as a waterfall) and a borrower has qualified for a particular loan modification option in the ranking established by the owner or assignee, it is sufficient for the servicer to inform the borrower, with respect to other loan modification options ranked below any such option offered to a borrower, that the investor's requirements include the use of such a ranking and that an offer of a loan modification option necessarily results in a denial for any other loan modification options below the option for which the borrower is eligible in the ranking.

2. *Net present value calculation.* If a trial or permanent loan modification is denied because of a net present value calculation, the specific reasons in the notice provided to the borrower must include the inputs used in the net present value calculation.

3. *Determination not to offer a loan modification option constitutes a denial.* A servicer's determination not to offer a borrower a loan modification available to the borrower constitutes a denial of the borrower for that loan modification option, notwithstanding whether a servicer offers a borrower a different loan modification option or other loss mitigation option.

4. *Reasons listed.* A servicer is required to disclose the actual reason or reasons for the denial. If a servicer's systems establish a hierarchy of eligibility criteria and reach the first criterion that causes a denial but do not evaluate the borrower based on additional criteria, a servicer complies with the rule by providing only the reason or reasons with respect to which the borrower was actually evaluated and rejected as well as notification that the borrower was not evaluated on other criteria. A servicer is not required to determine or disclose whether a borrower would have been denied on the basis of additional criteria if such criteria were not actually considered.

41(f) Prohibition on foreclosure referral.

1. *Prohibited activities.* Section 1024.41(f) prohibits a servicer from 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 on the basis of foreclosure procedure under the applicable State law.

i. 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).

ii. 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.

iii. 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.

iv. 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.

41(g) Prohibition on foreclosure sale.

1. *Dispositive motion.* The prohibition on a servicer 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. A servicer that has made any such motion before receiving a complete loss mitigation application has not moved for a foreclosure judgment or order of sale if the servicer takes reasonable steps to avoid a ruling on such motion or issuance of such order prior to completing the procedures required by §1024.41, notwithstanding whether any such action successfully avoids a ruling on a dispositive motion or issuance of an order of sale.

2. *Proceeding with the foreclosure process.* Nothing in §1024.41(g) prevents a servicer from proceeding with the foreclosure process, including any publication, arbitration, or mediation requirements established by applicable law, when the first notice or filing for a foreclosure proceeding occurred before

a servicer receives a complete loss mitigation application so long as any such steps 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 §1024.41.

3. *Interaction with foreclosure counsel.* The prohibitions in §1024.41(g) against moving for judgment or order of sale or conducting a sale may require a servicer to act through foreclosure counsel retained by the servicer in a foreclosure proceeding. If a servicer has received a complete loss mitigation application, the servicer must instruct counsel promptly not to make a dispositive motion for foreclosure judgment or order of sale; where such a dispositive motion is pending, to avoid a ruling on the motion or issuance of an order of sale; and, where a sale is scheduled, to prevent conduct of a foreclosure sale, unless one of the conditions in §1024.41(g)(1) through (3) is met. A servicer is not relieved of its obligations because foreclosure counsel's actions or inaction caused a violation.

4. *Loss mitigation applications submitted 37 days or less before foreclosure sale.* Although a servicer is not required to comply with the requirements in §1024.41 with respect to a loss mitigation application submitted 37 days or less before a foreclosure sale, a servicer is required separately, in accordance with policies and procedures maintained pursuant to §1024.38(b)(2)(v) to properly evaluate 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. 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.

5. *Conducting a sale prohibited.* Section 1024.41(g) prohibits a servicer from conducting a foreclosure sale, even if a person other than the servicer administers or conducts the foreclosure sale proceedings. Where a foreclosure sale is scheduled, and none of the conditions under §1024.41(g)(1) through (3) are applicable, conduct of the sale violates §1024.41(g).

Paragraph 41(g)(3).

1. *Short sale listing period.* An agreement for a short sale transaction, or other similar loss mitigation option, typically includes marketing or listing periods during which a servicer will allow a borrower to market a short sale transaction. A borrower is deemed to be performing under an agreement on a short sale, or other similar loss mitigation option, during the term of a marketing or listing period.

2. *Short sale agreement.* If a borrower has not obtained an approved short sale transaction at the end of any marketing or listing period, a servicer may determine that a borrower has failed to perform under an agreement on a loss mitigation option. An approved short sale transaction is a short sale transaction that has been approved by all relevant parties, including the servicer, other affected lienholders, or insurers, if applicable, and the servicer has received proof of funds or financing, unless circumstances otherwise indicate that an approved short sale transaction is not likely to occur.

41(h) Appeal process.

Paragraph 41(h)(3).

1. *Supervisory personnel.* The appeal may be evaluated by supervisory personnel that are responsible for oversight of the personnel that conducted the initial evaluation, as long as the supervisory personnel were not directly involved in the initial evaluation of the borrower's complete loss mitigation application.

41(i) Duplicative requests.

1. *Applicability of loss mitigation protections.* Under §1024.41(i), a servicer must comply with §1024.41 with respect to a loss mitigation application unless the servicer has previously done so for a complete loss mitigation application submitted by the borrower and the borrower has been delinquent at all times since submitting the prior complete application. Thus, for example, if the borrower has previously submitted a complete loss mitigation application and the servicer complied fully with §1024.41 for that application, but the borrower then ceased to be delinquent and later became delinquent again, the servicer again must comply with §1024.41 for any subsequent loss mitigation application submitted by the borrower. When a servicer is required to comply with the requirements of §1024.41 for such a subsequent loss mitigation application, the servicer must comply with all applicable requirements of §1024.41. For example, in such a case, the servicer's provision of the notice of determination of which loss mitigation options, if any, it will offer to the borrower under §1024.41(c)(1)(ii) regarding the borrower's prior complete loss mitigation application does not affect the servicer's obligations to provide a new notice of complete application under §1024.41(c)(3)(i) regarding the borrower's subsequent complete loss mitigation application.

2. *Servicing transfers.* Section 1024.41(i) provides that a servicer need not comply with §1024.41 for a subsequent loss mitigation application from a borrower where certain conditions are met. A transferee servicer and a transferor servicer, however, are not the same servicer. Accordingly, a transferee servicer is required to comply with the applicable requirements of §1024.41 upon receipt of a loss mitigation application from a borrower whose servicing the transferee servicer has obtained through a servicing transfer, even if the borrower previously received an

evaluation of a complete loss mitigation application from the transferor servicer.

41(k) Servicing transfers.

1. *Pending loss mitigation application.* For purposes of §1024.41(k), a loss mitigation application is pending if it was subject to §1024.41 and had not been fully resolved before the transfer date. For example, a loss mitigation application would not be considered pending if a transferor servicer had denied a borrower for all options and the borrower's time for making an appeal, if any, had expired prior to the transfer date, such that the transferor servicer had no continuing obligations under §1024.41 with respect to the application. A pending application is considered a pending complete application if it was complete as of the transfer date under the transferor servicer's criteria for evaluating loss mitigation applications.

41(k)(1) In general.

41(k)(1)(i) Timing of compliance.

1. *Obtaining loss mitigation documents and information.* i. In connection with a transfer, a transferor servicer must timely transfer, and a transferee servicer must obtain from the transferor servicer, documents and information submitted by a borrower in connection with a loss mitigation application, consistent with policies and procedures adopted pursuant to §1024.38(b)(4). A transferee servicer must comply with the applicable requirements of §1024.41 with respect to a loss mitigation application received as a result of a transfer, even if the transferor servicer was not required to comply with §1024.41 with respect to that application (for example, because §1024.41(i) precluded applicability of §1024.41 with respect to the transferor servicer). If an application was not subject to §1024.41 prior to a transfer, then for purposes of §1024.41(b) and (c), a transferee servicer is considered to have received the loss mitigation application on the transfer date. Any such application is subject to the timeframes for compliance set forth in §1024.41(k).

ii. A transferee servicer must, in accordance with §1024.41(b)(1), exercise reasonable diligence to complete a loss mitigation application, including a facially complete application, received as a result of a transfer. In the transfer context, reasonable diligence 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, as well as ensuring that the borrower is informed about which documents and information are necessary to complete the application.

iii. A borrower may provide documents and information necessary to complete an application to a transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to §1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, such documents and information.

2. *Determination of rights and protections.* For purposes of §1024.41(c) through (h), a transferee servicer must consider documents and information that constitute a complete loss mitigation application for the transferee servicer to have been received as of the date such documents and information were received by the transferor servicer, even if such documents and information were received by the transferor servicer after the transfer date. *See* comment 41(k)(1)(i)–1.iii. An application that was facially complete under §1024.41(c)(2)(iv) with respect to the transferor servicer remains facially complete under §1024.41(c)(2)(iv) with respect to the transferee servicer as of the date it was facially complete with respect to the transferor servicer. If an application was complete with respect to the transferor servicer, but is not complete with respect to the transferee servicer, the transferee servicer must treat the application as facially complete under §1024.41(c)(2)(iv) as of the date the application was complete with respect to the transferor servicer.

3. *Duplicative notices not required.* A transferee servicer is not required to provide notices under §1024.41 with respect to a particular loss mitigation application 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, the transferee servicer is not required to provide the notice again for that application.

41(k)(1)(ii) Transfer date defined.

1. *Transfer date.* Section 1024.41(k)(1)(ii) provides that the transfer date is the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to §1024.33(b)(4)(iv). The transfer date is the same date as that on which the transfer of the servicing responsibilities from the transferor servicer to the transferee servicer occurs. The transfer date is not necessarily the same date as either the effective date of the transfer of servicing as disclosed on the notice of transfer of loan servicing pursuant to §1024.33(b)(4)(i) or the sale date identified in a servicing transfer agreement.

41(k)(2) Acknowledgment notices.

41(k)(2)(ii) Prohibitions.

1. *Examples of prohibitions.* Section 1024.41(k)(2)(ii)(A) and (B) adjusts the timeframes for certain borrower rights and foreclosure protections where §1024.41(k)(2)(i) applies. These provisions are illustrated as follows: Assume a transferor servicer receives a borrower's initial loss mitigation application on October 1, and the loan is transferred five

days (excluding legal public holidays, Saturdays, or Sundays) later, on October 8. Assume that Columbus Day, a legal public holiday, occurs on October 14, and the transferee servicer provides the notice required by §1024.41(b)(2)(i)(B) 10 days (excluding legal public holidays, Saturdays, or Sundays) after the transfer date, on October 23. Assume the transferee servicer discloses a 30-day reasonable date, November 22, under §1024.41(b)(2)(ii).

i. If the transferor servicer receives the borrower's initial loss mitigation application when the borrower's mortgage loan is 101 days delinquent, the borrower's mortgage loan would be 123 days delinquent on October 23, the date the transferee servicer provides the notice required by §1024.41(b)(2)(i)(B). Pursuant to §1024.41(k)(2)(ii)(A), the transferee servicer cannot make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until after November 22, the reasonable date disclosed under §1024.41(b)(2)(ii), and then only if the borrower has not submitted a complete application by that date.

ii. If the transferor servicer receives the borrower's initial loss mitigation application 55 days before the foreclosure sale, the date that the transferee servicer provides the notice required by §1024.41(b)(2)(i)(B), October 23, is 33 days before the foreclosure sale. Pursuant to §1024.41(k)(2)(ii)(B), the transferee servicer must comply with §1024.41(c), (d), and (g) if the borrower submits a complete loss mitigation application on or before November 22, the reasonable date disclosed under §1024.41(b)(2)(ii).

2. *Applicability of loss mitigation provisions.* Section 1024.41(k)(2)(ii)(A) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until a date that is after the reasonable date disclosed to the borrower pursuant to §1024.41(b)(2)(ii), notwithstanding §1024.41(f)(1). Section 1024.41(k)(2)(ii)(B) requires a servicer to comply with §1024.41(c), (d), and (g) if a borrower submits a complete loss mitigation application on or before the reasonable date disclosed in the notice required by §1024.41(b)(2)(i)(B), even if the servicer would otherwise not be required to comply with §1024.41(c), (d), and (g) because the application is submitted 37 days or fewer before a foreclosure sale. Section 1024.41(k)(2)(ii) provides additional protections for borrowers but does not remove any protections. Servicers remain subject to the requirements of §1024.41 as applicable and so, for example, must comply with §1024.41(h) if the servicer receives a complete loss mitigation application 90 days or more before a foreclosure sale. Similarly, a servicer is prohibited from making the first notice or filing before the borrower's mortgage loan obligation is more than 120 days delinquent, even if that is after the reasonable date disclosed to the borrower pursuant to §1024.41(b)(2)(ii).

3. *Reasonable date when no milestones remain.* Generally, a servicer does not provide the notice required under §1024.41(b)(2)(i)(B) after the date that is 38 days before a foreclosure sale, so at least one milestone specified in comment 41(b)(ii)–1 always remains applicable. When §1024.41(k)(2)(i) applies, however, the transferee servicer may sometimes provide the notice after the date that is 38 days before a foreclosure sale. When this occurs, the transferee servicer must determine the reasonable date when none of the four specified milestones remain. The other requirements of §1024.41(b)(2)(ii) continue to apply. In this circumstance, a reasonable date may occur less than 30 days, but not less than seven days, after the date the transferee servicer provides the written notice pursuant to §1024.41(b)(2)(i)(B).

41(k)(3) Complete loss mitigation applications pending at transfer.

1. *Additional information or corrections to a previously submitted document.* If a transferee servicer acquires the servicing of a mortgage loan for which a complete loss mitigation application is pending as of the transfer date and the transferee servicer determines that additional information or a correction to a previously submitted document is required based upon its criteria for evaluating loss mitigation applications, the application is considered facially complete under §1024.41(c)(2)(iv) as of the date it was first facially complete or complete, as applicable, with respect to the transferor servicer. Once the transferee servicer receives the information or corrections necessary to complete the application, §1024.41(c)(3) requires the transferee servicer to provide a notice of complete application.

2. *Applications first complete upon transfer.* If the borrower's loss mitigation application was incomplete based on the transferor servicer's criteria prior to transfer but is complete based upon the transferee servicer's criteria, the application is considered a pending loss mitigation application complete as of the transfer date for purposes of §1024.41(k)(3). Consequently, the transferee servicer must comply with the applicable requirements of §1024.41(c)(1) and (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. *See* comment 41(k)(1)(i)–2. In such circumstances, §1024.41(c)(3) requires the transferee servicer to provide a notice of complete application that discloses the date the transferor servicer received the documents and information constituting the complete application.

41(k)(4) Applications subject to appeal process.

1. *Obtaining appeal.* A borrower may submit an appeal of a transferor servicer's determination pursuant to §1024.41(h) to the transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to §1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, documents and information regarding such appeals.

2. *Servicer unable to determine appeal.* A transferee servicer may be unable to make a determination on an appeal when, for example, the transferor servicer denied a borrower for a loan modification option that the transferee servicer does not offer or when the transferee servicer receives the mortgage loan through an involuntary transfer and the transferor servicer failed to maintain proper records such that the transferee servicer lacks sufficient information to review the appeal. In that circumstance, the transferee servicer is required to treat the appeal as a pending complete application, and it must permit the borrower to accept or reject any loss mitigation options offered by the transferor servicer, even if it does not offer the loss mitigation options offered by the transferor servicer, in addition to the loss mitigation options, if any, that the transferee servicer determines to offer the borrower based on its own evaluation of the borrower's complete loss mitigation application. For example, assume a transferor servicer denied a borrower for all loan modification options but offered the borrower a short sale option, and assume that the borrower's appeal of the loan modification denial was pending as of the transfer date. If the transferee servicer is unable to determine the borrower's appeal, the transferee servicer must evaluate the borrower for all available loss mitigation options in accordance with §1024.41(c) and (k)(3). At the conclusion of such evaluation, the transferee servicer must permit the borrower to accept the short sale option offered by the transferor servicer, even if the transferee servicer does not offer the short sale option, in addition to any loss mitigation options the transferee servicer determines to offer the borrower based upon its own evaluation.

41(k)(5) Pending loss mitigation offers.

1. *Obtaining evidence of borrower acceptance.* A borrower may provide an acceptance or rejection of a pending loss mitigation offer to a transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to §1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, documents and information regarding such acceptances and rejections, and the transferee servicer must provide the borrower with any timely accepted loss mitigation option, even if the borrower submitted the acceptance to the transferor servicer.

APPENDIX MS TO PART 1024—MORTGAGE SERVICING MODEL FORMS AND CLAUSES

1. *In general.* This appendix contains model forms and clauses for mortgage servicing disclosures required by §§1024.33, 37, and 39. Each of the model forms is designated for uses in a particular set of circumstances as indicated by the title of that model form or clause. Although use of the model forms and clauses is not required, servicers using them appropriately will be in compliance with disclosure requirements of §§1024.33, 37, and 39. To use the forms appropriately, information required by regulation must be set forth in the disclosures.

2. *Permissible changes.* Servicers may make certain changes to the format or content of the forms and clauses and may delete any disclosures that are inapplicable without losing the protection from liability so long as those changes do not affect the substance, clarity, or meaningful sequence of the forms and clauses. Servicers making revisions to that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Use of ''borrower'' and ''servicer'' instead of pronouns.

ii. Substitution of the words ''lender'' and ''servicer'' for each other.

iii. Addition of graphics or icons, such as the servicer's corporate logo.

iv. 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 the mortgage loan obligation under State law and is not otherwise liable on the mortgage loan obligation, this could include:

A. Use of ''the mortgage loan'' or ''this mortgage loan'' instead of ''your mortgage loan'' and ''the monthly payments'' instead of ''your monthly payments.''

B. 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.

C. Use of ''We will charge the loan account'' instead of ''You must pay us'' in notices relating to force-placed insurance.

APPENDIX MS–3—MODEL FORCE-PLACED INSURANCE NOTICE FORMS

1. Where the model forms MS–3(A), MS–3(B), MS–3(C), and MS–3(D) use the term ''hazard insurance,'' the servicer may substitute ''hazard insurance'' with ''homeowners' insurance'' or ''property insurance.''

APPENDIX MS–4—MODEL CLAUSES FOR THE WRITTEN EARLY INTERVENTION NOTICE

1. *Model MS–4(A).* These model clauses illustrate how a servicer may provide its contact information, how a servicer may request

that the borrower contact the servicer, and how the servicer may inform the borrower how to obtain additional information about loss mitigation options, as required by §1024.39(b)(2)(i), (ii), and (iv).

2. *Model MS–4(B)*. These model clauses illustrate how the servicer may inform the borrower of loss mitigation options that may be available, as required by §1024.39(b)(2)(iii), if applicable. A servicer may include clauses describing particular loss mitigation options to the extent such options are available. Model MS–4(B) does not contain sample clauses for all loss mitigation options that may be available. The language in the model clauses contained in square brackets is optional; a servicer may comply with the disclosure requirements of §1024.39(b)(2)(iii) by using language substantially similar to the language in the model clauses, providing additional detail about the options, or by adding or substituting applicable loss mitigation options for options not represented in these model clauses, provided the information disclosed is accurate and clear and conspicuous.

3. *Model MS–4(C)*. These model clauses illustrate how a servicer may provide contact information for housing counselors, as required by §1024.39(b)(2)(v). A servicer may, at its option, provide the Web site and telephone number for either the Bureau's or the Department of Housing and Urban Development's housing counselors list, as provided by paragraphs §1024.39(b)(2)(v).

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PART 1025 [RESERVED]