

for administrative action by the Secretary under part 24 of this title concerning debarment, suspension, ineligibility of contractors and grantees, or under part 25 of this title concerning the HUD Mortgagee Review Board. Nothing in this paragraph is a limitation on any other form of enforcement which may be legally available.

(b) *Violations of section 8 of RESPA* (12 U.S.C. 2607), §3500.14, or §3500.15. Any person who violates §§3500.14 or 3500.15 shall be deemed to violate section 8 of RESPA and shall be sanctioned accordingly.

(c) *Violations of section 9 of RESPA* (12 U.S.C. 2608) or §3500.16. Any person who violates section 3500.16 of this part shall be deemed to violate section 9 of RESPA and shall be sanctioned accordingly.

(d) *Investigations.* The procedures for investigations and investigational proceedings are set forth in 24 CFR part 3800.

§ 3500.20 [Reserved]

§ 3500.21 Mortgage servicing transfers.

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

Master servicer means the owner of the right to perform servicing, which may actually perform the servicing itself or may do so through a subservicer.

Mortgage servicing loan means a federally related mortgage loan, as that term is defined in §3500.2, subject to the exemptions in §3500.5, when the mortgage loan is secured by a first lien. The definition does not include subordinate lien loans or open-end lines of credit (home equity plans) covered by the Truth in Lending Act and Regulation Z, including open-end lines of credit secured by a first lien.

Qualified written request means a written correspondence from the borrower to the servicer prepared in accordance with paragraph (e)(2) of this section.

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

Transferee servicer means a servicer who obtains or who will obtain the right to perform servicing functions

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, who transfers or will transfer the right to perform servicing functions pursuant to an agreement or understanding.

(b) *Servicing Disclosure Statement and Applicant Acknowledgement; requirements.* (1) At the time an application for a mortgage servicing loan is submitted, or within 3 business days after submission of the application, the lender, mortgage broker who anticipates using table funding, or dealer who anticipates a first lien dealer loan shall provide to each person who applies for such a loan a Servicing Disclosure Statement. This requirement shall not apply when the application for credit is turned down within three business days after receipt of the application. A format for the Servicing Disclosure Statement appears as appendix MS-1 to this part. Except as provided in paragraph (b)(2) of this section, the specific language of the Servicing Disclosure Statement is not required to be used, but the Servicing Disclosure Statement must include the information set out in paragraph (b)(3) of this section, including the statement of the borrower's rights in connection with complaint resolution. The information set forth in Instructions to Preparer on the Servicing Disclosure Statement need not be included on the form given to applicants, and material in square brackets is optional or alternative language.

(2) The Applicant's Acknowledgement portion of the Servicing Disclosure Statement in the format stated is mandatory. Additional lines may be added to accommodate more than two applicants.

(3) The Servicing Disclosure Statement must contain the following information, except as provided in paragraph (b)(3)(ii) of this section:

(i) Whether the servicing of the loan may be assigned, sold or transferred to any other person at any time while the loan is outstanding. If the lender, table funding mortgage broker, or dealer in a first lien dealer loan does not engage in the servicing of any mortgage servicing

loans, the disclosure may consist of a statement to the effect that there is a current intention to assign, sell, or transfer servicing of the loan.

(ii) The percentages (rounded to the nearest quartile (25%)) of mortgage servicing loans originated by the lender in each calendar year for which servicing has been assigned, sold, or transferred for such calendar year. Compliance with this paragraph (b)(3)(ii) is not required if the lender, table funding mortgage broker, or dealer on a first lien dealer loan chooses option B in the model format in paragraph (b)(4) of this section, including in square brackets the language “[and have not serviced mortgage loans in the last three years.]”. The percentages shall be provided as follows:

(A) This information shall be set out for the most recent three calendar years completed, with percentages as of the end of each year. This information shall be updated in the disclosure no later than March 31 of the next calendar year. Each percentage should be obtained by using as the numerator the number of mortgage servicing loans originated during the calendar year for which servicing is transferred within the calendar year and, as the denominator, the total number of mortgage servicing loans originated in the calendar year. If the volume of transfers is less than 12.5 percent, the word “nominal” or the actual percentage amount of servicing transfers may be used.

(B) This statistical information does not have to include the assignment, sale, or transfer of mortgage loan servicing by the lender to an affiliate or subsidiary of the lender. However, lenders may voluntarily include transfers to an affiliate or subsidiary. The lender should indicate whether the percentages provided include assignments, sales, or transfers to affiliates or subsidiaries.

(C) In the alternative, if applicable, the following statement may be substituted for the statistical information required to be provided in accordance with paragraph (b)(3)(ii) of this section: “We have previously assigned, sold, or transferred the servicing of federally related mortgage loans.”

(iii) The best available estimate of the percentage (0 to 25 percent, 26 to 50 percent, 51 to 75 percent, or 76 to 100 percent) of all loans to be made during the 12-month period beginning on the date of origination for which the servicing may be assigned, sold, or transferred. Each percentage should be obtained by using as the numerator the estimated number of mortgage servicing loans that will be originated for which servicing may be transferred within the 12-month period and, as the denominator, the estimated total number of mortgage servicing loans that will be originated in the 12-month period.

(A) If the lender, mortgage broker, or dealer anticipates that no loan servicing will be sold during the calendar year, the word “none” may be substituted for “0 to 25 percent.” If it is anticipated that all loan servicing will be sold during the calendar year, the word “all” may be substituted for “76 to 100 percent.”

(B) This statistical information does not have to include the estimated assignment, sale, or transfer of mortgage loan servicing to an affiliate or subsidiary of that person. However, this information may be provided voluntarily. The Servicing Disclosure Statements should indicate whether the percentages provided include assignments, sales or transfers to affiliates or subsidiaries.

(iv) The information set out in paragraphs (d) and (e) of this section.

(v) A written acknowledgement that the applicant (and any co-applicant) has/have read and understood the disclosure, and understand that the disclosure is a required part of the mortgage application. This acknowledgement shall be evidenced by the signature of the applicant and any co-applicant.

(4) The following is a model format, which includes several options, for complying with the requirements of paragraph (b)(3) of this section. The model format may be annotated with additional information that clarifies or enhances the model language. The lender or table funding mortgage broker (or dealer) should use the language that best describes the particular circumstances.

(i) *Model format:* The following is the best estimate of what will happen to the servicing of your mortgage loan:

(A) *Option A.* We may assign, sell, or transfer the servicing of your loan while the loan is outstanding. [We are able to service your loan[.][.], and we [will] [will not] [haven't decided whether to] service your loan.]; or

(B) *Option B.* We do not service mortgage loans[.][.], [and have not serviced mortgage loans in the past three years.] We presently intend to assign, sell, or transfer the servicing of your mortgage loan. You will be informed about your servicer.

(C) As appropriate, the following paragraph may be used:

We assign, sell, or transfer the servicing of some of our loans while the loans are outstanding, depending on the type of loan and other factors. For the program for which you have applied, we expect to [assign, sell, or transfer all of the mortgage servicing][retain all of the mortgage servicing] [assign, sell, or transfer _____% of the mortgage servicing].

(ii) [Reserved]

(c) *Servicing Disclosure Statement and Applicant Acknowledgement; delivery.* The lender, table funding mortgage broker, or dealer that anticipates a first lien dealer loan shall deliver Servicing Disclosure Statements to each applicant for mortgage servicing loans. Each applicant or co-applicant must sign an Acknowledgement of receipt of the Servicing Disclosure Statement before settlement.

(1) In the case of a face-to-face interview with one or more applicants, the Servicing Disclosure Statement shall be delivered at the time of application. An applicant present at the interview may sign the Acknowledgment on his or her own behalf at that time. An applicant present at the interview also may accept delivery of the Servicing Disclosure Statement on behalf of the other applicants.

(2) If there is no face-to-face interview, the Servicing Disclosure Statement shall be delivered by placing it in the mail, with prepaid first-class postage, within 3 business days from receipt of the application. 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) The signed Applicant Acknowledgment(s) shall be retained for a period of 5 years after the date of settlement as part of the loan file for every settled loan. There is no requirement for retention of Applicant Acknowledgment(s) if the loan is not settled.

(d) *Notices of Transfer; loan servicing—*

(1) *Requirement for notice.* (i) Except as provided in this paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section, each transferor servicer and transferee servicer of any mortgage servicing loan shall deliver to the borrower a written Notice of Transfer, containing the information described in paragraph (d)(3) of this section, of any assignment, sale, or transfer of the servicing of the loan. The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of this requirement if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

(A) Transfers between affiliates;

(B) Transfers resulting from mergers or acquisitions of servicers or subservicers; and

(C) Transfers between master servicers, where the subservicer remains the same.

(ii) The Federal Housing Administration (FHA) is not required under paragraph (d) of this section to submit to the borrower a Notice of Transfer in cases where a mortgage insured under the National Housing Act is assigned to FHA.

(2) *Time of notice.* (i) Except as provided in paragraph (d)(2)(ii) of this section:

(A) The transferor servicer shall deliver 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 servicing loan;

(B) The transferee servicer shall deliver the Notice of Transfer to the borrower not more than 15 days after the effective date of the transfer; and

(C) The transferor and transferee servicers may combine their notices

into one notice, which shall be delivered to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan.

(ii) The Notice of Transfer shall be delivered 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 servicing 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; or

(C) Commencement of proceedings by the Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC) for conservatorship or receivership of the servicer or an entity that owns or controls the servicer.

(iii) Notices of Transfer delivered at settlement by the transferor servicer and transferee servicer, whether as separate notices or as a combined notice, will satisfy the timing requirements of paragraph (d)(2) of this section.

(3) *Notices of Transfer; contents.* The Notices of Transfer required under paragraph (d) of this section shall include the following information:

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

(ii) The name, consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or collect-call telephone number for an employee or department of the transferee servicer;

(iii) A toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower for 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) Information concerning any effect the transfer may have on 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 coverage;

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

(vii) A statement of the borrower's rights in connection with complaint resolution, including the information set forth in paragraph (e) of this section. Appendix MS-2 of this part illustrates a statement satisfactory to the Secretary.

(4) *Notices of Transfer; sample notice.* Sample language that may be used to comply with the requirements of paragraph (d) of this section is set out in appendix MS-2 of this part. Minor modifications to the sample language may be made to meet the particular circumstances of the servicer, but the substance of the sample language shall not be omitted or substantially altered.

(5) *Consumer protection during transfer of servicing.* During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage servicing 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 loan documents), a late fee may not be imposed on the borrower with respect to that payment and the payment may not be treated as late for any other purposes.

(e) *Duty of loan servicer to respond to borrower inquiries—* (1) *Notice of receipt of inquiry.* Within 20 business days of a servicer of a mortgage servicing loan receiving a qualified written request from the borrower for information relating to the servicing of the loan, the servicer shall provide to the borrower a written response acknowledging receipt of the qualified written response. This requirement shall not apply if the action requested by the borrower is taken within that period and the borrower is notified of that action in accordance with the paragraph (f)(3) of this section. By notice either included in the Notice of Transfer or separately delivered by first-class mail, postage

prepaid, a servicer may establish a separate and exclusive office and address for the receipt and handling of qualified written requests.

(2) *Qualified written request; defined.*

(i) For purposes of paragraph (e) of this section, a qualified written request means a written correspondence (other than notice on a payment coupon or other payment medium supplied by the servicer) that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and includes a statement of the reasons that the borrower believes the account is in error, if applicable, or that provides sufficient detail to the servicer regarding information relating to the servicing of the loan sought by the borrower.

(ii) A written request does not constitute a qualified written request if it is delivered to a servicer more than 1 year after either the date of transfer of servicing or the date that the mortgage servicing loan amount was paid in full, whichever date is applicable.

(3) *Action with respect to the inquiry.* Not later than 60 business days after receiving a qualified written request from the borrower, and, if applicable, before taking any action with respect to the inquiry, the servicer shall:

(i) Make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of the correction. This written notification shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower; or

(ii) After conducting an investigation, provide the borrower with a written explanation or clarification that includes:

(A) To the extent applicable, a statement of the servicer's reasons for concluding the account is correct and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower; or

(B) Information requested by the borrower, or an explanation of why the information requested is unavailable or cannot be obtained by the servicer, and the name and telephone number of an

employee, office, or department of the servicer that can provide assistance to the borrower.

(4) *Protection of credit rating.* (i) During the 60-business day period beginning on the date of the servicer receiving from a borrower a qualified written request relating to a dispute on the borrower's payments, a servicer may not provide adverse information regarding any payment that is the subject of the qualified written request to any consumer reporting agency (as that term is defined in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a).

(ii) In accordance with section 17 of RESPA (12 U.S.C. 2615), the protection of credit rating provision of paragraph (e)(4)(i) of this section does not impede a lender or servicer from pursuing any of its remedies, including initiating foreclosure, allowed by the underlying mortgage loan instruments.

(f) *Damages and costs.* (1) Whoever fails to comply with any provision of this section shall be liable to the borrower for each failure in the following amounts:

(i) *Individuals.* In the case of any action by an individual, an amount equal to the sum of any actual damages sustained by the individual as the result of the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not to exceed \$1,000.

(ii) *Class actions.* In the case of a class action, an amount equal to the sum of any actual damages to each borrower in the class that result from the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not greater than \$1,000 for each class member. However, the total amount of any additional damages in a class action may not exceed the lesser of \$500,000 or 1 percent of the net worth of the servicer.

(iii) *Costs.* In addition, in the case of any successful action under paragraph (f) of this section, the costs of the action and any reasonable attorneys' fees incurred in connection with the action.

(2) *Nonliability.* A transferor or transferee servicer shall not be liable for

any failure to comply with the requirements of this section, if within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before commencement of an action under this section and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(g) *Timely payments by servicer.* If the terms of any mortgage servicing loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the mortgaged property, the servicer shall make payments from the escrow account in a timely manner for the taxes, insurance premiums, and other charges as the payments become due, as governed by the requirements in § 3500.17(k).

(h) *Preemption of State laws.* A lender who makes a mortgage servicing 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 prepared under this section, if the procedure is allowable under State law.

(Approved by the Office of Management and Budget under control number 2502-0458)

APPENDIX A TO PART 3500—
INSTRUCTIONS FOR COMPLETING
HUD-1 AND HUD-1A SETTLEMENT
STATEMENTS; SAMPLE HUD-1 AND
HUD-1A STATEMENTS

The following are instructions for completing sections A through L of the HUD-1 settlement statement, required under section 4 of RESPA and Regulation X of the Department of Housing and Urban Development (24 CFR part 3500). This form is to be used as a statement of actual charges and adjustments 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 Regulation X for specific definitions of many of the terms which 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 Regulation X regarding rules applicable to reproduction of the HUD-1. An additional page(s) may be attached to 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 Lender 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 for at settlement. Charges to be paid outside of settlement, including cases where a non-settlement agent (*i.e.*, attorneys, title companies, escrow agents, real estate agents or brokers) holds the Borrower's deposit against the sales price (earnest money) and applies the entire deposit towards the charge for the settlement service it is rendering, shall be included on the HUD-1 but marked "P.O.C." for "Paid Outside of Closing" (settlement) and shall not be included in computing totals. P.O.C. items should not be placed in the Borrower or Seller columns, but rather on the appropriate line next to the columns.

Blank lines are provided in section L for any additional settlement charges. Blank