AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 77 Monday,
No. 180 September 17, 2012

Part II

Bureau of Consumer Financial Protection

12 CFR Part 1024
2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal; Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1024

[Docket No. CFPB–2012–0034]

RIN 3170–AA14

2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (the Bureau) is proposing to amend Regulation X, which implements the Real Estate Settlement Procedures Act of 1974 (RESPA) and the official interpretation of the regulation. The proposed amendments implement the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provisions regarding mortgage loan servicing. Specifically, this proposal requests comment regarding proposed additions to Regulation X to address seven servicer obligations: To correct errors asserted by mortgage loan borrowers; to provide information requested by mortgage loan borrowers; to ensure that a reasonable basis exists to obtain force-placed insurance; to establish reasonable information management policies and procedures; to provide information about mortgage loss mitigation options to delinquent borrowers; to provide delinquent borrowers access to servicer personnel with continuity of contact about the borrower's mortgage loan account; and to evaluate borrowers' applications for available loss mitigation options.

This proposal would also modify and streamline certain existing servicing-related provisions of Regulation X. For instance, the proposal would revise provisions relating to a mortgage servicer's obligation to provide disclosures to borrowers in connection with a transfer of mortgage servicing, and a mortgage servicer's obligation to manage escrow accounts, including the obligation to advance funds to an escrow account to maintain insurance coverage and to return amounts in an escrow account to a borrower upon payment in full of a mortgage loan.

Published elsewhere in today's **Federal Register**, the Bureau proposes companion regulations implementing amendments to the Truth In Lending Act (TILA) in Regulation Z (the 2012 TILA Servicing Proposal).

DATES: Comments must be received on or before October 9, 2012, except that comments on the Paperwork Reduction Act analysis in part IX of this **Federal Register** notice must be received on or before November 16, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0034 or RIN 3170–AA14, by any of the following methods:

- *Electronic: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov*. In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

e-Rulemaking Initiative

The Bureau is working with the Cornell e-Rulemaking Initiative (CeRI) on a pilot project, Regulation Room, to use different web technologies and approaches to enhance public understanding and participation in Bureau rulemakings and to evaluate the advantages and disadvantages of these techniques. The TILA and RESPA proposed rulemakings on mortgage servicing are the subject of the project. The Bureau has undertaken this project to increase effective public involvement in the rulemaking process and strongly encourages all parties interested in this rulemaking to visit the Regulation Room Web site, *http://www.regulationroom.org*, to learn about the Bureau's proposed mortgage servicing rules and the rulemaking process, to discuss the issues in the rules with other persons and groups, and to participate in drafting a summary of that discussion that CeRI will submit to the Bureau.

Note that Regulation Room is sponsored by CeRI, and is not an official United States Government Web site. Participating in the discussion on that site will not result in individual formal comments that will be included in the Bureau's rulemaking record. If you would like to add a formal comment, please do so through the means identified above. The Bureau anticipates that CeRI will submit to the Bureau's rulemaking docket a summary of the discussion that occurs on the Regulation Room site and that participants will have a chance to review a draft and suggest changes before the summary is submitted. For questions about this project, please contact Whitney Patross, Attorney, Office of Regulations, at (202) 435–7700.

FOR FURTHER INFORMATION CONTACT: *Regulation X (RESPA):* Jane Gao, Mitchell E. Hochberg, and Michael Scherzer, Counsels at (202) 435–7700; Office of Regulations, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection; 1700 G Street NW., Washington, DC 20552.

Regulation Z (TILA): Whitney Patross, Attorney and Marta Tanenhaus, Senior Counsel at (202) 435–7700; Office of Regulations, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection; 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Overview

A. Background

The recent financial crisis exposed pervasive consumer protection problems across major segments of the mortgage servicing industry. As millions of borrowers fell behind on their loans, many servicers failed to provide the level of service necessary to serve the needs of those borrowers. Many servicers simply had not made the investments in resources and infrastructure necessary to service large numbers of delinquent loans. Existing weaknesses in servicer practices, including inadequate recordkeeping and document management and lack of oversight of service providers, made it harder to sort out borrower problems to achieve optimal results. In addition, many servicers took short cuts that made things even worse. As one review of fourteen major servicers found, companies ''emphasize[d] speed and cost efficiency over quality and accuracy'' in their foreclosure processes.[1]

[1] Federal Reserve System, Office of the Comptroller of the Currency, & Office of Thrift

The Dodd-Frank Act (Pub. L. 111–203, July 21, 2010) adopts several new servicing protections.[2] The Bureau has the authority to promulgate regulations to implement the new servicing protections. These changes will significantly improve disclosures to make it easier for consumers to monitor their mortgage loans and servicers' activities. The changes also address critical servicer practices, including error resolution, prompt crediting of payments, and ''force-placing'' insurance where borrowers have allowed their hazard insurance policies to lapse.

The Dodd-Frank Act also gives the Bureau discretionary authority to develop additional servicing rules. The Bureau proposes to use this authority to adopt requirements relating to reasonable information management policies and procedures, early intervention with delinquent borrowers, continuity of contact, and procedures for evaluating and responding to loss mitigation applications when the servicer makes loss mitigation options available in the ordinary course of business. These proposals address fundamental problems that underlie many consumer complaints and recent regulatory and enforcement actions. The Bureau believes these changes will reduce avoidable foreclosures and improve general customer service. The proposals cover nine major topics, as summarized below.

The Bureau's proposal is split into two parts because Congress imposed some requirements under TILA and some under RESPA.[3] This proposed rule would amend Regulation X, which implements RESPA, to implement section 1463 of the Dodd-Frank Act concerning error resolution and force-placed insurance and to impose additional requirements concerning reasonable information management policies and procedures, early intervention with delinquent borrowers, continuity of contact, and procedures for evaluating and responding to loss mitigation applications.

B. Scope of Coverage

The proposed rules generally apply to closed-end mortgage loans, with certain exceptions. Under the proposed amendments to Regulation X, open-end lines of credit and certain other loans, such as construction loans and business-purpose loans, are excluded. Under the proposed amendments to Regulation Z, the periodic statement and adjustable-rate mortgage (ARM), disclosure provisions apply only to closed-end mortgage loans, but the prompt crediting and payoff statement provisions apply both to open-end and closed-end mortgage loans. In addition, reverse mortgages and timeshares are excluded from the periodic statement requirement, and certain construction loans are excluded from the ARM disclosure requirements. As discussed below, the Bureau is seeking comment on whether to exempt small servicers from certain requirements or modify certain requirements for small servicers.

C. Summary

The proposals cover nine major topics, summarized below. More details can be found in the proposed rules, which are split into two notices issued under the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA), respectively.

1. Periodic billing statements. The Dodd-Frank Act generally mandates that servicers of closed-end residential mortgage loans (other than reverse mortgages) must send a periodic statement for each billing cycle. These statements must meet the timing, form, and content requirements provided for in the rule. The proposal contains sample forms that servicers could use. The periodic statement requirement generally would not apply for fixed-rate loans if the servicer provides a coupon book, so long as the coupon book contains certain information specified in the rule and certain other information is made available to the consumer. The proposal also includes an exception for small servicers that service 1000 or fewer mortgage loans and service only mortgage loans that they originated or own.

2. Adjustable-rate mortgage interest-rate adjustment notices. Servicers would have to provide a consumer whose mortgage has an adjustable rate with a notice 60 to 120 days before an adjustment which causes the payment to change. The servicer would also have to provide an earlier notice 210 to 240 days prior to the first rate adjustment. This first notice may contain an estimate of the rate and payment change. Other than this initial notice, servicers would no longer be required to provide an annual notice if a rate adjustment does not result in an increase in the monthly payment. The proposal contains model and sample forms that servicers could use.

3. Prompt payment crediting and payoff payments. As required by the Dodd-Frank Act, servicers must promptly credit payments from borrowers, generally on the day of receipt. If a servicer receives a payment that is less than a full contractual payment, the payment may be held in a suspense account. When the amount in the suspense account covers a full installment of principal, interest, and escrow (if applicable), the proposal would require the servicer to apply the funds to the oldest outstanding payment owed. A servicer also would be required to send an accurate payoff balance to a consumer no later than seven business days after receipt of a written request from the borrower for such information.

4. Force-placed insurance. As required by the Dodd-Frank Act, servicers would not be permitted to charge a borrower for force-placed insurance coverage unless the servicer has a reasonable basis to believe the borrower has failed to maintain hazard insurance and has provided required notices. One notice to the borrower would be required at least 45 days before charging for forced-place insurance coverage, and a second notice would be required no earlier than 30 days after the first notice. The proposal contains model forms that servicers could use. If a borrower provides proof of hazard insurance coverage, then the servicer would be required to cancel any force-placed insurance policy and refund any premiums paid for periods in which the borrower's policy was in place. In addition, if a servicer makes payments for hazard insurance from a borrower's escrow account, a servicer would be required to continue those payments rather than force-placing a separate policy, even if there is insufficient money in the escrow account. The rule would also provide that charges related to forced place insurance (other than those subject to State regulation as the business of insurance or authorized by Federal law for flood insurance) must relate to a service that was actually performed. Additionally, such charges would have to bear a reasonable relationship to the servicer's cost of providing the service.

5. Error resolution and information requests. Pursuant to the Dodd-Frank Act, servicers would be required to meet certain procedural requirements for responding to information requests or complaints of errors. The proposal defines specific types of claims which constitute an error, such as a claim that the servicer misapplied a payment or assessed an improper fee. A borrower

Supervision, *Interagency Review of Foreclosure Policies and Practices,* at 5 (Apr. 2011) (Interagency Foreclosure Report), available at *http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf.*

[2] *See* Dodd-Frank Act sections 1418, 1420, 1463, and 1464.

[3] Note that TILA and RESPA differ in their terminology. Consumers and creditors are the defined terms used in Regulation Z. Borrowers and lenders are the defined terms used in Regulation X.

could assert an error either orally or in writing. Servicers could designate a specific phone number and address for borrowers to use. Servicers would be required to acknowledge the request or complaint within five days. Servicers would have to correct or respond to the borrower with the results of the investigation, generally within 30 to 45 days. Further, servicers generally would be required to acknowledge borrower requests for information and either provide the information or explain why the information is not available within a similar amount of time. A servicer would not be required to delay a scheduled foreclosure sale to consider a notice of error unless the error relates to the servicer's improperly proceeding with a foreclosure sale during a borrower's evaluation for alternatives to foreclosure.

6. Information management policies and procedure. Servicers would be required to establish reasonable information management policies and procedures. The reasonableness of a servicer's policies and procedures would take into account the servicer's size, scope, and nature of its operations. A servicer's policies and procedures would satisfy the rule if the servicer regularly achieves the document retention and servicing file requirements, as well as certain objectives specified in the rule. Examples of such objectives include providing accurate and timely information to borrowers and the courts or enabling servicer personnel to have prompt access to documents and information submitted in connection with loss mitigation applications. In addition, a servicer must retain records relating to each mortgage until one year after the mortgage is discharged or servicing is transferred and must create a mortgage servicing file for each loan containing certain specified documents and information.

7. Early intervention with delinquent borrowers. Servicers would be required to make good faith efforts to notify delinquent borrowers of loss mitigation options. If a borrower is 30 days late, the proposal would require servicers to make a good faith effort to notify the borrower orally and to let the borrower know that loss mitigations options may be available. If the borrower is 40 days late, the servicer would be required to provide the borrower with a written notice with certain specific information, including examples of loss mitigation options available, if applicable, and information on how to obtain more information about loss mitigation options. The notice would also provide information to the borrower about the foreclosure process. The rule contains model language servicers could use for these notices.

8. Continuity of contact with delinquent borrowers. Servicers would be required to provide delinquent borrowers with access to personnel to assist them with loss mitigation options where applicable. The proposal would require servicers to assign dedicated contact personnel for a borrower no later than five days after providing the early intervention notice. Servicers would be required to establish reasonable policies and procedures designed to ensure that the servicer personnel perform certain specified functions where applicable, such as access the borrower's records and provide the borrower with information about how and when to apply for a loss mitigation option and about the status of the application.

9. Loss mitigation procedures. Servicers that offer loss mitigation options to borrowers would be required to implement procedures to ensure that complete loss mitigation applications are reasonably evaluated before proceeding with a scheduled foreclosure sale. The proposal would require servicers to exercise reasonable diligence to secure information or documents required to make an incomplete loss mitigation application complete. In certain circumstances, this could include notifying the borrower within five days of receiving an incomplete application. Within 30 days of receiving a borrower's complete application, the servicer would be required to evaluate the borrower for all available options, and, if the denial pertains to a requested loan modification, notify the borrower of the reasons for the servicer's decision, and provide the borrower with at least a 14-day period within which to appeal the decision. The proposal would require that appeals be decided within 30 days by different personnel than those responsible for the initial decision. A servicer that receives a complete application for a loss mitigation option could not proceed with a foreclosure sale unless (i) the servicer had denied the borrower's application and the time for any appeal had expired; (ii) the servicer had offered a loss mitigation option which the borrower declined or failed to accept within 14 days of the offer; or (iii) the borrower failed to comply with the terms of a loss mitigation agreement. The proposal would require that deadlines for submitting an application for a loss mitigation option be no earlier than 90 days before a scheduled foreclosure sale.

D. Small Servicers

As discussed below, the Bureau convened a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel to assess the impact of the possible rules on small servicers and to help the Bureau determine to what extent it may be appropriate to consider adjusting these standards for small servicers, to the extent permitted by law. Informed by this process, the 2012 TILA Servicing Proposal contains an exemption from the periodic statement requirement for certain small servicers. The Bureau seeks comment on whether other exemptions might be appropriate for small servicers.

E. Effective Date

As discussed below, the Bureau is seeking comment on when this final rule should be effective. Because the final rule will provide important benefits to consumers, the Bureau seeks to make it effective as soon as possible. However, the Bureau understands that the final rules will require servicers to make revisions to their software and to retrain their staff. In addition, some entities will be required to implement other Dodd-Frank Act provisions, which are subject to separate rulemaking deadlines under the statue and will have separate effective dates. Therefore, the Bureau is seeking comment on how much time industry needs to make these changes.

II. Background

A. Overview of the Mortgage Servicing Market and Market Failures

The mortgage market is the single largest market for consumer financial products and services in the United States, with approximately $10.3 trillion in loans outstanding.[4] Mortgage servicers play a vital role within the broader market by undertaking the day-to-day management of mortgage loans on behalf of lenders who hold the loans in their portfolios or (where a loan has been securitized) investors who are entitled to the loan proceeds.[5] Over

[4] Inside Mortgage Finance, Outstanding 1–4 Family Mortgage Securities, Mortgage Market Statistical Annual (2012). For general background on the market and the recent mortgage crisis, *see* the 2012 TILA–RESPA Proposal available at: *http://www.consumerfinance.gov/knowbeforeyouowe/*.

[5] As of the end of 2011, approximately 33% of outstanding mortgage loans were held in portfolio, 57% of mortgage loans were owned through mortgage-backed securities issued by government sponsored enterprises (GSEs), and 11% of loans were owned through private label mortgage-backed securities. Inside Mortgage Finance, Issue 2012:13, at 11 (March 30, 2012). A securitization results in the economic separation of the legal title to the mortgage loan and a beneficial interest in the

60% of mortgage loans are serviced by mortgage servicers for investors.

Servicers' duties typically include billing borrowers for amounts due, collecting and allocating payments, maintaining and disbursing funds from escrow accounts, reporting to creditors or investors, and pursuing collection and loss mitigation activities (including foreclosures and loan modifications) with respect to delinquent borrowers. Indeed, without dedicated companies to perform these activities, it is questionable whether a secondary market for mortgage-backed securities would exist in this country.[6]

Several aspects of the mortgage servicing business make it uniquely challenging for consumer protection purposes. Given the nature of their activities, servicers can have a direct and profound impact on borrowers. However, industry compensation practices and the structure of the mortgage servicing industry create wide variations in servicers' incentives to provide effective customer service to borrowers. Also, because borrowers cannot choose their own servicers, it is particularly difficult for them to protect themselves from shoddy service or harmful practices.

Mortgage servicing is performed by banks, thrifts, credit unions, and non-bank servicers under a variety of business models. In some cases, creditors service mortgage loans that they originate or purchase and hold in portfolio. Other creditors sell the ownership of the underlying mortgage loan, but retain the mortgage servicing rights in order to retain the relationship with the borrower, as well as the servicing fee and other ancillary income. In still other cases, servicers have no role at all in origination or loan ownership, but rather purchase mortgage servicing rights on securitized loans or are hired to service a portfolio lender's loans.[7]

These different servicing structures can create difficulties for borrowers if a servicer makes mistakes, fails to invest sufficient resources in its servicing operations, or does not properly service the borrower's loan. Although the mortgage servicing industry has numerous participants, the industry is highly concentrated, with the five largest servicers servicing approximately 55 percent of outstanding mortgage loans in this country.[8] Small servicers generally operate in discrete segments of the market, for example, by specializing in servicing delinquent loans, or by servicing loans that they originate.[9]

Contracts between the servicer and the mortgage loan owner specify the rights and responsibilities of each party. In the context of securitized loans, the contracts may require the servicer to balance the competing interests of different classes of investors when borrowers become delinquent. Certain provisions in servicing contracts may limit the servicer's ability to offer certain types of loan modifications to borrowers. Such contracts also may limit the circumstances under which investors can transfer servicing rights to a different servicer.

Compensation structures vary somewhat for loans held in portfolio and securitized loans,[10] but have tended to make pure mortgage servicing (where the servicer has no role in origination) a high-volume, low-margin business in which servicers have little incentive to invest in customer service. A servicer will expect to recoup its investment in purchasing mortgage servicing rights and earn a profit through a net servicing fee (which is expressed as a constant rate assessed on unpaid mortgage balances),[11] fees assessed on borrowers, interest float on payment accounts between receipt and disbursement, and cross-marketing other products and services to borrowers. Under this business model, servicers act primarily as payment collectors and processors, and provide minimal customer service to ensure profitability. Servicers also have an incentive to look for opportunities to impose fees on borrowers to enhance revenues and are generally not subject to market discipline because consumers have no opportunity to switch providers. Additionally, servicers may have financial incentives to foreclose rather than engage in loss mitigation.[12]

These attributes of the servicing market created problems for certain borrowers even prior to the national mortgage crisis. For example, borrowers experienced problems with mortgage servicers even during regional mortgage market downturns that preceded the mortgage crisis.[13] Borrowers were subjected to improper fees that servicers had no reasonable basis to impose on borrowers, improper force-placed insurance practices, and improper foreclosure and bankruptcy practices.[14]

When the mortgage crisis erupted, many servicers were ill-equipped to handle the high volumes of delinquent mortgages, loan modification requests,

mortgage loan obligation. In a securitization transaction, a securitization trust is the owner or assignee of a mortgage loan. An investor is a creditor of the trust and is entitled to cash flows that are derived from the proceeds of the mortgage loans. In general, certain investors (or an insurer entitled to act on behalf of the investors) may direct the trust to take action as the owner or assignee of the mortgage loans for the benefit of the investors or insurers. *See, e.g.,* Adam Levitin & Tara Twomey, *Mortgage Servicing,* 28 Yale J. on Reg., 1, 11 (2011) (Levitin & Twomey).

[6] *See, e.g.,* Levitin & Twomey at 11 (''All securitizations involved third-party servicers * * * [m]ortgage servicers provide the critical link between mortgage borrowers and the SPV and RMBS investors, and servicing arrangements are an indispensable part of securitization.'').

[7] *See, e.g.,* Diane E. Thompson, *Foreclosing Modifications: How Servicer Incentives Discourage Loan Modifications,* 86 Wash. L. Rev. 755, 763 (2011) (Thompson), available at *http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1074/86WLR755.pdf.*

[8] *See, e.g,* Inside Mortgage Finance, Issue 2012:13, at 12 (Mar. 30, 2012). As of the end of the fourth quarter of 2011, the top five largest servicers serviced $5.66 trillion of mortgage loans. *See id.* at 12.

[9] *See, e.g.,* Fitch Ratings, *U.S. Residential and Small Balance Commercial Mortgage Servicer Rating Criteria,* at 14–15 (Jan. 31, 2011), available at http://*www.fitchratings.com.*

[10] At securitization, the cash flow that was part of interest income is bifurcated between the loan and the mortgage servicing right (MSR). The MSR represents the present value of all the cash flows, both positive and negative, related to servicing a mortgage. Prime MSRs are largely created by the GSE minimum servicing fee rate, which is calculated as 25 basis points (bps) per annum. The servicing fee rate is typically paid to the servicer monthly and the monthly amount owed is calculated by multiplying the pro rata portion of the servicing fee rate by the stated principal balance of the mortgage loan at the payment due date. Accounting rules require that a capitalized asset be created if the ''compensation'' for servicing (including float/ancillary) exceeds ''adequate compensation.'' For loans held in portfolio, there is no bifurcation of the interest income from the loan. The owner of the loan simply negotiates pricing, terms, and standards with the servicer, which, at larger institutions, is typically a separate affiliate or subsidiary of the owner of the loans. Keefe, Bruyette & Woods, *Mortgage Servicing Primer,* at 3 (Apr. 17, 2012).

[11] *See, e.g.,* Thompson, 86 Wash. L. Rev. 755, 767.

[12] National Consumer Law Center, *Why Servicers Foreclose When They Should Modify and Other Puzzles of Servicer Behavior,* at v (Oct. 2009) (''Servicers, unlike investors or homeowners, do not generally lose money on foreclosure. Servicers may even make money on a foreclosure.''); *see also, The Need for National Mortgage Servicing Standards: Hearing Before the Subcomm. on Housing, Transportation, and Community Affairs of the Senate Comm. on Banking, Housing and Urban Affairs,* S. Hrg. 112–139, 112th Cong. 126 (2011) (statement of Diane E. Thompson, National Consumer Law Center), at 15 (''...modification will also likely reduce future income, cost more in the present in staffing, and delay recovery of expenses. Moreover, the foreclosure process itself generates significant income for servicers.''), available at *http://www.nclc.org/images/pdf/pr-reports/report-servicers-modify.pdf.*

[13] *See Problems in Mortgage Servicing From Modification to Foreclosure: Hearings Before the Comm. on Banking, Housing and Urban Affairs,* S. Hrg. 111–987, 111th Cong. 53–54 (2010) (statement of Thomas J. Miller, Iowa Attorney General) (Miller Testimony). *See also,* Kurt Eggert, *Limiting Abuse and Opportunism by Mortgage Servicers 15:3 Housing Policy Debate* (2004), available at *http://ssrn.com/abstract=992095*

[14] *See* Kurt Eggert, *Limiting Abuse and Opportunism by Mortgage Servicers 15:3 Housing Policy Debate* (2004), available at *http://ssrn.com/abstract=992095* (collecting cases).

and foreclosures they were required to process. These servicers lacked the infrastructure, trained staff, controls, and procedures needed to manage effectively the flood of delinquent mortgages they were forced to handle. Consumer harm has manifested in many different areas, and major servicers have entered into significant settlement agreements with Federal and State governmental authorities. For example, in April 2011, the Office of the Comptroller of the Currency and the Federal Reserve Board undertook formal enforcement actions against several major servicers for unsafe and unsound residential mortgage loan servicing practices.[15] These enforcement actions generally focused on practices relating to (1) filing of foreclosure documents without, for example, proper affidavits or notarizations; (2) failing to always ensure that loan documents were properly endorsed or assigned and, if necessary, in the possession of the appropriate party at the appropriate time; (3) failing to devote sufficient financial, staffing, and managerial resources to ensure proper administration of foreclosures processes; (4) failing to devote adequate oversight, internal controls, policies and procedures, compliance risk management, internal audit, third party management, and training, to foreclosure processes; and (5) failing to sufficiently oversee outside counsel and other third-party providers handling foreclosure-related services.[16] Congress has held significant detailed hearings on the issue of servicer ''robo-signing'' of foreclosure related documentation.[17]

Servicers have also misled, or failed to communicate with, borrowers, lost or mishandled borrower-provided documents supporting loan modification requests, and generally provided inadequate service to delinquent borrowers. These problems became pervasive in broad segments of the mortgage servicing industry and had profound impacts on borrowers, particularly delinquent borrowers.[18]

The Bureau further understands from mortgage investors that there is a pervasive belief that servicers are making discretionary decisions based on the best interests of the servicer rather than to achieve results that will benefit owners or assignees of mortgages loans. When servicers hold a second lien that is behind a first lien owned by a different owner or assignee, one study has found a lower likelihood of liquidation and modification, and a higher likelihood of inaction by a servicer.[19] Specifically, ''liquidation and modification of securitized first mortgages are 60% [to] 70% less likely respectively and no action is 13% more likely when the servicer of that securitized first mortgage holds on its portfolio the second lien attached to the first mortgage.'' [20] These failures to take actions that may benefit both consumers and owners or assignees of first lien mortgage loans harm consumers.

The mortgage servicing industry, however, is not monolithic. Some servicers provide high levels of customer service. Some of these servicers may be compensated by investors in a way that incentivizes them to provide high levels of customer service in order to optimize investor outcomes. Other servicers provide high levels of customer service because they rely on providing other products and services to consumers and thus have an interest in preserving their reputations and relationships with their consumers. For example, as discussed further below, small servicers that the Bureau consulted as part of a process required under SBREFA described their businesses as requiring a ''high touch'' model of customer service both to ensure loan performance and maintain a strong reputation in their local communities.[21]

B. Mortgage Servicing Consumer Protection Regulation Before the Recent Crisis

Prior to the adoption of the Dodd-Frank Act, the mortgage servicing industry was subject to limited Federal consumer financial protection regulation. RESPA set forth basic protections with respect to mortgage servicing that were implemented by the U.S. Department of Housing and Urban Development (HUD). These included required disclosures at application concerning whether the lender intended to service the mortgage loan and disclosures upon an actual transfer of servicing rights.[22] RESPA further imposed substantive and disclosure requirements for escrow account management and required servicers to respond to ''qualified written requests''—written error resolution or information requests relating to a restricted definition of the ''servicing'' of the borrower's mortgage loan.[23]

TILA set forth requirements on creditors that were implemented by servicers, including disclosures regarding interest rate adjustments on adjustable rate mortgage loans. Regulation Z, which implements TILA, was amended by the Board of Governors of the Federal Reserve System (the Board) to include certain limited requirements directly on servicers, such as requirements to timely credit payments, provide payoff balances and prohibit pyramiding of late fees.[24] Servicers also had some obligations under other Federal laws, including, for example, the Servicemembers Civil Relief Act.[25]

Although TILA and RESPA did not impose many requirements on servicers, servicers were still required to navigate overlapping requirements governing their servicing responsibilities. In addition to Federal law, servicers were required to consider the impact of State and even local regulation on mortgage servicing. Servicers also had to comply with investor requirements to the extent they serviced loans owned or guaranteed by various types of entities. These include (1) servicing guidelines required by Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), together known as the government-sponsored enterprises (GSEs), as well as servicing guidelines required by the Government National Mortgage Association (Ginnie Mae); (2) government insured program

[15] OCC Press Release, OCC Takes Enforcement Action Against Eight Servicers for Unsafe and Unsound Foreclosure Practices (April 13, 2011), available at: *http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47.html,* and Federal Reserve Board Press Release, Federal Reserve Issues Enforcement Actions Related to Deficient Practices in Residential Mortgage Loan Servicing (April 13, 2011), available at: *http://www.federalreserve.gov/newsevents/press/enforcement/20110413a.htm*, and accompanying documents. In addition to enforcement actions against major servicers, Federal agencies have also undertaken formal enforcement actions against major service providers to mortgage servicers. See *id.*

[16] See *id.* None of the servicers admitted or denied the OCC's or Federal Reserve Board's findings.

[17] *See, e.g., Problems in Mortgage Servicing From Modification to Foreclosure: Hearings Before the Comm. on Banking, Housing and Urban Affairs,* S. Hrg. 111–987, 111th Cong. 53–54 (2010) (statement of Diane E. Thompson, NCLC) (Thompson Testimony).

[18] *See* U.S. Government Accountability Office, *Troubled Asset Relief Program: Further Actions Needed to Fully and Equitably Implement Foreclosure Mitigation Actions,* at 14–16 (Jun, 2010); Miller Testimony at 54.

[19] Sumit Agarwal *et al.,* Second Liens and the Holdup Problem in First Mortgage Renegotiation (Dec, 2011), available at *http://ssrn.com/abstract=2022501.*

[20] *Id.*

[21] *See* Final Report of the Small Business Review Panel on CFPB's Proposals Under Consideration for Mortgage Servicing Rulemaking (Small Business Review Panel Report) (Jun, 11, 2012). A copy of the report is available at: *http://www.consumerfinance.gov.*

[22] *See* 12 U.S.C. 2605(a)–(e).

[23] *See* 12 U.S.C. 2605(e) and 2609.

[24] *See* 12 CFR 1026.36(c).

[25] *See* 50 U.S.C. App. 501 *et seq.*

guidelines issued by the Federal Housing Administration (FHA), Department of Veterans Affairs (VA), and the Rural Housing Service; (3) contractual agreements with investors (such as pooling and servicing agreements and subservicing contracts); and (4) bank or institution policies. All those requirements remain in effect today and going forward.

C. The National Mortgage Settlement and Other Regulatory Actions

In response to the unprecedented mortgage crisis and pervasive problems in mortgage servicing, including the systemic violation of State foreclosure laws by many of the largest servicers, State and Federal regulators have engaged in a number of individual servicing related enforcement and regulatory actions over the last few years and have begun discussions about comprehensive national standards.

For example, 49 State attorneys general,[26] joined by numerous Federal agencies including the Bureau, entered into a National Mortgage Settlement (National Mortgage Settlement) with the nation's five largest servicers in February 2012.[27] The National Mortgage Settlement applies to loans held in portfolio and serviced by the five largest servicers. Loans owned by GSEs, private investors, or smaller servicers are not covered by the settlement.

Exhibit A to each of the settlements is a Settlement Term Sheet, which sets forth standards that each of the five largest servicers must follow to comply with the terms of the settlement.[28] The settlement standards contained in the Settlement Term Sheet are sub-divided into the following eight categories: (1) Foreclosure and bankruptcy information and documentation; (2) third-party provider oversight; (3) bankruptcy; (4) loss mitigation; (5) protections for military personnel; (6) restrictions on servicing fees; (7) force-placed insurance; and (8) general servicer duties and prohibitions.

In addition to the settlement, other Federal regulatory agencies have issued guidance on mortgage servicing and loan modifications,[29] conducted coordinated reviews of the nation's largest servicers,[30] and taken enforcement actions against individual companies.[31] The Bureau and other Federal agencies have also engaged since spring 2011 in informal discussions about the potential development of national mortgage servicing standards through regulations and guidance.

The Bureau's proposed rules under Regulation Z and X represent another important step towards establishing uniform minimum national standards. When adopted in final form, the Bureau's rules will apply to all mortgage servicers, whether depository institutions or non-depository institutions, and to all segments of the mortgage market, regardless of the ownership of the loan. The proposals focus both on implementing the specific mortgage servicing requirements of the Dodd-Frank Act and on addressing broader systemic problems that the Bureau believes are critical to ensure that the mortgage servicing market functions to serve consumer needs. To that end, the proposed TILA and RESPA mortgage servicing rules incorporate elements from four categories of the National Mortgage Settlement—(1) foreclosure and bankruptcy information and documentation, (4) loss mitigation, (6) restrictions on servicing fees, and (7) force-placed insurance. In addition, the proposed requirement to maintain reasonable information management policies and procedures addresses oversight of service providers, which impacts category (2) of the settlement.

The Bureau continues to consider whether to incorporate other settlement standards into rules or guidance, either alone or in conjunction with other Federal regulatory agencies; certain requests for comment in this proposal reflect these considerations. The Bureau is also continuing ongoing discussions with other regulators to ensure appropriate coordination of rulemaking and other initiatives relating to mortgage servicing issues.

D. The Statutory Requirements and Additional Proposals

The Dodd-Frank Act mandates several protections for homeowners in the servicing of their loans. The Act requires new disclosures, specifically periodic statements (unless coupon books are provided in certain circumstances), notices prior to the reset of adjustable-rate mortgages, and force-placed insurance notices. These disclosures are designed to provide consumers with comprehensive and comprehensible information when they need it and in a form they can use, so they can better manage their obligations and avoid unnecessary problems.

The Dodd-Frank Act also imposes new requirements on servicers to respond in a timely way to borrowers who assert that their servicer made an error. The statute also requires servicers to respond in a timely way to borrower requests for information.

The Dodd-Frank Act contains requirements relating to the prompt crediting of payments, so that consumers are not wrongly penalized with late fees or other fees because servicers did not credit their payments quickly. The statute also requires servicers to provide timely responses to consumer requests for payoff amounts, so consumers can get this information when they need it, such as when refinancing.

The Bureau is proposing additional standards to improve the way servicers treat all borrowers, including delinquent borrowers. Some servicers have made it very difficult for delinquent borrowers to explore and take advantage of potential alternatives to foreclosure. For example, servicers have frequently neglected to reach out or respond to such borrowers to discuss alternatives to foreclosure, lost or misplaced the documents of borrowers who have sought modifications or other relief, failed to keep track of borrower communications, and forced borrowers who have invested substantial time communicating with an employee of the servicer to repeat the process with a different employee.[32]

To address these concerns, the Bureau is proposing new servicing standards in

[26] Oklahoma elected not to join the settlement.

[27] The National Mortgage Settlement is available at: *http://www.nationalmortgagesettlement.com/*. The five servicers subject to the settlement are Bank of America, JP Morgan Chase, Wells Fargo, CitiMortgage, and Ally/GMAC.

[28] *See http://www.nationalmortgagesettlement.com/*.

[29] Office of the Comptroller of the Currency, Bulletin 2011–29 (Jun. 30, 2011), available at: *http://www.occ.gov/news-issuances/bulletins/2011/bulletin-2011-29.html*; Letter from Edward J. DeMarco, Acting Director of FHFA, to Hon. Elijah E. Cummings, Ranking Member, Committee on Oversight and Government Reform, U.S. House of Representatives (Jan. 20, 2012), available at: *http://www.fhfa.gov/webfiles/23056/PrincipalForgivenessltr12312.pdf*; Guidance, Home Affordable Modification Program, available at: *https://www.hmpadmin.com/portal/programs/guidance.jsp*. FHFA, Frequently Asked Questions—Servicing Alignment Initiative, available at: *http://www.fhfa.gov/webfiles/21191/FAQs42811Final.pdf*.

[30] *See* Interagency Foreclosure Report, a joint review of foreclosure processing of 14 federally regulated mortgage servicers during the fourth quarter of 2010 by the Federal Reserve System, Office of the Comptroller of the Currency, and Office of Thrift Supervision.

[31] *See* Interagency Foreclosure Report at 5; Federal Reserve Board, Press Release (May 24, 2012), available at: *http://www.federalreserve.gov/newsevents/press/enforcement/20120524a.htm*; Federal Reserve Board, Press Release (Feb. 27, 2012), available at: *http://www.federalreserve.gov/newsevents/press/enforcement/20120227a.htm*; Office of the Comptroller of the Currency, News Release 2011–47 (Apr. 13, 2011), available at: *http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47.html*.

[32] *See, e.g.,* Larry Cordell *et al., The Incentives of Mortgage Servicers: Myths and Realities,* at 9 (Federal Reserve Board, Working Paper No. 2008–46, Sept. 2008).

four areas. First, servicers would have to establish and maintain information management policies and procedures that would have to be reasonably designed to achieve certain objectives and address certain obligations, including accessing and providing accurate information, evaluating borrowers for loss mitigation options, facilitating oversight of, and compliance by, service providers, and facilitating servicing transfers. Second, servicers would have to intervene early with delinquent borrowers to provide them with information about, and encourage them to explore, available alternatives to foreclosure. Third, servicers would have to provide delinquent borrowers with a point of contact on the servicer's staff that provides continuity in the borrowers' dealings with the servicer. At such point of contact, staff must have access to complete records about that borrower, including records of prior communications with the borrower, and be able to assist the borrower in pursuing loss mitigation options.

Fourth, servicers that offer loss mitigation options in the ordinary course of business would be required to follow certain procedures to ensure that borrowers' completed loss mitigation applications are evaluated in a timely manner, that borrowers are notified of the results, and that borrowers have a right to appeal the denial of a loan modification option. Servicers would also be required to provide borrowers who submit incomplete loss mitigation applications with timely notice about the additional documents or information needed to make a loss mitigation application complete.

The Bureau recognizes that a one-size-fits-all approach may not be optimal with regard to either the mandated or additional requirements. As discussed below, the Bureau seeks comment on to what extent it may be appropriate to adjust these standards for small servicers.

III. Summary of Statute and Rulemaking Process

A. Overview of the Statute

The Dodd-Frank Act imposes certain new requirements related to mortgage servicing. Some of these new requirements are amendments to RESPA addressed in this proposal and others are amendments to TILA.

RESPA amendments. Section 1463 of the Dodd-Frank Act imposes a number of new servicing related requirements under RESPA that broadly relate to force-placed insurance and error resolution/responses to requests for information. First, the statute prohibits a servicer from obtaining force-placed hazard insurance, unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirement to maintain property insurance. A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property secured by a federally related mortgage, unless the servicer sends, by first-class mail, two written notices to the borrower, at least 30 days apart. The notices must remind borrowers of their obligation to maintain hazard insurance on the property, alert borrowers to the servicer's lack of evidence of insurance coverage, tell borrowers what they must do to demonstrate that they have coverage, and state that the servicer may obtain coverage at the borrower's expense if the borrower fails to provide evidence of coverage. Servicers must terminate force-placed insurance coverage and refund to borrowers any premiums charged during any period when the borrower had private insurance coverage. The statute also provides that all charges imposed on the borrower related to force-placed insurance, apart from charges subject to State regulation as the business of insurance, must be bona fide and reasonable.

Second, the statute prohibits certain acts and practices by servicers of federally related mortgages with regard to resolving errors and responding to requests for information. Specifically, the statute prohibits servicers of federally related mortgages from charging fees for responding to valid qualified written requests. The statute also provides that a servicer of a federally related mortgage must not fail to take timely action to respond to a borrower's requests to correct errors relating to: Allocation of payments, final balances for purposes of paying off the loan, avoiding foreclosure, or other standard servicer duties.

Finally, the statue requires a servicer of a federally related mortgage to respond within ten business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner or assignee of the loan. The statue also reduces the amount of time that servicers of federally related mortgages have to correct errors and respond to inquiries generally, as well as refund escrow accounts upon payoff.[33]

In addition, the statute provides that a servicer of a federally related mortgage must ''comply with any other obligation found by the Consumer Financial Protection Bureau, by regulation, to be appropriate to carry out the consumer protection purposes of this Act.'' [34] This provision gives the Bureau broad authority to adopt additional regulations to govern the conduct of servicers of federally related mortgage loans. In light of the systemic problems in the mortgage servicing industry, the Bureau is proposing to exercise this authority to require servicers of federally related mortgages to: Establish reasonable information management policies and procedures; undertake early intervention with delinquent borrowers; provide delinquent borrowers with continuity of contact with staff equipped to assist them; and require servicers that offer loss mitigation options in the ordinary course of business to follow certain procedures when evaluating loss mitigation applications.

TILA amendments. There are three new mortgage servicing requirements under TILA. First, for closed-end credit transactions secured by a consumer's principal residence, section 1418 of the Dodd-Frank Act adds a new section 128A to TILA. TILA section 128A states that, for hybrid ARMs with a fixed interest rate for an introductory period that adjusts or resets to a variable interest rate at the end of such period, a notice must be provided six months prior to the initial adjustment of the interest rate for closed-end credit transactions secured by a consumer's principal residence. Section 1418 of the Dodd-Frank Act permits the Bureau to extend this requirement to ARMs that are not hybrid ARMs.

Second, section 1420 of the Dodd-Frank Act, which adds section 128(f) to TILA, requires the creditor, assignee, or servicer of any residential mortgage loan to transmit to the borrower, for each billing cycle, a periodic statement that sets forth certain specified information in a conspicuous and prominent manner. The statute also gives the Bureau the authority to require additional content to be included in the periodic statement. The statute provides an exception to the periodic statement requirement for fixed-rate loans where the borrower is given a coupon book containing substantially the same information as the statement.

Third, section 1464 of the Dodd-Frank Act adds sections 129F and 129G to TILA, which generally codify existing Regulation Z requirements for the prompt crediting of mortgage payments received by servicers in connection with

[33] Other changes in section 1463 of the Dodd-Frank Act relate to increases in penalties for violations. These provisions are not addressed in this rulemaking.

[34] 12 U.S.C. 2605(k)(1)(E).

consumer credit transactions secured by a consumer's dwelling. The statute also requires a creditor or servicer to send accurate and timely responses to borrower requests for payoff amounts for home loans.

The statutory provisions with enumerated mortgage servicing requirements become effective on January 21, 2013, unless final rules are issued on or before that date.

B. Outreach and Consumer Testing

The Bureau has conducted extensive outreach in developing the mortgage servicing proposals. Bureau staff met with mortgage servicers, force-placed insurance carriers, industry trade associations, consumer advocates, other Federal regulatory agencies, and other interested parties to discuss various aspects of the statute and the servicing industry.

In preparing this proposed rule, the Bureau solicited input from small servicers through a Small Business Review Panel (Small Business Review Panel) with the Chief Counsel for Advocacy of the Small Business Administration (SBA) and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).[35] The Small Business Review Panel's findings and recommendations are contained in the Final Report of the Small Business Review Panel on CFPB's Proposals Under Consideration for Mortgage Servicing Rulemaking (Small Business Review Panel Report).[36]

The Bureau also engaged in other meetings and roundtables with a variety of other stakeholders to gather factual information about the servicing industry and to discuss various elements of the Bureau's proposals as they were being developed. As discussed above and in connection with section 1022 of the Dodd-Frank Act below, the Bureau has also consulted with relevant Federal regulators both regarding the Bureau's specific proposals and the need for and potential contents of national mortgage servicing standards in general. As it considers public comment and works to develop final rules on mortgage servicing, the Bureau will continue to seek input from all interested parties.

In addition, the Bureau engaged ICF Macro (Macro), a research and consulting firm that specializes in designing disclosures and consumer testing, to conduct one-on-one cognitive interviews regarding disclosures connected with mortgage servicing. During the first quarter of 2012, the Bureau and Macro worked closely to develop and test disclosures that would satisfy the requirements of the Dodd-Frank Act and provide information to consumers in a manner that would be understandable and useful. These disclosures related to the ARM notices, the force-placed insurance notices, and the periodic statements. Macro conducted three rounds of one-on-one cognitive interviews with a total of 31 participants in the Baltimore, Maryland metro area (Towson, Maryland), Memphis, Tennessee, and Los Angeles, California. Participants were all consumers who held a mortgage loan and represented a range of ages and education levels. Efforts were made to recruit a significant number of participants who had trouble making mortgage payments in the last two years. During the interviews, participants were shown disclosure forms for periodic statements, ARM interest rate adjustment notices for the new disclosures required by Dodd-Frank Act section 1418, and force-placed insurance notices. Participants were asked specific questions to test their understanding of the information presented in each of the disclosures, how easily they could find various pieces of information presented in each of the disclosures, as well as to learn about how they would use the information presented in each of the disclosures. The disclosures were revised after each round of testing. Specific findings from the consumer testing are discussed in detail throughout the **SUPPLEMENTARY INFORMATION** where relevant.[37]

C. Other Dodd-Frank Act Mortgage-Related Rulemakings

Including this proposal, the Bureau currently is engaged in seven rulemakings relating to mortgage credit to implement requirements of the Dodd-Frank Act:

- *TILA–RESPA Integration:* On July 9, 2012, the Bureau released proposed rules and forms combining the TILA mortgage loan disclosures with the Good Faith Estimate (GFE) and settlement statement required under RESPA, pursuant to Dodd-Frank Act section 1032(f) as well as sections 4(a) of RESPA and 105(b) of TILA, as amended by Dodd-Frank Act sections 1098 and 1100A, respectively. 12 U.S.C. 2603(a); 15 U.S.C. 1604(b) (the 2012 TILA–RESPA Proposal).[38]
- *HOEPA:* On July 9, 2012, the Bureau released proposed rules to implement Dodd-Frank Act requirements expanding protections for ''high-cost'' mortgage loans under HOEPA, pursuant to TILA sections 103(bb) and 129, as amended by Dodd-Frank Act sections 1431 through 1433. 15 U.S.C. 1602(bb) and 1639.[39] Such loans have requirements on servicers of ''high-cost'' mortgage loans related to payoff statements, late fees, prepayment penalties, and fees for loan modifications or deferrals.
- *Loan Originator Compensation:* The Bureau is in the process of developing a proposal to implement provisions of the Dodd-Frank Act requiring certain creditors and mortgage loan originators to meet duty of care qualifications and prohibiting mortgage loan originators, creditors, and the affiliates of both from receiving compensation in various forms (including based on the terms of the transaction) and from sources other than the consumer, with specified exceptions, pursuant to TILA section 129B as established by Dodd-Frank Act sections 1402 through 1405. 15 U.S.C. 1639b.
- *Appraisals:* The Bureau, jointly with Federal prudential regulators and other Federal agencies, is in the process of developing a proposal to implement Dodd-Frank Act requirements concerning appraisals for higher-risk mortgages, appraisal management companies, and automated valuation models, pursuant to TILA section 129H as established by Dodd-Frank Act section 1471, 15 U.S.C. 1639h, and sections 1124 and 1125 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) as established by Dodd-Frank Act sections 1473(f), 12 U.S.C. 3353, and 1473(q), 12 U.S.C. 3354, respectively. In addition, the Bureau is developing rules to implement section 701(e) of the Equal Credit Opportunity Act (ECOA), as amended by Dodd-Frank Act section 1474, to require that creditors provide applicants with a free copy of written appraisals and valuations developed in connection with applications for loans secured by a first lien on a dwelling (collectively, Appraisals Rulemaking). 15 U.S.C. 1691(e).

[35] The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the Bureau to convene a Small Business Review Panel before proposing a rule that may have a significant economic impact on a substantial number of small entities. *See* Public Law 104–121, tit. II, 110 Stat. 847, 857 (1996) (as amended by Public Law 110–28, sec. 8302 (2007)).

[36] *See* Small Business Review Panel Report (Jun. 11, 2012). A copy of the report is available at: *http://www.consumerfinance.gov*.

[37] A copy of the Macro report on consumer testing is available at: *http://www.consumerfinance.gov/notice-and-comment/*.

[38] Available at: *http://www.consumerfinance.gov/notice-and-comment/*.

[39] *Id.*

• *Ability to Repay:* The Bureau is in the process of finalizing a proposal issued by the Board to implement provisions of the Dodd-Frank Act requiring creditors to determine that a consumer can repay a mortgage loan and establishing standards for compliance, such as by making a ''qualified mortgage,'' pursuant to TILA section 129C as established by Dodd-Frank Act sections 1411 and 1412 (ATR Rulemaking). 15 U.S.C. 1639c.

• *Escrows:* The Bureau is in the process of finalizing a proposal issued by the Board to implement provisions of the Dodd-Frank Act requiring certain escrow account disclosures and exempting from the higher-priced mortgage loan escrow requirement loans made by certain small creditors, among other provisions, pursuant to TILA section 129D as established by Dodd-Frank Act sections 1461 and 1462 (Escrows Rulemaking). 15 U.S.C. 1639d.

With the exception of the requirements being implemented in the 2012 TILA–RESPA Proposal, the Dodd-Frank Act requirements referenced above generally will take effect on January 21, 2013, unless final rules implementing those requirements are issued on or before that date and provide for a different effective date. To provide an orderly, coordinated, and efficient comment process, the Bureau is generally setting the deadlines for comments on this and other proposed mortgage rules based on the date the proposal is issued, instead of the date this notice is published in the **Federal Register**. Therefore, the Bureau is providing 60 days for comment on those proposals, which will ensure that the Bureau receives comments with sufficient time remaining to issue final rules by January 21, 2013. Because the precise date this notice will be published cannot be predicted in advance, setting the deadlines based on the date of issuance will allow interested parties that intend to comment on multiple proposals to plan accordingly.

The Bureau regards the foregoing rulemakings as components of a larger undertaking; many of them intersect with one or more of the others. Accordingly, the Bureau is coordinating carefully the development of the proposals and final rules identified above. Each rulemaking will adopt new regulatory provisions to implement the various Dodd-Frank Act mandates described above. In addition, each of them may include other provisions the Bureau considers necessary or appropriate to ensure that the overall undertaking is accomplished efficiently and that it ultimately yields a regulatory scheme for mortgage credit that achieves the statutory purposes set forth by Congress, while avoiding unnecessary burdens on industry.

Thus, many of the rulemakings listed above involve issues that extend across two or more rulemakings. In this context, each rulemaking may raise concerns that might appear unaddressed if that rulemaking were viewed in isolation. For efficiency's sake, however, the Bureau is publishing and soliciting comment on a proposed approach to certain issues raised by two or more of its mortgage rulemakings in whichever rulemaking is most appropriate, in the Bureau's judgment, for addressing each specific issue. Accordingly, the Bureau urges the public to review this and the other mortgage proposals identified above, including those previously published by the Board, together. Such a review will ensure a more complete understanding of the Bureau's overall approach and will foster more comprehensive and informed public comment on the Bureau's several proposals, including provisions that may have some relation to more than one rulemaking but are being proposed for comment in only one of them.

D. Small Servicers

The small entity representatives (SERs) who provided feedback to the SBREFA panel generally emphasized that their business models required a ''high touch'' approach to customer service and that they did not engage in many of the practices that contributed to the mortgage market process. The SERs indicated that they take a proactive approach to providing consumer information, resolving errors and working with delinquent borrowers to find alternatives to foreclosure. Nevertheless, they indicated that some elements of the proposals under consideration were not consistent with their current business practices and expressed concern about the need to begin providing extensive documentation to prove compliance with the proposed standards. The SERs urged the Bureau to adopt standards that would allow small servicers to stay in the market and provide choices to consumers.[40] The SERs were particularly concerned about the costs and burdens of complying with the periodic statement requirements, as well as certain aspects of the process for resolving errors and responding to inquiries.[41]

Informed by this process, the Bureau is proposing in the 2012 TILA Servicing Proposal to exempt certain small servicers from the periodic statement requirement. The Bureau is also proposing that certain requirements, such as the requirement to maintain reasonable information management policies and procedures under Regulation X, should be applied in light of the scale of the servicer's operations as well as other contextual factors. The Bureau does not believe that these provisions, described more fully in the section-by-section analysis of the applicable proposal, would impair consumer protection. The Bureau is also seeking comment more broadly on whether other exemptions or adjustments for small servicers would be warranted to reduce regulatory burden while appropriately balancing consumer protections.

E. Request for Comment on Effective Date

The Bureau specifically requests comment on the appropriate effective date for each of the servicing-related rules contained in this proposal and the 2012 TILA Servicing Proposed Rule. As discussed above, the Dodd-Frank Act servicing requirements take effect automatically on January 21, 2013, unless final rules are issued on or before that date.[42] Where rules are required to be issued, the Dodd-Frank Act permits the Bureau to provide up to 12 months for implementation. For all other rules, the implementation period is left to the discretion of the Bureau.

Given the significant consumer benefits offered by the proposals and the challenges faced by delinquent borrowers in dealing with their servicers, the Bureau generally believes that the final rules should be made effective as soon as possible. However, the Bureau understands that various elements of the final rules would require servicers to adopt or revise existing software to generate compliant disclosures, retrain staff, assess and revise policies and procedures, and/or take other implementation measures. The Bureau therefore seeks detailed comment on the nature and length of implementation process for each individual servicing rule and in light of interactions between the rules. The Bureau is particularly interested in analyzing the impacts on both consumers and servicers of a staggered implementation sequence as compared to imposing a single date by which all rules must be implemented.

The Bureau also notes that some companies may also need to implement

[40] Small Business Review Panel Report at 16, 21.

[41] *Id.* at 16–19, 21, and 23–24.

[42] Public Law 111–203, 124 Stat. 1376, section 1400(c) (2010).

other new requirements under other parts of the Dodd-Frank Act, as described above. The Bureau believes based on conversations and analysis to date that there is more overlap and interaction among the various proposals relating to mortgage origination than there is between the servicing proposals and the origination proposals. However, the Bureau seeks comment specifically on this issue and on whether the general cumulative burden on entities that are subject to both sets of rules will complicate implementation.

Finally, the Bureau seeks comment on any particular implementation challenges faced by small servicers, and on whether an extended implementation period would be appropriate or useful. For instance, to the extent that small servicers rely heavily on outside software vendors, the Bureau seeks comment on whether a delayed effective date would provide significant relief if the vendors will have to develop software solutions for larger servicers on a shorter timeline anyway. The Bureau also seeks comment on the impacts of delayed implementation on consumers and on other market participants.

IV. Summary of Proposed Rule

The proposal contains a number of significant revisions to Regulation X. As a preliminary matter, the Bureau proposes to reorganize Regulation X to include three distinct subparts. Subpart A (General) would include general provisions of Regulation X, including provisions that apply to both subpart B and subpart C. Subpart B (Mortgage settlement and escrow accounts) would include provisions relating to settlement services and escrow accounts, including disclosures provided to borrowers relating to settlement services. Subpart C (Mortgage servicing) would include provisions relating to obligations of mortgage servicers. The Bureau also proposes to set forth a commentary that includes official Bureau interpretations of Regulation X.

With respect to mortgage servicing-related provisions, the proposed rule would amend existing provisions currently published in 12 CFR 1024.21, which relate to disclosures of mortgage servicing transfers and servicer obligations to borrowers. The Bureau is proposing to include these provisions within the proposed subpart C as proposed §§ 1024.33–1024.34. The Bureau also proposes to move certain clarifications in these provisions that were previously published in 12 CFR 1024.21 to the commentary to conform the organization of these provisions with the proposed additions to Regulation X.

The proposed rule would establish procedures for investigating and resolving alleged errors and responding to requests for information. The requirements would be set forth in proposed §§ 1024.35–1024.36. As proposed, these sections would require servicers to respond to errors and information requests from borrowers, which would include qualified written requests. The Bureau's goal is to conform and consolidate the pre-existing procedures applicable to qualified written requests with the new requirements imposed by the Dodd-Frank Act to respond to errors and information requests under section 6(k)(1)(C) and 6(k)(1)(D) of RESPA. The Bureau proposes to create a unified requirement for servicers to respond to errors and information requests provided by borrowers, without regard to whether the request constitutes a qualified written request.[43] To that end, the proposed rule would implement the Dodd-Frank Act amendments to RESPA section 6(e) by adjusting the timeframes applicable to respond to qualified written requests, as well as errors and information requests generally, to conform to the new requirements.

The proposed rule would implement limitations on servicers obtaining force-placed insurance in § 1024.37. The proposed rule would require servicers to provide notices to borrowers at certain timeframes before a servicer could impose a charge on a borrower. *See* proposed § 1024.37. Further, the proposed rule would require that charges related to force-placed insurance, other than charges subject to State regulation as the business of insurance or authorized by Federal flood laws must be bona fide and reasonable. Finally, and as set forth in more detail below, the proposed rule would also reduce the instances in which force-placed insurance would be needed by amending current § 1024.17 to require that where a borrower has escrowed for hazard insurance, servicers must generally advance funds to maintain the borrowers' own hazard insurance policies even if the loan is delinquent.

The proposed rule would also implement the Dodd-Frank Act amendment to RESPA section 6(g) in proposed § 1024.34(b) by proposing requirements on servicers for the refund or transfer of funds in an escrow account when a mortgage loan is paid in full.

The proposed rule would also impose obligations on servicers in four additional areas not specifically required by the Dodd-Frank Act: Reasonable information management policies and procedures, early intervention for delinquent borrowers, continuity of contact, and loss mitigation procedures. *See* proposed §§ 1024.38–1024.41. The Bureau is proposing rules in these areas to address significant problems in the mortgage servicing industry and the difficulties that borrowers, particularly delinquent borrowers, have encountered when dealing with servicers. The early intervention for delinquent borrower provisions would require servicers to contact borrowers at an early stage of delinquency and provide information to borrowers about available loss mitigation options and the foreclosure process. The continuity of contact provisions would require servicers to make available to borrowers direct phone access to personnel who could assist borrowers in pursuing loss mitigation options. The reasonable information management policies and procedures would require servicers to implement policies and procedures to manage documents and information to achieve defined objectives that ensure borrowers are not harmed by servicers' information management operations. These objectives include providing accurate information to borrowers, correcting errors on borrower accounts, providing oversight of service providers, protecting borrowers from lost information during servicing transfers, and ensuring that servicers have access to all information necessary to evaluate loss mitigation options, as appropriate. The information management policies and procedures would also have to include standard requirements. Policies and procedures would satisfy the requirements if they do not result in a pattern or practice of failing to comply with the standard requirements or achieving the objectives. The loss mitigation procedures would require servicers that offer loss mitigation

[43] RESPA sets forth a ''qualified written request'' mechanism through which a borrower can assert an error to a servicer or request information from a servicer. Section 6(k)(1)(C) and 6(k)(1)(D) of RESPA set forth separate obligations for servicers to correct certain types of errors or to provide information regarding an owner or assignee of a mortgage loan without reference to the ''qualified written request'' process. The Bureau's proposal would integrate all error resolution and information request processes, including requirements applicable to ''qualified written requests.'' Although a borrower would still be able to submit a ''qualified written request,'' under the proposed rule, a ''qualified written request'' would be subject to the same error resolution or information request requirements applicable to any other type written error notice or information request to a servicer and a servicer's liability for failure to respond to a qualified written request would be the same as for any other written error or information request notice.

options to borrowers to evaluate complete and timely applications for loss mitigation options. Servicers would be required to permit borrowers to appeal denials of loss mitigation applications for loan modification programs. A servicer that receives a complete application for a loss mitigation option may not proceed with a foreclosure sale unless (i) the servicer has denied the borrower's application and the time for any appeal has expired; (ii) the servicer has offered a loss mitigation option which the borrower has declined or failed to accept within 14 days of the offer; or (iii) the borrower fails to comply with the terms of a loss mitigation agreement.

The proposed new protections would significantly improve the transparency of mortgage servicing operations, provide substantive protections, enhance borrowers' ability to obtain information from and assert errors to servicers, and provide borrowers, particularly delinquent borrowers, with information and options necessary to undertake informed actions with respect to mortgage loan obligations.

V. Legal Authority

Section 1463 of the Dodd-Frank Act creates statutory mandates under new sections 6(k), 6(l) and 6(m) of RESPA. Section 1463 of the Dodd-Frank Act also amends certain consumer protection provisions set forth in sections 6(e), 6(f) and 6(g) of RESPA.

Regarding the statutory mandates, section 6(k) of RESPA contains prohibitions on servicers for servicing of federally related mortgage loans. Pursuant to section 6(k) of RESPA, servicers are prohibited from: (i) Obtaining force-placed insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance; (ii) charging fees for responding to valid qualified written requests; (iii) failing to take timely action to respond to correct certain types of errors; (iv) failing to respond within ten business days to a request from a borrower to provide certain information about the owner or assignee of a mortgage loan; or (v) failing to comply with any other obligation found by the Bureau to be appropriate to carry out the consumer protection purposes of RESPA. *See* RESPA section 6(k).

Section 6(l) of RESPA sets forth specific requirements for determining if a servicer has a reasonable basis to obtain force-placed insurance coverage. Section 6(l) of RESPA requires servicers to provide written notices to a borrower before a charge for a force-placed insurance policy may be imposed on the borrower. Section 6(l) of RESPA also requires a servicer to accept any reasonable form of written confirmation from a borrower of existing insurance coverage. Section 6(l) of RESPA further requires a servicer, within 15 days of the receipt of such confirmation, to terminate force-placed insurance and refund any premiums and fees paid during the period of overlapping coverage. *See* RESPA section 6(l).

Section 6(m) of RESPA requires that charges related to force-placed insurance, other than charges subject to State regulation as the business of insurance, must be bona fide and reasonable. *See* RESPA section 6(m).

The Dodd-Frank Act also amends sections 6(e), 6(f), and 6(g) of RESPA. Section 6(e) is amended by decreasing the response times currently applicable to a servicer's obligation to respond to a qualified written request. Section 6(f) is amended to increase the penalty amounts servicers may incur for violations of section 6 of RESPA. Further, section 6(g) is amended to protect borrowers by obligating servicers to refund escrow balances to borrowers when a mortgage loan is paid in full or to transfer the escrow balance in certain refinancing related situations.

In addition to the statutory mandates and amendments, RESPA section 6(k) authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of the title. RESPA is a remedial consumer protection statute and imposes obligations upon servicers for servicing federally related mortgage loans that are intended to protect borrowers. RESPA has established a consumer protection paradigm of requiring disclosures to consumers, and establishing servicer obligations, all of which are intended to protect consumers regarding servicer actions. The disclosures include, for example, disclosures regarding escrow account balances and disbursements, transfers of mortgage servicing among mortgage servicers, and force-placed insurance. Obligations limiting servicer actions include obligations for servicers to respond to qualified written requests from borrowers and obligations with respect to escrow account payments. Servicers incur liability for failure to comply with such requirements.

Considered as a whole, RESPA, as amended by the Dodd-Frank Act, reflects at least two significant consumer protection purposes: (1) To establish requirements that ensure that servicers have a reasonable basis for undertaking actions that may harm borrowers and (2) to establish servicers' duties to borrowers with respect to the servicing of federally related mortgage loans. Each of the provisions proposed in this rulemaking address these purposes. RESPA section 19(a) authorizes the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA, which includes the consumer protection purposes laid out above. In addition, RESPA section 6(j)(3) authorizes the Bureau to establish any requirements necessary to carry out the purposes of section 6 of RESPA.

The Bureau uses the specific statutory authorities set forth above, as well as the broader authorities set forth in sections 6(j)(3), 6(k), and 19(a) of RESPA in issuing this proposal. As described in more detail elsewhere in the **SUPPLEMENTARY INFORMATION**, the provisions proposed in part or in whole pursuant to the Bureau's authority in RESPA sections 6(j)(3), 6(k) and 19(a) include: §§ 1024.17(k)(5), 1024.30—1024.41.[44]

The Bureau's proposal also includes official Bureau interpretations in a supplement to Regulation X. RESPA section 19(a) authorizes the Bureau to make such reasonable interpretations of RESPA as may be necessary to achieve the consumer protection purposes of RESPA. Good faith compliance with the interpretations would afford servicers protection from liability under section 19(b) of RESPA. The Bureau's proposed practice of setting forth official Bureau interpretations in the supplement substitutes for the prior practice of the HUD of publishing Statements of Policy with respect to interpretations of RESPA.[45]

Dodd-Frank Act Section 1032(a)

As discussed in the section-by-section analysis for proposed § 1024.37, the Bureau is proposing disclosures and model forms for force-placed insurance notices pursuant to its authority under RESPA sections 6(k), 6(j)(3), 19(a), as well as its authority under Dodd-Frank Act section 1032. Section 1032(a) of the

[44] Throughout the **SUPPLEMENTARY INFORMATION**, the Bureau is citing its authority under RESPA sections 6(j)(3), 6(k), and 19(a) for purposes of simplicity. The Bureau notes, however, that with respect to some of the provisions referenced in the text, use of only one of the authorities may be sufficient.

[45] The Bureau recognizes that the proposed supplement, which sets forth interpretations that relate to the proposed mortgage servicing rulemakings, is not inclusive of all interpretations of RESPA, including interpretations previously issued by the HUD. The Bureau does not intend that the publication of the supplement would withdraw or otherwise affect the status of any prior interpretations of RESPA not set forth in the supplement.

Dodd-Frank Act provides that the Bureau ''may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.'' 12 U.S.C. 5532(a). The authority granted to the Bureau in section 1032(a) is broad, and empowers the Bureau to prescribe rules regarding the disclosure of the ''features'' of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032, the Bureau ''shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.'' 12 U.S.C. 5532(c). In developing proposed rules under Dodd-Frank Act section 1032(a) for this proposal, the Bureau has considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services. The Bureau has considered the evidence developed through its consumer testing of the force-placed insurance notices.

In addition, Dodd-Frank Act section 1032(b)(1) provides that ''any final rule prescribed by the Bureau under this [section 1032] requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.'' 12 U.S.C. 5532(b)(1). Any model form issued pursuant to that authority shall contain a clear and conspicuous disclosure that, at a minimum, uses plain language that is comprehensible to consumers, using a clear format and design, such as readable type font, and succinctly explains the information that must be communicated to the consumer. Dodd-Frank Act 1032(b)(2); 12 U.S.C. 5532(b)(2). As discussed in the section-by-section analysis for proposed § 1024.37, the Bureau is proposing model forms for force-placed insurance notices. As discussed in this notice, the Bureau is proposing these model forms pursuant to its authority under Dodd-Frank Act section 1032(b)(1).

VI. Section-by-Section Analysis

Subpart A—General

The Bureau proposes to create three distinct subparts within Regulation X. Subpart A titled ''General'' would include general provisions as well as provisions that are applicable to both subpart B and subpart C of Regulation X. Subpart B titled ''Mortgage settlement and escrow accounts'' would include provisions relating to settlement services and escrow accounts, including disclosures required to be provided to borrowers with respect to settlement service providers. Subpart C titled ''Mortgage servicing'' would include provisions relating to mortgage servicing and would include most of the provisions in this proposal.

In order to organize the general provisions of Regulation X, as well as the provisions that would be applicable to both subpart B and subpart C, the Bureau proposes placing §§ 1024.1 through 1024.5 in subpart A.

Current § 1024.1 sets forth the designation and applicability of Regulation X and would be republished without change. Current § 1024.2 sets forth definitions that are applicable to transactions covered by this regulation, including the definition of federally related mortgage loan that is referenced in the proposed definition of the term ''mortgage loan'' in subpart C. *See* proposed § 1024.31. Current § 1024.2 would generally be republished without changed, except for a deletion from the definitions of ''Federally related mortgage loan'' and ''Mortgage broker'' and additions to the definitions of ''Public Guidance Documents'' and ''Servicer.''

The deletion to the definition of ''Federally related mortgage loan'' eliminates the use of the short term ''mortgage loan'' as a substitute for ''Federally related mortgage loan'' in light of the definition of the term ''mortgage loan'' in proposed § 1024.31. Conforming edits have also been proposed for the definitions of ''Origination service,'' ''Servicer,'' and ''Servicing.'' Conforming edits have also been proposed for current §§ 1024.7(f)(3), 1024.17(c)(8), 1024.17(f)(2)(ii), 1024.17(f)(4)(iii), 1024.17(i)(2), and 1024.17(i)(4)(iii).

The deletion to the definition of ''Mortgage broker'' removes a reference to loan correspondents that are approved under 24 CFR 202.8. HUD amended 24 CFR 202.8 on April 20, 2010 to eliminate the FHA approval process for loan correspondents and determined that loan correspondents would no longer be approved participants in FHA programs.[46] The deletion of the reference to FHA approved loan correspondents in the definition of ''Mortgage broker'' removes the now obsolete reference.

The addition to the definition of ''Public Guidance Documents'' provides that such documents are available from the Bureau upon request and provides an address that could be used to request the ''Public Guidance Documents.''

The addition to the definition of ''Servicer'' is intended to clarify the treatment of the National Credit Union Administration (NCUA) as conservator or liquidating agent of a servicer or in its role of providing special assistance to an insured credit union. The definition of ''Servicer'' currently provides that the Federal Deposit Insurance Corporation (FDIC) is not a servicer (1) with respect to 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 or (2) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by commencement of proceedings by the FDIC for conservatorship or receivership of a servicer (or an entity by which the servicer is owned or controlled). The addition to the definition of ''servicer'' clarifies similarly that the NCUA is not a servicer (1) with respect to 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 or (2) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by commencement of proceedings by the NCUA for appointment of a conservator or liquidating agent of a servicer (or an entity by which the servicer is owned or controlled). The definition of ''servicer'' also has been edited to clarify that it relates to servicers of federally related mortgage loans.

With respect to the additions to the definition of ''Servicer,'' the Bureau relies on its authority in section 19(a) of RESPA to make such interpretations and to grant such reasonable exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of the Act. The Bureau does not believe there is a basis to impose on the NCUA, when it is providing assistance to an insured credit union or in its role as conservator or liquidating agent of an insured credit union, the obligations of a servicer in light of the fact that Congress has

[46] *See* 75 FR 20718.

specifically stated that the FDIC, when it is providing assistance to an insured depository institution or in its role as conservator or receiver of an insured deposition institution, should not be considered a servicer.

Current § 1024.3 would be removed and the substance of § 1024.23 would be moved to proposed § 1024.3. Current § 1024.3 sets forth the process for the public to submit questions or suggestions regarding RESPA or to receive copies of Public Guidance Documents. Although the Bureau welcomes questions and suggestions from the public regarding Regulation X, the Bureau does not believe a provision of Regulation X must be specifically designated for that purpose. The public may contact the Bureau to request documents, suggest changes to Regulation X, or submit questions, including questions concerning the interpretation of RESPA by mail to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G St. NW., Washington, DC 20552 or by email to *CFPB_RESPAInquiries@cfpb.gov*. Further, the Bureau has proposed including contact information to request copies of Public Guidance Documents in the definition of Public Guidance Documents in proposed § 1024.2 as discussed above.

Current § 1024.23 states that provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), which permits electronic disclosures to consumers if certain conditions are met, apply to Regulation X. The Bureau believes that the E-Sign Act provisions are applicable to all provisions in the regulation, and, therefore, should be moved to subpart A. The Bureau has made technical edits to the language of the provision to conform to the language of other similar Bureau regulations.

Current § 1024.4 sets forth provisions relating to reliance upon rules, regulations, or interpretations by the Bureau. The Bureau proposes to remove current § 1024.4(b) and redesignate current § 1024.4(c) as proposed § 1024.4(b). Current § 1024.4(b) provides that the Bureau may, in its discretion, provide unofficial staff interpretations but that such interpretations do not provide protection under section 19(b) of RESPA and that staff will not ordinarily provide such interpretations on matters adequately covered by Regulation X, official interpretations or commentaries. The Bureau's policy is to assist the public in understanding the Bureau's regulations, including, but not limited to, Regulation X. The Bureau believes that this provision, which states Bureau policy, is more appropriate for the commentary and, accordingly, proposes to include the substance of this provision in the introduction to the commentary.

Current § 1024.5 sets forth exemptions with respect to the applicability of Regulation X. The Bureau proposes to make a technical correction to current § 1024.5(b)(7) to reflect that mortgage servicing related provisions of Regulation X will be included in the new subpart C and will no longer be placed in current § 1024.21.

The Bureau further proposes to remove current § 1024.22. Current § 1024.22 states that if any particular provision of Regulation X, or its application to any particular person or circumstance is held invalid, the remainder of Regulation X or the application of such provision to any other person or circumstance shall not be affected. The Bureau is proposing removing current § 1024.22 because the section is unnecessary and the inclusion of the current section in Regulation X is inconsistent with the drafting of other Bureau regulations. A court reviewing Regulation X should presume that provisions of Regulation X are severable in the absence of an indication that the Bureau intended the provisions to be non-severable.[47] The Bureau intends that the provisions of Regulation X are severable and believes that if any particular provision of Regulation X, or its application to any particular person or circumstance is held invalid, the remainder of Regulation X or the application of such provision to any other provision or circumstance should not be affected. The Bureau's proposal to remove current § 1024.22 should not be construed to indicate a contrary position.

Subpart B—Mortgage Settlement and Escrow Accounts

The Bureau proposes to establish the provisions of Regulation X relating to settlement services and escrow accounts within subpart B of Regulation X. These provisions include §§ 1024.6 through 1024.21.

Section 1024.17 Escrow Accounts

17(k) Timely Payments

The Bureau proposes to modify § 1024.17(k), which, pursuant to proposed § 1024.34(a) discussed below, sets forth requirements a servicer must follow when making payments from a borrower's escrow account. The Bureau proposes to add a new § 1024.17(k)(5) to Regulation X to address circumstances in which servicers are required to make payments from a borrower's escrow account to continue a borrower's hazard insurance policy. The Bureau has reviewed a number of issues concerning force-placed insurance in order to implement the new Dodd-Frank Act requirements on force-placed insurance discussed below. During that process, for reasons set forth below, the Bureau concluded that if a borrower has escrowed for hazard insurance (*i.e.* established an escrow account for the payment of hazard insurance premiums), it would be appropriate to require servicers to continue paying for the borrower's existing hazard insurance when practicable. The Bureau understands that it is practicable for a servicer to pay the hazard insurance premium of such borrower unless the borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges. Under proposed § 1024.37(a)(2)(ii) discussed below, the Bureau is proposing that hazard insurance obtained by a borrower but renewed by the borrower's servicer as required by § 1024.17(k)(1), (k)(2), or (k)(5) is not considered to be force-placed insurance under § 1024.37.

Current § 1024.17(k)(1) and (k)(2) require servicers to make timely disbursements from a borrower's escrow account, and to advance funds if necessary, as long as the borrower's mortgage payment is not more than 30 days past due. Proposed § 1024.17(k)(5) would amend the requirements of § 1024.17(k)(1) and (k)(2) with respect to the timely payment of hazard insurance premiums. Proposed § 1024.17(k)(5) provides that notwithstanding § 1024.17(k)(1) and (k)(2), a servicer must make payments from a borrower's escrow account in a timely manner to pay the premium charge on a borrower's hazard insurance, as defined in § 1024.31, unless the servicer has a reasonable basis to believe that such insurance has been canceled or not renewed for reasons other than nonpayment of premium charges. The proposal would require the servicer to advance funds to pay the premium charge if the borrower's escrow account does not contain sufficient funds.

Proposed comment 17(k)(5)–1 clarifies that the receipt by a servicer of a notice of cancellation or non-renewal from the borrower's insurance company before the insurance premium is due provides a servicer with a reasonable

[47] *See Regan* v. *Time,* 468 U.S. 641, 653 (1984) (stating that the presumption regarding the review of statutes is always in favor of severability); *Community for Creative Non-Violence* v. *Turner,* 893 F.2d 1387, 1394 (D.C. Cir. 1990) (applying presumption against severability in *Regan* to administrative regulations); *Stupak-Thrall* v. *United States,* 89 F.3d 1269, 1289 (6th Cir. 1996) (same).

basis to believe that the borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges.

Proposed comment 17(k)(5)–2 contains three examples of a borrower's hazard insurance being canceled or not renewed for reasons other than the nonpayment of premium charges, to the extent permitted by State or other applicable law. Proposed comment 17(k)(5)–2.i describes a situation in which the borrower cancels the hazard insurance before its expiration date or chooses to not renew the insurance. Proposed comment 17(k)(5)–2.ii describes a situation in which the insurance company cancels the hazard insurance before its expiration date or chooses not to renew the insurance because it decides to stop writing insurance for all properties in the community where the borrower's property is located. Proposed comment 17(k)(5)–2.iii describes a situation in which the insurance company cancels or chooses not to renew the borrower's hazard insurance based on its underwriting criteria, which may include, for example, a borrower's claim history, a change in the occupancy status of the property, or a change in the probability of the property being exposed to loss caused by certain hazards (*e.g.,* a change in the property's exposure to loss caused by wind).

Proposed comment 17(k)(5)–3 clarifies that a servicer that advances the premium payment as required by § 1024.17(k)(5) 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.

As discussed above, the Bureau's review of issues concerning force-placed insurance has led the Bureau to conclude that it would be appropriate to require servicers to continue paying for a borrower's existing hazard insurance when practicable if the borrower has an escrow account established to pay for hazard insurance. As discussed in greater detail in the discussion of the Bureau's proposed definition of ''force-placed insurance'' in proposed § 1024.37(a)(1), a servicer is already contractually required to obtain alternative hazard insurance to protect the interest that the owner or assignee of a mortgage loan has in the property securing such loan if the servicer is unable to obtain evidence of acceptable borrower-purchased hazard insurance for such property. Additionally, a servicer typically makes payments for force-placed insurance with its own funds.[48] Because the servicer would have to obtain some type of hazard insurance to protect the interest of the mortgage loan owner or assignee (and to advance payment with its own funds, if necessary), requiring servicers to continue paying for an escrowed borrower's existing hazard insurance when practicable would provide borrowers with greater protection than a servicer obtaining force-placed insurance. For reasons discussed in greater detail in the Bureau's proposed definition of force-placed insurance, servicer's purchase of force-placed insurance under certain circumstances could harm borrowers. The Bureau also believes that the approach the Bureau is proposing would be generally more cost-effective for the owner or assignee of the mortgage loan.[49] As discussed above, when servicers obtain force-placed insurance, they typically advance the force-placed insurance premium charges, which are then added to the amount of the loan. If a borrower cannot reimburse a servicer for the advancement of force-placed insurance charges, then when a loan is liquidated, the servicer will mostly likely be paid for the unreimbursed force-placed insurance charges before the owner or assignee of the mortgage loan gets paid.[50]

Additionally, the Bureau understands that servicers currently advance hazard insurance premiums for a borrower with an escrow account established to pay for hazard insurance even if they are not required by Regulation X to do so. The Bureau notes that when it solicited input from small servicers through the Small Business Review Panel, most SERs did not raise specific concerns with the Bureau's proposal to require servicers to advance funds to pay a borrower's hazard insurance. There were two SERs who expressed concern about advancing funds to renew a borrower's hazard insurance because the borrower could cancel the hazard insurance and keep the refund.[51] The Small Business Review Panel recommended that the Bureau reduce the incentives for borrowers to take such action by allowing servicers to advance premium payment in 30-day installments. Proposed comment 17(k)(5)–3, discussed above, reflects the panel's recommendation. The Bureau also notes that to the extent that the servicer is permitted by applicable law to seek reimbursement for advancing a borrower's hazard insurance premium payment, the Bureau's proposal would not prohibit a servicer from seeking such reimbursement.

The Bureau, however, invites comment on an alternative to the requirement in proposed § 1024.17(k)(5) that servicers must advance funds to pay a borrower's hazard insurance premium. The alternative approach would be in § 1024.37 and would simply make it a condition of charging a borrower who has an escrow account established to pay hazard insurance, that the force-placed insurance be less expensive to the borrower than the servicer advancing funds to continue the borrower's hazard insurance policy. The Bureau further requests whether the condition should be adjusted to require that the force-placed insurance policy protect the borrower's interest.

Borrower's insurance canceled for reasons other than nonpayment of premiums. As discussed above, the Bureau understands that for a borrower who has escrowed for hazard insurance, it is practicable for a servicer to pay such borrower's hazard insurance premium unless the borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges. In other words, the Bureau recognizes that there could be situations where it would not be practicable for a servicer to continue paying for a borrower's existing hazard insurance even though the borrower has escrowed for hazard insurance because the borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges. Accordingly, as discussed above, proposed § 1024.17(k)(5) clarifies that a servicer's obligation to make payments from a borrower's escrow account in a timely manner to pay the premium charge on a borrower's hazard insurance rests on whether the servicer has a reasonable basis to believe that a borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges. If the servicer has such basis,

[48] *See e.g., Force-Placed Insurance Hearings: Testimony of Justin Crowley on Behalf of Select Portfolio Servicing, Inc., et al. Before the New York State Department of Financial Services,* at 3 (May 2012), available at: *http://www.dfs.ny.gov/insurance/hearing/fp_052012_testimony.htm.*

[49] One mortgage analyst has suggested that incentives to obtain force-placed insurance are such that it would be ''unrealistic to expect a servicer to make an unbiased decision on when to buy [force-placed insurance],'' and hence, national servicing standards should be established to require servicers to maintain a borrower's hazard insurance ''as long as possible.'' *The Need for National Mortgage Servicing Standards: Hearing Before the Subcomm. on Housing, Transportation, and Community Affairs of the Senate Comm. on Banking, Housing and Urban Affairs,* S. Hrg. 112–139, 112th Cong. 126 (2011) (statement of Laurie Goodman).

[50] National Consumer Law Center, *Why Servicers Foreclose When They Should Modify,* at 25.

[51] *See* Small Business Review Panel Report at 22.

then the servicer would not be required to make such payments. The Bureau notes that for such servicer, the servicer is subject to proposed § 1024.37's consumer protections with respect to servicer's purchase of force-placed insurance. The Bureau believes that ''reasonable basis'' rather than actual knowledge should be the standard for determining whether the servicer is required to make timely payments. The Bureau understands that notices of cancellation or non-renewal vary in the level of detail. Hence a servicer may not be able to determine why a borrower's hazard insurance was canceled or not renewed based on information provided in a notice of cancellation or non-renewal. Additionally, the Bureau notes that the new Dodd-Frank requirements, discussed below, only require a servicer to have a ''reasonable basis'' to believe a borrower has failed to maintain hazard insurance pursuant to the terms of the borrower's mortgage loan contract before the servicer obtains force-placed insurance.

Proposed comment 17(k)(5)–1, discussed above, clarifies what constitutes a ''reasonable basis'' for the purposes of proposed § 1024.17(k)(5). The Bureau believes that providing an illustration of what constitutes ''a reasonable basis'' to believe that a borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges facilitates compliance. The Bureau invites comment on whether additional circumstances may provide a servicer with a ''reasonable basis'' to believe that a borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges. Proposed comment 17(k)(5)–2, discussed above, contains three examples of a borrower's hazard insurance being canceled or not renewed for reasons other than the nonpayment of premium charges.

Legal authority. Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA. As previously discussed in part V above, RESPA has established a consumer protection paradigm of establishing servicer obligations intended to protect consumers regarding servicer actions. As noted, servicers are contractually required to obtain alternative hazard insurance—advancing their own funds as necessary—if they do not have evidence that the borrower has hazard insurance in place. The Bureau has determined that requiring servicers to continue paying for escrowed borrowers' existing hazard insurance, when practicable, is more protective of the borrower's interest than providing servicers with the opportunity to obtain force-placed insurance. Accordingly, the Bureau proposes § 1024.17(k)(5) pursuant to its authority under RESPA section 6(k)(1)(E) of RESPA. The Bureau has additional authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of REPSA and has authority pursuant to section 19(a) of RESPA to prescribe such rules and regulations, and to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the consumer protection purposes of RESPA.

To the extent proposed § 1024.17(k)(5) would require servicers to make timely payments for a borrower whose mortgage payment is more than 30 days past due, but whose escrow account contains sufficient funds to pay the hazard insurance premium, the Bureau additionally relies on its authority under RESPA section 6(g). RESPA section 6(g) provides that when a borrower is required by the terms of a federally related mortgage loan to pay into an escrow account to assure payment of taxes, insurance premiums, and other charges with respect to the property, the borrower's servicer must make timely payments out of the borrower's escrow account for such taxes, insurance premiums, and other charges. As discussed above, the Bureau recognizes that under certain circumstances, it may not be practicable for a servicer to continue paying a borrower's existing hazard insurance. Pursuant to its interpretive authority under RESPA section 19(a), discussed above, the Bureau believes it is appropriate to clarify that a servicer's obligation to make timely payment from a borrower's escrow account to pay for the borrower's hazard insurance premium does not apply when a servicer has a reasonable basis to believe that the borrower's existing hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges. The Bureau notes that for such servicer, the servicer would have to comply with proposed § 1024.37's consumer protections if the servicer obtains force-placed insurance. Additionally, the Bureau notes that RESPA section 19(a) provides the Bureau with authority to grant reasonable exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA.

Borrowers not escrowed for hazard insurance. Proposed § 1024.17(k)(5) would apply in situations where a borrower has established an escrow account for the payment of hazard insurance premiums. Where a borrower has not done so, whether because the borrower has not established an escrow account at all, or has established an escrow account to pay for other items but not for hazard insurance premiums, the Bureau is proposing to set forth that hazard insurance obtained by a borrower but renewed at the servicer's discretion is not force-placed insurance under proposed § 1024.37 in proposed § 1024.37(a)(2)(iii) discussed below. The Bureau notes that there is an on-going debate among consumer advocates, servicers, the GSEs, and regulators on whether it is practicable to require servicers to pay insurance premiums for borrowers who have not escrowed for hazard insurance. Consumer advocates have urged the Bureau to require servicers to advance funds to pay insurance premiums for such borrowers.[52] But servicers have testified that requiring servicers to pay insurance premiums for borrowers who have not escrowed for hazard insurance is often not possible.[53]

The National Mortgage Settlement, discussed in part II.C above, requires servicers to ''continue to advance payments for the homeowner's existing policy [for borrowers who have escrowed for hazard insurance], unless the borrower or insurance company cancels the existing policy.''[54] On the other hand, Fannie Mae has revised its servicing guide to require servicers to pay a borrower's hazard insurance premium even if the borrower has not escrowed for hazard insurance, stating:

> When a mortgage loan payment includes escrows, they must advance funds for the timely payment of the borrower's property insurance premiums. Additionally, when the servicer has waived the escrow deposit account for a specific borrower, it remains responsible for the timely payment of the insurance premiums. Therefore, if a borrower fails to pay a premium, the servicer must advance its own funds to pay the past-due premium and reinstate the borrower insurance coverage, revoke the waiver and begin escrow deposit collections to pay further premiums.[55]

[52] *See* The National Consumer Law Center and the Center for Economic Justice, *The Consumer Financial Protection Bureau Should Rein in Mortgage Servicers' Use of Force-Placed Insurance,* at 4 (May 2012), available at: *http://www.nclc.org/images/pdf/regulatory_reform/ib-force-placed-insurance.pdf.*

[53] *See supra* note 42, at 2–3.

[54] *See, e.g., United States of America et al.* v. *Bank of America Corp. et al* (National Mortgage Settlement)., at A–38, available at: *http://nationalmortgagesettlement.com.*

[55] Fannie Mae, Servicing Guide Announcement SVC–2012–04 (Fannie Mae March 2012 Servicing

With respect to a borrower who has not escrowed for hazard insurance, the National Mortgage Settlement only requires a servicer to disclose in the notices it sends to such borrower that the servicer would establish an escrow account for the borrower to pay the borrower's hazard insurance premium with the borrower's consent. Furthermore, the Bureau notes that in contrast to Fannie Mae, Freddie Mac only requires a servicer that services loans for Freddie Mac to obtain insurance if a borrower fails to maintain insurance coverage required by Freddie Mac. Freddie Mac does not require the servicer to advance funds to maintain a borrower's hazard insurance coverage. The guidelines state, ''[if] the borrower does not or cannot obtain such coverage, then the servicer must do so. The servicer must then adjust the Borrower's escrow payment accordingly or bill the borrower to recover the advance if the servicer does not maintain an escrow account for the borrower.'' [56] In light of the existence of competing views about: (1) A servicer's obligation to a borrower who has not escrowed for hazard insurance with respect to paying the borrower's hazard insurance premium on the borrower's behalf; and (2) the practicality of a servicer being able to pay the hazard insurance premium of such a borrower, the Bureau seeks comment on whether it should require servicers to pay the hazard insurance premiums of borrowers who have not escrowed for hazard insurance. The Bureau also seeks comment on whether servicers should be required to ask borrowers who have not escrowed for hazard insurance whether they would consent to servicers renewing the borrower-obtained hazard insurance, and then be required to pay the hazard insurance premiums if the borrowers give consent.

17(l) System of Recordkeeping

The Bureau proposes to remove current § 1024.17(l). Current § 1024.17(l) generally requires that a servicer maintain for five years records regarding the payment of amounts into and from an escrow account and escrow account statements provided to borrowers. Current § 1024.17(l) further mandates that the Bureau may request information contained in the servicer's records for an escrow account and a servicer's failure to provide such information may be deemed to be evidence of the servicer's failure to comply with its obligations with respect to providing escrow account statements to borrowers.

The Bureau believes that, in light of this proposal, and the substantially different authorities available to the Bureau, as opposed to HUD, the obligations set forth in current § 1024.17(l) are no longer required. HUD proposed adding current § 1024.17(l) to Regulation X in 1993 and finalized the rule in 1994.[57] Current § 1024.17(l) reflects requirements relating to HUD's authority to require information from mortgage servicers and compel compliance with the requirements of Regulation X at the time it was implemented.

Proposed § 1024.38(a) would require servicers to establish policies and procedures that include a standard requirement to retain records that document actions taken by a servicer 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. Such documents include those relating to escrow accounts. Further, proposed §§ 1024.35–1024.36 provide tools available to borrowers to require the correction of misapplied escrow account payments or to request information regarding a borrower's escrow account. Moreover, the Bureau has authority to supervise mortgage servicers and determine whether mortgage servicers are complying with their obligations under Regulation X with respect to escrow accounts. For these reasons, the Bureau proposes to remove current § 1024.17(l). The Bureau requests comment regarding whether current § 1024.17(l) should be removed from Regulation X.

Subpart C—Mortgage Servicing

Currently, section 6 of RESPA sets forth protections for borrowers with respect to the servicing of federally related mortgage loans. These protections include disclosures to borrowers about whether servicing for a mortgage loan may be transferred, as well as disclosures regarding the prior and new servicers in the event of a transfer. *See* RESPA section 6(a)—6(c). Section 6 of RESPA further provides protections regarding misdirected payments during a servicing transfer. *See* RESPA section 6(d).

Section 6 of RESPA also currently requires a servicer to respond to qualified written requests asserting errors or requesting information regarding the servicing of a mortgage loan and sets forth obligations on servicers regarding the administration of escrow accounts. *See* RESPA sections 6(e), 6(g). Servicers are liable to borrowers for violations of section 6 of RESPA. *See* RESPA section 6(f).

Section 1463 of the Dodd-Frank Act created new sections 6(k), 6(l), and 6(m) of RESPA, which set forth new obligations on servicers for federally related mortgage loans. Section 6(k) of RESPA prohibits servicers from: (i) Obtaining force-placed insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance; (ii) charging fees for responding to valid qualified written requests; (iii) failing to take timely action to respond to correct certain types of errors; (iv) failing to respond within ten business days to a request from a borrower to provide certain information about the owner or assignee of a mortgage loan; or (v) failing to comply with any other obligation found by the Bureau to be appropriate to carry out the consumer protection purposes of RESPA. *See* RESPA section 6(k). Further, section 6(l) of RESPA requires servicers: (i) To provide written notices to a borrower before a charge for a force-placed insurance policy may be imposed on the borrower; (ii) to accept any reasonable form of written confirmation from a borrower of existing insurance coverage; and (iii) within 15 days of the receipt of such confirmation, to terminate force-placed insurance and refund any premiums and fees paid during the period of overlapping coverage. *See* RESPA section 6(l).

Section 6(m) of RESPA requires that charges related to force-placed insurance, other than charges subject to State regulation as the business of insurance, must be bona fide and reasonable. *See* RESPA section 6(m).

Section 1463 of the Dodd-Frank Act also amends sections 6(e) and 6(g) of RESPA with respect to a servicer's obligation to respond to qualified written requests and a servicer's administration of an escrow account. Further, section 1463 of the Dodd-Frank Act amended section 6(f) of RESPA to increase the dollar amounts of damages for which a servicer may be liable for violations of section 6 of RESPA. *See* RESPA section 6(e)–(g); Dodd-Frank Act sections 1463(b)–(d).

Announcement) (March 14, 2012), available at *https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2012/svc1204.pdf*. Fannie Mae originally required that servicers implement the revised requirements no later than June 1, 2012. In May 2012, however, Fannie Mae announced that it is postponing the implementation date. *See* Fannie Mae, Servicing Notice (May 23, 2012), available at: *https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2012/ntce052312.pdf*.

[56] *See* Freddie Mac Single Family Seller/Servicer Guide, Vol. 2 § 58.9 (2007).

[57] *See* 58 FR 64065 (December 3, 1993); 59 FR 53890 (October 26, 1994).

In order to implement these provisions in a consistent and clear manner, the Bureau proposes to reorganize Regulation X to include provisions relating to mortgage servicing within a new subpart C.

Section 1024.21 Mortgage Servicing Transfers

To incorporate mortgage servicing-related provisions within subpart C, the proposed rule would remove § 1024.21 and would implement the provisions of § 1024.21, subject to proposed changes as discussed below, in proposed §§ 1024.31–1024.34 within subpart C. *Compare* § 1024.21 *with* proposed §§ 1024.31–1024.34.

Section 1024.30 Scope

Proposed § 1024.30 sets forth the scope of proposed subpart C. Currently, § 1024.21, which implements section 6 of RESPA, applies to a ''mortgage servicing loan'' as that term is defined in current § 1024.21(a). The term ''mortgage servicing loan'' means a federally related mortgage loan, as that term is defined in § 1024.2, subject to the exemptions in § 1024.5, when the mortgage loan is secured by a first lien. The term ''mortgage servicing loan'' does not include subordinate-lien loans or open-end lines of credit (home equity plans) covered by TILA and Regulation Z, including open-end lines of credit secured by a first lien. *See* § 1024.21(a) (defining mortgage servicing loan).

Proposed § 1024.30 would eliminate the term ''mortgage servicing loan'' from Regulation X and would set forth the scope of subpart C. Subpart C would apply to any mortgage loan, as that term is defined in proposed § 1024.31. ''Mortgage loan'' in § 1024.31 would mean a federally related mortgage loan, as that term is defined in § 1024.2, subject to the exemptions in § 1024.5. Unlike the previous term ''mortgage servicing loan,'' the term ''mortgage loan'' would include subordinate-lien closed-end mortgage loans. The term ''mortgage loan'' would maintain the exclusion for open-end lines of credit (home-equity plans) covered by TILA and Regulation Z, including open-end lines of credit secured by a first lien, currently set forth in the definition of ''mortgage servicing loan.'' As a result, the elimination of the term ''mortgage servicing loan,'' the proposed definition of ''mortgage loan'' in proposed § 1024.31, and the proposed scope of subpart C in proposed § 1024.30 would create new servicer obligations with respect to subordinate-lien closed-end mortgage loans under Regulation X.

The Bureau believes that borrowers of subordinate lien closed-end mortgage loans should be entitled to the protections that would be set forth in subpart C.

The use of subordinate-lien closed-end mortgage loans grew substantially during the housing boom. Subordinate-lien closed-end mortgage loans were commonly originated as ''piggyback loans''—that is, a subordinate-lien mortgage loan originated concurrently with a first-lien mortgage loan to finance a home purchase in excess of an 80% loan-to-value ratio.[58] By taking ''piggyback loans,'' a borrower could avoid a requirement to purchase a mortgage insurance policy. During 2006, subordinate-lien closed-end mortgage loans were used as ''piggyback loans'' for 22% of one-to-four family owner-occupied home purchases, with higher percentages reported in high-cost housing areas.[59] Because borrowers with simultaneously-originated subordinate-lien closed-end mortgage loans are more highly levered, such borrowers are at a greater risk of having negative equity when home prices decline and may be more susceptible to default (depending on the credit quality of the borrower).[60] Further, such loans complicate loss mitigation processes if the first-lien and subordinate-lien loans are owned by separate entities or serviced by separate servicers.

There are no unique characteristics of subordinate-lien closed-end mortgage loans that should require servicers to treat a borrower of such a mortgage loan differently than a first-lien mortgage loan borrower with respect to protections for mortgage servicing transfers, error resolution, information requests, force-placed insurance, reasonable information management policies and procedures, early intervention for delinquent borrowers, continuity of contact, or loss mitigation procedures. To the contrary, because of the difficulty of achieving loss mitigation options when a borrower has a subordinate-lien closed-end mortgage loan, such borrower may be more likely to benefit from certain protections in proposed subpart C.

Accordingly, the Bureau's proposal would remove the exclusion for subordinate-lien closed-end mortgage loans that was previously included in Regulation X but which was not required by RESPA. The Bureau has not identified any countervailing reasons why borrowers of subordinate-lien closed-end mortgage loans should not benefit from the protections afforded by the provisions of proposed subpart C. However, the Bureau requests comment regarding whether subordinate-lien closed-end mortgage loans should be included within the scope of proposed subpart C.

The Bureau proposes to maintain the exclusion for open-end lines of credit (home-equity plans) covered by TILA and Regulation Z, including open-end lines of credit secured by a first lien, from the servicer requirements of Regulation X. Home equity lines of credit (HELOCs) tend to reflect better credit quality than subordinate-lien closed-end mortgage loans and share risk characteristics more similar to other open-end consumer financial products, such as credit cards, because of the access to additional unutilized credit provided by a HELOC.[61] The Bureau understands from discussions with servicers and industry representatives that the servicing of HELOCs tends to differ significantly from closed-end mortgage loans, including with respect to information systems used, lender remedies (including restricting access to the line of credit), and borrower behavior. Further, the Bureau understands that although a household may finance a property solely with an open-end line of credit, the proportion that do so is very small.[62]

Open-end lines of credit have been historically excluded from regulations applicable to mortgage servicing under Regulation X. *See* current § 1024.21(a) (defining ''mortgage servicing loan''). Further, open-end lines of credit are already regulated under Regulation Z. Certain provisions of Regulation Z would duplicate the servicer obligations that would be set forth in subpart C, including, for example, billing error resolution procedures. *See* 12 CFR 1026.13.

In addition, the protections proposed in Regulation X may not necessarily be appropriate for open-end lines of credit. A borrower is in control of an open-end line of credit and can draw from that line as necessary to meet financial obligations. Many borrowers that have

[58] Michael LaCour-Little *et al., What Role Did Piggyback Lending Play in the Housing Bubble and Mortgage Collapse?,* at 3 (Oct. 5, 2010), available at: *http://ssrn.com/abstract=1688033.*

[59] *Id.* at 3 (stating that ''piggyback loans'' accounted for 30% of home purchases in New York City and 37.3% of home purchases in California in 2006).

[60] *See id.* at 26–27.

[61] *See* Donghoon Lee *et al., A New Look at Second Liens,* 3, 19 (Feb. 2012), available at: *http://ssrn.com/abstract=2014570* (chapter in Housing and the Financial Crisis, Edward Glaeser and Todd Sinai, eds.)

[62] *See, e.g.,* Julapa Jagtiani and William W. Lang, *Strategic Default on First and Second Lien Mortgages During The Financial Crisis,* at n.5 (Federal Reserve Bank of Philadelphia, Working Paper No. 11–3, Dec. 9, 2010), available at: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1724947.*

become delinquent on a first lien closed end mortgage loan keep current on payments for subordinate lien open-end lines of credit in order to maintain their access to the line of credit.[63] Conversely, when borrowers experience difficulty meeting their obligations, lenders have the ability to cut off access to unutilized draws from the open-end line of credit. These features of open-end lines of credit may weigh against imposing the requirements set forth for early intervention with delinquent borrowers, continuity of contact, and loss mitigation procedures on servicers for open-end lines of credit. Further, open-end lines of credit tend to differ from closed-end mortgage loans with respect to servicing information systems utilized and servicer processes, such that information management policies and procedures may be better targeted toward different objectives for open-end lines of credit than those set forth in proposed § 1024.38(b) with respect to closed-end mortgage loans. Finally, and as discussed below, the Bureau has learned that servicers generally do not obtain force-placed insurance on behalf of open-end lines of credit because such lines of credit are typically secured by a subordinate lien. Accordingly, the Bureau believes that exempting open-end lines of credit (home-equity plans) from the Bureau's proposed force-placed insurance regulations is appropriate.

Although the Bureau believes that maintaining the current exclusion of open-end lines of credit (home-equity plans) covered by TILA and Regulation Z, from the servicer requirements of Regulation X is consistent with consumer protection purposes of RESPA, the Bureau requests comment regarding whether open-end lines of credit (home-equity plans) should be excluded from any of the provisions of proposed subpart C.

The Bureau proposes to interpret the application of the servicer obligations and prohibitions in section 6 of RESPA pursuant to its authority in section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA. The Bureau further relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA.

[63] *Id.* at 11.

Section 1024.31 Definitions

Proposed § 1024.31 contains definitions for the following terms: Consumer reporting agency, day, hazard insurance, loss mitigation application, loss mitigation options, master servicer, mortgage loan, qualified written request, reverse mortgage transaction, subservicer, service provider, transferee servicer, and transferor servicer.

Consumer reporting agency. The Bureau proposes to define the term ''consumer reporting agency'' to have the same meaning set forth in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a. This proposed definition is the same as the definition of the term ''consumer reporting agency'' set forth in the relevant provisions of RESPA that would be implemented by this proposed rulemaking. *See* RESPA section 6(e)(3).

Day. The Bureau proposes to define the term ''day'' for purposes of subpart C to mean calendar day. ''Day'' is not defined by RESPA. RESPA generally uses the terms ''day'' and ''day (excluding legal public holidays, Saturdays, and Sundays).'' Because Congress excluded legal public holidays, Saturdays, and Sundays in certain circumstances, the Bureau believes that Congress intended the term ''day'' by itself to include these days, and therefore, believes a definition of ''day'' as a calendar day reflects Congress's intent.

The Dodd-Frank Act, however, amended section 6(g) and added section 6(k)(1)(D) to RESPA and, in these provisions, used the term ''business day.'' The term ''business day'' is not defined by RESPA and does not otherwise appear in section 6 of RESPA.[64] Rather, section 6 of RESPA uses the terms ''day'' and ''day (excluding legal public holidays, Saturdays, and Sundays).'' Accordingly, the Bureau proposes to interpret the term ''business day'' in sections 6(g) and 6(k)(1)(D) of RESPA to mean ''day (excluding legal public holidays, Saturdays, and Sundays)'' consistent with other usage of the term ''day'' within section 6 of RESPA and RESPA generally. The Bureau believes that a consistent interpretation of the definition of the term ''day'' will provide certainty that benefits borrowers by clarifying their rights under subpart C and benefits servicers by easing compliance burden associated with different understandings of the meaning of the term ''day.''

The Bureau relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 19(a) of RESPA to make such interpretations necessary to achieve the consumer protection purposes of RESPA.

[64] The term is used three times elsewhere in RESPA, once in section 4(b) and twice in section 8(c) of RESPA.

Hazard insurance. The Bureau proposes to define ''hazard insurance'' to mean insurance on the property securing a mortgage loan that protects the property against losses 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. The Bureau believes that defining ''hazard insurance'' is necessary to implement the new Dodd-Frank requirements on force-placed insurance, set forth in new RESPA section 6(k)–(m). Accordingly, the Bureau proposes to define ''hazard insurance'' pursuant to its authority under section 6(j)(3) of RESPA, which authorizes the Bureau to establish any requirements necessary to carry out the purposes of RESPA. The Bureau additionally relies on its authority pursuant to sections 6(k)(1)(E) and 19(a) of RESPA. Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and section 19(a) of RESPA gives the Bureau the authority to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

As discussed below in the Bureau's discussion of proposed § 1024.37(a)(1), Dodd-Frank Act section 1463 defines ''force-placed insurance'' for the purposes of RESPA section 6(k)–(m) as a type of hazard insurance. Although Dodd-Frank Act section 1463 does not define ''hazard insurance,'' it provides that a servicer of a federally related mortgage must not obtain ''force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance.'' In other words, force-placed ''hazard insurance'' simply refers to ''property insurance'' the borrower has failed to maintain. Under the typical mortgage loan contract, property insurance is defined broadly to mean insurance that protects a mortgaged property against loss by ''fire, hazards included within the term 'extended coverage', and any other hazards including, but not limited to, earthquakes and floods, for which

Lender requires insurance.'' [65] Accordingly, the proposed definition of ''hazard insurance'' in proposed § 1024.31 is equally broad.

The Bureau's proposed definition of ''hazard insurance'' would include, but not be limited to, homeowner's insurance. Virtually all borrowers are required to have homeowner's insurance in place as a condition of obtaining a mortgage loan. Homeowner's insurance policies typically insure mortgaged properties against loss caused by all hazards other than those specifically excluded by the policies. The Bureau understands that borrowers may be required by the terms of the mortgage loan contract to obtain separate insurance policies that protect the property against loss caused by hazards specifically excluded from coverage by homeowner's insurance policies. The Bureau understands that losses caused by earthquake or flood hazards, and in many coastal areas, losses caused by wind, are typically excluded.[66] Insurance written to cover loss caused by specifically-excluded hazards is typically narrowly written to protect a mortgaged property against loss caused by a single, specifically-excluded hazard. A single hazard insurance policy, such as a hazard insurance policy to protect against flood loss, would also be included within the Bureau's proposed definition of ''hazard insurance.'' [67] The Bureau recognizes that a servicer could be required to obtain force-placed hazard insurance to protect against flood loss by the Flood Disaster Protection Act of 1973 (FDPA). As discussed in greater detail below, the Bureau proposes to exempt hazard insurance to protect against flood loss obtained by a servicer as required by the FDPA from the definition of ''force-placed insurance'' in proposed § 1024.37. The Bureau, however, invites comment on whether a definition of ''hazard insurance'' that specifically excludes hazard insurance to protect against flood loss would be more appropriate than the Bureau's proposed definition of ''hazard insurance.''

Loss mitigation application. The Bureau proposes to define a ''loss mitigation application'' as an application from a borrower requesting evaluation for a loss mitigation option, as that term is defined in proposed § 1024.31, in accordance with procedures established by the servicer for the submission of such requests. The Bureau has set forth a separate definition of loss mitigation application to indicate that a loss mitigation application is separate from an ''application'' as that term is defined in current § 1024.2(b). Proposed comment 31(loss mitigation application)–1 clarifies that a loss mitigation application may be submitted by a representative of a borrower and that a servicer may undertake reasonable procedures to determine if a purported representative actually represents a borrower.

Loss mitigation options. As defined in proposed § 1024.31, ''loss mitigation options'' are ''alternatives available from the servicer to the borrower to avoid foreclosure.'' Proposed comment 31 (loss mitigation options)—1 clarifies that loss mitigation options include temporary and long-term relief, and options that allow borrowers to remain in or leave their homes, 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 State or the Federal Government. Proposed comment 31 (loss mitigation options)—2 clarifies that loss mitigation options ''available from the servicer'' include options offered by the owner or assignee of the loan that are made available through the servicer.

The Bureau's proposed definition of ''loss mitigation option'' is broad to account for the wide variety of options that may be available to a borrower. The Bureau believes that borrowers are best served when they are aware of all of their options. Thus, the proposed definition sets forth examples of loss mitigation options ''without limitation.'' The Bureau has not defined each of the examples of loss mitigation options to account for alternatives that may vary depending on the underlying loan documents, any servicer obligations to the lender or assignee of the loan, the borrower's particular circumstances, and the flexibility the servicer has in arranging alternatives with the borrower.

The Bureau recognizes that not every loss mitigation option will be available to each individual borrower. Thus, the Bureau has limited the proposed definition of ''loss mitigation options'' to alternatives ''available to the borrower.'' The Bureau invites comment on the appropriateness of the proposed definition of ''loss mitigation options,'' and whether revision or further clarification is warranted.

Mortgage loan. As set forth in the discussion above on proposed § 1024.30, the term ''mortgage loan'' in proposed § 1024.31 would generally mean a federally related mortgage loan, as that term is defined in § 1024.2, subject to the exemptions in § 1024.5 and an exemption for open-end lines of credit (home equity plans). For the reasons discussed above on proposed § 1024.30, the term ''mortgage loan'' would not exclude subordinate-lien closed-end mortgage loans but would maintain the exclusion for open-end lines of credit (home-equity plans) covered by TILA and Regulation Z, including open-end lines of credit secured by a first lien, currently set forth in the definition of ''mortgage servicing loan.'' As a result, the elimination of the term ''mortgage servicing loan,'' the proposed definition of ''mortgage loan'' in proposed § 1024.31, and the proposed scope of subpart C in proposed § 1024.30 would create new servicer obligations with respect to subordinate-lien closed-end mortgage loans under Regulation X.

The Bureau proposes to interpret the application of the servicer obligations and prohibitions in section 6 of RESPA pursuant to its authority in section 19(a) to prescribe such rules and regulations, to make such interpretations, and to grants such reasonable exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA.

Reverse mortgage transaction. The Bureau proposes to add a definition for the term ''reverse mortgage transaction.'' A ''reverse mortgage transaction'' would have the same definition used in Regulation Z, which implements TILA, to maintain consistency with other Bureau definitions applicable to reverse

[65] *See, e.g.,* California Single Family Fannie Mae/Freddie Mac Uniform Instrument, Form 3005, (Fannie Mae/Freddie Mac Note), at ¶ 5.

[66] *See* National Association of Insurance Commissioners, *A Consumer Quick Guide to Home Insurance,* at 2–5 (2010), available at: *http:\\www.naic.org/documents/consumer_guide_home_quick.pdf).*).

[67] The Bureau acknowledges that Dodd-Frank Act section 1461, which added a new section 129D to TILA, lists ''hazard insurance'' and ''flood insurance'' as two separate categories of insurance. *See* TILA section 129D(i); however, the Dodd-Frank Act provides that the definitions in TILA section 129D(i) apply only to TILA section 129D. The Bureau does not interpret the definitions to apply to RESPA section 6(k)–(m). The Bureau also acknowledges that in current Regulation X, the provision of settlement services involving hazard insurance is separate from the provision of services involving flood insurance pursuant to the definition of ''settlement service'' in § 1024.2. Further, for purposes of current Regulation X, the Bureau further acknowledges that: (1) In appendix A's instructions on how to prepare a HUD–1 Settlement statement, the settlement agent must list homeowner's insurance premiums separately from flood insurance premiums; and (2) appendix C's instructions on how to prepare a good faith estimate (GFE) form treat hazard insurance separately from flood insurance. The Bureau's proposed definition of ''hazard insurance'' would only apply to proposed subpart C of RESPA and § 1024.17(k)(5). It would not apply to § 1024.2, appendix A, or appendix C.

mortgages. *See* 12 CFR 1026.33(a). The Bureau is proposing to include a definition for a ''reverse mortgage transaction'' in Regulation X to implement the requirements for mortgage servicing disclosure statements in proposed § 1024.33(a).

Proposed § 1024.33(a) sets forth the requirements applicable to disclosures to applicants about assignment, sale, or transfer of loan servicing that must be provided to applicants within three days (excluding legal public holidays, Saturdays, and Sundays). If the 2012 TILA–RESPA Proposal, which was published by the Bureau on July 9, 2012, is adopted as proposed with respect to the implementing of the disclosures required by sections 6(a) of RESPA, the only mortgage loans that would not receive the disclosure through the 2012 TILA–RESPA Proposal would be reverse mortgage transactions. Accordingly, the Bureau proposes to apply the current requirements of § 1024.21(b)–(c) only to reverse mortgage transactions, and proposed § 1024.33(a) would require the disclosure for reverse mortgage transactions.

Service provider. The Bureau proposes to add a definition for the term ''service provider.'' A service provider means any party retained by a servicer that interacts with a borrower or provides a service to a servicer for which a borrower may incur a fee. Proposed comment 31 (service provider)—1 clarifies that 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 property inspections.

Definitions of master servicer, qualified written request, subservicer, transferee servicer, and transferor servicer. Currently, definitions of the terms ''master servicer,'' ''subservicer,'' ''transferee servicer,'' and ''transferor servicer,'' are set forth in § 1024.21(a). The proposed rule would include the definitions of these terms currently set forth in § 1024.21(a), without change, in proposed § 1024.31.

The definition of ''qualified written request'' would be revised to state that a qualified written request is a written correspondence from the borrower to the servicer that enables the servicer to identify the name and account of the borrower, and (1) states the reasons the borrower believes an error relating to the servicing of the loan has occurred, or (2) provides sufficient detail to the servicer regarding information relating to the servicing of the mortgage loan sought by the borrower. The definition further states that a qualified written request (i) must be in writing, (ii) must not be written on a payment coupon or other payment form from a servicer, and (iii) must be delivered less than one year after servicing of a mortgage loan is transferred or a mortgage loan is paid in full, whichever date is applicable. All of the elements of this definition are currently set forth in § 1024.21(e)(2) and the proposed definition of ''qualified written request'' in proposed § 1024.32 is not intended to alter the meaning of the term. Proposed comment 32 (qualified written request)—1 clarifies that a qualified written request may request information without asserting an error with respect to the servicing of a mortgage loan (and vice versa).

A ''qualified written request'' is just one form that a written notice of error or information request may take. As set forth above, although RESPA sets forth a ''qualified written request'' mechanism through which a borrower can assert an error to a servicer or request information from a servicer, the Bureau's proposal would integrate all error resolution and information request processes, including ''qualified written requests.'' A borrower may still submit a ''qualified written request,'' under the proposed rule, however a ''qualified written request'' would be subject to the same error resolution or information request requirements applicable to any other form of written notice of error or information request to a servicer. Further, a servicer's liability for failure to respond to a qualified written request would be the same as for any other written notice of error or information request. Accordingly, there would be no greater benefit to a borrower, nor additional burden to a servicer, to respond to a ''qualified written request'' than would exist for a written notice of error or written information request pursuant to proposed §§ 1024.35–1024.36.

Section 1024.32 General Disclosure Requirements

Proposed § 1024.32 would set forth requirements applicable to disclosures required by subpart C. Specifically proposed § 1024.32(a)(1) would require that disclosures provided by servicers be clear and conspicuous, in writing, and in a form the consumer may keep. This standard is consistent with disclosure standards applicable in other regulations issued by the Bureau, including, for example, Regulation Z. *See, e.g.,* 12 CFR 1026.17(a)(1). Proposed § 1024.32(a)(2) would permit disclosures to be provided in languages other than English, so long as disclosures are made available in English upon a borrower's request. Further, proposed § 1024.32(b) would permit disclosures required under subpart C to be combined with disclosures required by applicable laws, including State laws, as well as disclosures required pursuant to the terms of an agreement between the servicer and a federal or state regulatory agency.

The Bureau believes this provision is appropriate to enable servicers to integrate disclosures required by subpart C with requirements imposed by other federal regulatory agencies, including through the National Mortgage Settlement, and with applicable State law. The Bureau proposes to exercise its authority under sections 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA. The Bureau further relies on its authority in section 19(a) of RESPA to make such rules and regulations necessary to achieve the consumer protection purposes of RESPA.

Section 1024.33 Mortgage Servicing Transfers

Proposed § 1023.33 implements the mortgage servicing transfer disclosure requirements in section 6(a)–(d) of RESPA. The mortgage servicing transfer disclosure requirements are currently in § 1024.21(b)–(d) of Regulation X.

As a preliminary matter, the Bureau proposes to implement certain provisions currently set forth in § 1024.21(b)–(d) of Regulation X through commentary to proposed § 1024.33 rather than as text of the regulation itself. This change is proposed to conform the organization of proposed § 1024.33 with other proposed provisions of subpart C.

Proposed § 1024.33(a) makes changes to the requirements currently set forth in § 1024.21(b)–(c). Proposed § 1024.33(a) sets forth the requirements applicable to disclosures to applicants about assignment, sale, or transfer of loan servicing that must be provided to applicants within three days (excluding legal public holidays, Saturdays, and Sundays) of application. If the 2012 TILA–RESPA Proposal, which was published by the Bureau on July 9, 2012, is adopted as proposed with respect to the implementing the disclosures required by section 6(a) of RESPA, the only mortgage loans that currently receive mortgage servicing transfer disclosures that would not receive the disclosure through the new integrated TILA/RESPA disclosure form would be closed-end reverse mortgage

transactions.[68] Accordingly, the Bureau proposes to apply the current requirements of § 1024.21(b)–(c) only to reverse mortgage transactions, and proposed § 1024.33(a) reflects the limited scope of this provision.

Further, the Bureau proposes to implement through commentary a clarification relating to providing a servicing disclosure statement for co-applicants. Regulation X currently provides that if co-applicants provide the same address on an application, one copy of the servicing disclosure statement delivered to that address is sufficient, but if different addresses are shown by co-applicants, a copy of the servicing disclosure statement should be provided to each of the co-applicants. The Bureau believes this requirement is unduly burdensome, especially in light of the reduced scope of the servicing disclosure statement to closed-end reverse mortgage transactions. The Bureau proposes instead to require that if co-applicants provide different addresses, a servicing disclosure statement need only be provided to the primary applicant. This requirement is consistent with disclosure requirements applicable to other Bureau regulations. *See* 12 CFR 1002.9(f).

The Bureau does not believe this change will have a meaningful impact on consumers. The only situation that would be covered by this commentary is when multiple applicants for a closed-end reverse mortgage transaction indicate separate addresses on an application. Closed-end reverse mortgage transactions typically require funds to be dispersed in a single lump-sum payment and are typically only available for borrower-occupied residences. The servicer of a closed-end reverse mortgage transaction is not responsible for making on-going payments to reverse mortgage borrowers, and borrowers of closed-end reverse mortgage transactions do not have on-going mortgage loan payment obligations during the life of the loan. The Bureau believes that removing the requirement that borrowers with different addresses receive a separate mortgage servicing disclosure statement will remove a burden for reverse mortgage lenders and will not remove any meaningful protection for consumers.

Proposed § 1024.33(b)–(c) sets forth the requirements applicable to notices of transfer of mortgage loan servicing. The Bureau proposes to remove the requirement that the transferor and transferee servicers provide collect-call telephone numbers (but retain the requirement to provide toll-free telephone numbers). The Bureau believes the collect-call telephone number requirement is obsolete. The Bureau also proposes to remove the requirement currently set forth in § 1024.21(d)(3)(vii) for a statement of the borrower's rights in connection with complaint resolution. The expanded error resolution and information request requirements set forth in proposed §§ 1024.35–1024.36 provide tools for borrowers to assert errors and request information in connection with a servicing transfer. A transferee servicer will either identify for borrowers a phone number and address that must be used for asserting errors or requesting information pursuant to the requirements of §§ 1024.35–1024.36 when servicing is transferred or will be required to respond to a notice of error or information request received at any office of the servicer.

Further, the Bureau proposes to conform the requirements that extend the time for the disclosure to treat institutions for which the NCUA has commenced proceedings to appoint a conservator or liquidating agent similarly to those for which the FDIC has commenced proceedings to appoint a conservator or receiver. The Bureau does not believe that the timing for providing a servicing transfer disclosure should differ for an insured credit union in the process of conservatorship of liquidation by the NCUA as opposed to an insured depository institution in the process of conservatorship or receivership by the FDIC.

The Bureau also proposes to conform proposed § 1024.33(c) with the requirements in proposed § 1024.39 by clarifying that a borrower's account may be considered late for purposes of contacting the borrower for early intervention, but may not be considered late for any other purpose, including imposing late fees.

The Bureau proposes to add a requirement in proposed § 1024.33(c)(2) that, in connection with a servicing transfer, a transferor servicer shall promptly either transfer a payment it has received incorrectly to the transferee servicer for application to a borrower's mortgage loan account or return the payment to the person that made the payment to the transferor servicer. The Bureau understands that many servicers already transfer misdirected payments to the appropriate servicer in connection with a servicing transfer. The Bureau requests comment regarding whether servicers should be required to transfer funds received for a borrower's mortgage loan account to the appropriate servicers. The Bureau also solicits comment on whether the Bureau should implement requirements on the timing and method by which payments are returned to consumers.

The Bureau also proposes to add comment 33(b)(3)–2 to clarify how a notice of servicing transfer should be delivered to a borrower. Proposed comment 33(b)(3)–2 clarifies that a notice of transfer should be delivered to the mailing address listed by the borrower in the mortgage loan documents, unless the borrower has notified the servicer of a new address pursuant to the servicer's requirements for receiving a notice of a change of address. This requirement is consistent with current law.[69] Proposed comment 33(b)(3)–2 further clarifies that when a mortgage loan has more than one borrower, the notice of transfer need only be given to one borrower, but must be given to the primary borrower when one is readily apparent.

The Bureau also proposes to amend the model form set forth in appendix MS–2 to reflect the proposed requirements in proposed § 1024.33(b)(4) and to streamline the contents of the form. The Bureau believes that borrowers are best served by reducing the content of the form so that borrowers receive a form that clearly sets forth the required content regarding the transfer of servicing and the address to which the next payment should be sent.

The Bureau proposes to exercise its authority under section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA. The Bureau further relies on its authority in section 19(a) of RESPA to make such rules and regulations necessary to achieve the consumer protection purposes of RESPA.

Section 1024.34 Timely Payments by Servicer

Proposed § 1024.34(a) would require a servicer to pay amounts owed for taxes, insurance premiums, and other charges from an escrow account in a timely manner, pursuant to the requirements of

[68] Currently, mortgage servicing transfer disclosures are required for ''mortgage servicing loans.'' *See* current § 1024.21(b)(1). The only ''mortgage servicing loans'' that would not be covered by the 2012 TILA–RESPA Proposal rulemaking are closed-end reverse mortgage transactions. Open-end reverse mortgage transactions are not ''mortgage servicing loans'' as that term is defined in current § 1024.21(a).

[69] *Rodriguez* v. *Countrywide Homes et al.,* 668 F. Supp. 2d 1239, 1245 (E.D. Ca. 2009) (''Countrywide submits, and the Court agrees, that RESPA requires a lender to send a Good Bye letter to the Mailing Address listed by the borrower in the loan documents. When the borrower submits an express change of mailing address, the lender is required to send the Good Bye letter to the new address.'').

current § 1024.17(k), including the amendments proposed in this rule. Further, proposed § 1024.34(b) would implement the Dodd-Frank Act amendment to section 6(g) of RESPA by requiring a servicer to refund to a borrower any amounts remaining in an escrow account when a mortgage loan is paid in full. Section 6(g) of RESPA also permits a servicer to credit the escrow account balance to an escrow account for a new mortgage loan to the borrower with the same lender. ''Lender'' is defined in Regulation X to mean, 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.

The Bureau believes the purpose of the provision allowing a servicer to credit funds in an escrow account to an escrow account for a new mortgage loan is intended to allow the amounts to be smoothly transferred without the need for the borrower to expend funds to fund a new escrow account and wait for a refund of a prior escrow account. Consistent with the Bureau's proposal to clarify that subpart C may relate to secondary market transactions, which is implemented by the amendment to current § 1024.5(b)(7), the Bureau proposes to interpret the language ''account with the same lender'' consistent with secondary market practices. Accordingly, for purposes of section 6(g), the Bureau believes that a servicer should be able to credit an escrow account for a prior mortgage loan to a new mortgage loan where the lender for the new mortgage loan is (i) the same as the lender for the prior mortgage loan, (ii) the same as the current owner or assignee of the prior mortgage loan, or (iii) intends to use as its agent the same servicer that services the prior mortgage loan.

Accordingly, proposed § 1024.34(b) is intended to clarify three points. First, a servicer may credit an escrow account balance to an escrow account for a new mortgage loan if the lender for the new mortgage loan is the owner or assignee of the prior mortgage loan, even if that entity was not the lender for the prior mortgage loan named in the debt obligation and document creating the lien. Second, a servicer may credit an escrow account balance to an escrow account for a new mortgage loan if the servicer for the new mortgage loan is the same as the servicer for the prior mortgage loan. Third, the 20-day allowance for section 6(g) only applies if the servicer refunds the escrow account balance to the borrower. If the servicer credits the funds in the escrow account to an escrow account for a new mortgage loan, the credit should occur as of the settlement of the new mortgage loan.

Proposed comment 34(b)(2)–1 clarifies that a servicer is not required to credit an escrow account balance to a new mortgage loan in any circumstance in which it would be permitted to do so. A servicer may determine, in all circumstances, to return funds in an escrow account to the borrower pursuant to proposed § 1024.34(a).

The Bureau requests comments regarding whether the Bureau has identified proper instances where servicers may credit funds to a new escrow account and how such crediting should occur.

The Bureau is proposing these requirements to implement section 6(g) of RESPA pursuant to its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA. The Bureau further relies on its authority in section 19(a) of RESPA to make such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA.

Section 1024.35 Error Resolution Procedures

Proposed § 1024.35 states the error resolution requirements that servicers would be required to follow for a notice of error from a borrower. In general, this proposal provides an opportunity to clarify servicer obligations to correct errors and respond to information requests to provide certainty to borrowers regarding their rights and to servicers regarding their obligations.

Currently, section 6(e) of RESPA requires servicers to respond to ''qualified written requests.'' Qualified written requests must be in writing and must relate to the ''servicing'' of the mortgage loan, as that term is defined in RESPA. Although the Bureau believes that qualified written requests may be used to either assert an error or to request information, there has been confusion among courts regarding whether both types of requests are necessary to set forth a qualified written request.[70]

The Dodd-Frank Act adds another layer of complexity. Section 1463(a) of the Dodd-Frank Act amends RESPA to add section 6(k)(1)(C), which states that a servicer shall not fail to take timely action to ''correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties.'' Further, section 1463(a) of the Dodd-Frank Act amends RESPA to add section 6(k)(1)(D) which states that a servicer shall not fail to provide information regarding the owner or assignee of a mortgage loan within ten business days of a borrower's request. Neither section indicates whether the request to correct an error or the request for information must be in the form of a qualified written request.

In light of these disparate obligations, the Bureau believes that both borrowers and servicers would be better served if the Bureau were to clearly define a servicer's obligation to correct errors or respond to information requests. To that end, the Bureau proposes §§ 1024.35 (Error resolution procedures) and 1024.36 (Requests for information) to establish separate but parallel obligations for servicers to respond to notices of error and information requests. Further, the Bureau's intention is to establish servicer procedural requirements for error resolution and information requests that are consistent with the requirements applicable to a qualified written request under RESPA. Through this, the Bureau intends to make the restrictions and circumlocutions inherent in the language of the qualified written request provisions obsolete. Any valid qualified written request is a valid notice of error or information request. An invalid qualified written request may still be a valid notice of error or information request.[71]

Proposed § 1024.35 establishes the rules implementing the servicer prohibitions set forth in section 6(k)(1)(B), (C), and (E) of RESPA. These prohibitions make it unlawful for a servicer to charge a fee for responding to valid qualified written requests, to fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, avoiding foreclosure, or other standard servicer's duties, and to fail to comply with any other obligation found by the Bureau to be appropriate to carry

[70] *See Catalan* v. *GMAC Mortgage Corp.,* 629 F.3d 676 (7th Cir. 2011); *Pettie* v. *Saxon Mortgage Services,* No. C08–5089, 2009 U.S. Dist. LEXIS 41496 (W.D. Wa. May 12, 2009).

[71] Notably, a notice of error may also constitute a direct dispute under Regulation V, which implements the Fair Credit Reporting Act, if it complies with the requirements in 12 CFR 1022.43.

out the consumer protection purposes of RESPA.

35(a) Notice of Error

Proposed § 1024.35(a) states that a notice of error may be made orally or in writing and must include the name of the borrower, information that enables a servicer to identify the borrower's mortgage loan account, and the error the borrower believes has occurred.

Section 6(k)(1)(C) of RESPA, as added by section 1463(a) of the Dodd-Frank Act, refers generically to servicers' failures to respond to requests of borrowers to correct certain errors. However, unlike section 6(e) of RESPA, which contains the statutory language regarding qualified written requests, section 6(k)(1)(C) of RESPA does not specify that borrowers' requests to correct errors must be submitted in any particular format.

Oral notices of error. The Bureau proposes to allow a borrower to make a notice of error either orally or in writing. The Bureau believes this approach is warranted because, based on its discussions with consumers, consumer advocates, servicers, and industry trade associations, it appears that the vast majority of borrower complaints are generated orally instead of in writing. A requirement that a notice of error must be in writing generally serves as a barrier that unduly restricts the ability of a borrower to have errors resolved. The Bureau believes it is important for consumers to receive the benefit of required correction or investigation from servicers of orally asserted errors.

Servicers and servicer representatives stated that allowing a notice of error to be provided orally would create new burdens for servicers regarding tracking the notices of error and monitoring that a borrower receives written acknowledgements and responses. In addition, small entity representatives with whom the Small Business Review Panel conducted outreach reiterated these burdens on behalf of small servicers. The Small Business Review Panel recommended that the CFPB consider requiring small servicers to comply with the error resolution procedures only when borrowers provided error notices in writing.[72] The Small Business Review Panel also recommended that the Bureau consider adopting a more flexible process for tracking errors and demonstrating compliance that could be used by small servicers.[73]

The Bureau recognizes the burdens on servicers to ensure compliance with this proposed rule for notices of error received orally. In order to implement this section, servicers may adopt systems to ensure that a borrower's notice of error is tracked and receives the required acknowledgement and response. In light of the concerns express in the Small Business Review Panel Report, the Bureau has declined to specify any particular requirement that a servicer must undertake to track notices of error. Further, ensuring that borrower assertions of errors are investigated, responded to, and, as appropriate, corrected, is an objective of the reasonable information management policies and procedures set forth below in proposed § 1024.38. The Bureau has created that proposal to provide flexibility to servicers, including small servicers, to design policies and procedures that are appropriate to the particular circumstances of each servicer. The Bureau believes this flexibility reflects that Small Business Review Panel recommendation that the Bureau create flexibility in the manner in which small servicers comply with the error resolution requirements.

The Bureau further believes that elements of the proposed rule assist in mitigating burden for all servicers. These elements include, for example, a limitation on the types of errors that servicers would be required to resolve to a finite list, as well as a proposal to allow servicers to designate a specific telephone number for receiving oral notices of error.

The Bureau believes the error resolution (as well as the information management) requirement provides appropriate flexibility for small servicers to implement policies and procedures to comply with this objective that make sense for their organizations and responds to the findings and recommendations in the Small Business Review Panel Report.[74]

The Bureau solicits comments regarding whether servicers should be required to apply the error resolution requirements to notices of error received orally. The Bureau further solicits comments regarding whether small servicers (as that term is defined in the 2012 TILA Servicing Proposal) should be exempt from a requirement to apply the error resolution procedures in proposed § 1024.35 to notices of error received orally.

Qualified written requests. Proposed § 1024.35(a) would require a servicer to treat notices of error, whether oral or written, the same way it treats a qualified written request that asserts an error. The Bureau's intention is to propose servicer obligations applicable to a notice of error that are exactly the same as obligations applicable to a qualified written request. For example, as set forth below, a servicer may not charge a fee for responding to a notice of error, a servicer must acknowledge receipt of a notice of error within five days (excluding legal public holidays, Saturdays, and Sundays) and must respond to the notice of error within 30 days (excluding legal public holidays, Saturdays, and Sundays). Moreover, a servicer's potential liability for failure to respond to a notice of error is the same as the potential liability for failure to respond to a qualified written request. Thus, under proposed § 1024.35(a), there is no reason for a borrower to send a qualified written request as opposed to an oral or written notice of error nor is there a reason for a servicer to reject a qualified written request because it does not meet the requirements for a qualified written request in section 6(e) of RESPA when such request constitutes a valid notice of error. Even if a borrower does not comply with all the requirements of a qualified written request, including, for instance, by asserting an error orally, or by asserting an error that is defined in § 1024.35(b) but does not constitute ''servicing'' as defined in RESPA, the obligations for the servicer to respond to the borrower are the same and the liability for the servicer's failure to respond to the borrower is the same.

Proposed comment 35(a)–1 would clarify that a notice of error submitted by a person acting on behalf of the borrower is considered a notice of error pursuant to proposed § 1024.35(b). This clarification is substantially the same as the current requirement existing under section 6(e)(1)(A) of RESPA with respect to a qualified written request.[75] 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.

Proposed comment 35(a)–2 would clarify that the substance of the notice of error would determine the servicer's obligation to comply with the error resolution requirements. No particular language (such as ''qualified written request'' or ''notice of error'') is necessary to set forth a notice of error.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(C) and 6(k)(1)(E) of RESPA to implement the

[72] *See* Small Business Review Panel Report at 30.

[73] *Id.*

[74] *See* Small Business Review Panel Report at 29.

[75] Section 6(e)(1)(A) of RESPA states that a qualified written request may be provided by a ''borrower (or an agent of the borrower).''

notice of error requirements. Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

35(b) Scope of Error Resolution

Proposed § 1024.35(b) provides a finite list of errors to which the error resolution provisions would relate (covered errors). A finite list of covered errors provides certainty to both borrowers and servicers regarding the types of errors that are subject to the error resolution process. Further, a finite list of covered errors is intended to ensure that servicer resources can be dedicated to responding to errors that are capable of correction, to the benefit of a borrower. For example, the Bureau considered whether to define as a covered error a servicer's failure to accurately and timely provide a disclosure to a borrower as required by applicable law. The Bureau determined that such a failure was not appropriate as a covered error because the information request provisions provide the borrower the ability to obtain the underlying information. Further, the Bureau believes that a servicer's action to attempt to correct the failure, such as by sending the untimely disclosure after the deadline, would not actually correct the timeliness error and would not be helpful or useful to borrowers. In that circumstance, the error resolution request would create burden and impose costs on servicers without offering concomitant benefit for borrowers.

The Bureau further considered the impact of the proposed error resolution requirements if the types of covered errors were not limited. The proposal expands servicer's obligations to respond to error notices and information requests from borrowers. Borrowers may initiate an error resolution process orally, not just in writing. Further, in general, the proposal reduces the time period within which a servicer must respond to a borrower (from 60 days to 30 days), consistent with the Dodd-Frank Act amendments to section 6(e)(2) of RESPA. For certain types of covered errors, the time period to respond to the borrower is even more limited. The Bureau believes that the added costs and burden created by having an open-ended definition of an error could substantially increase the costs to servicers with limited additional benefit to consumers. The Bureau further believes that requiring servicers to respond to potentially any assertion of an error could, as a practical matter, lead to servicers using disproportionate resources to respond to every asserted error. That practice may cause servicers to expend fewer resources to address errors that may be far more significant to borrowers.

The Small Business Review Panel received feedback from SERs regarding whether the error resolution procedures should include a catch-all provision to the enumerated list of errors. In general, the SERs commented favorably on the Bureau's proposal to include a finite list of errors. The SERs indicated that if the Bureau were to consider adding a catch-all provision, then the Bureau should request comment on whether to not include such a provision. Accordingly, for the reasons above, proposed § 1024.35(b) provides a finite list of covered errors to which the error resolution provisions would relate. The Bureau requests comment regarding whether (1) the finite list of covered errors should include any other specific types of errors that are not addressed in the list and (2) whether the list of covered errors should not be finite and should include a catch-all provision for other types of errors not set forth in the rule.

Covered errors. Paragraph 35(b) defines the types of covered errors for which the error resolution procedures apply. As discussed below, the proposed rule sets forth a finite list of nine types of covered errors based on the statutory language prohibiting servicers from failing to take timely action to respond to a borrower's request to correct errors ''relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties.'' *See* RESPA section 6(k)(1)(C).

Proposed comment 35(b)–1 clarifies that a servicer would not be required to comply with the requirements of proposed § 1024.35(d)–(e) if a notice relates to something other than one of the types of covered errors in proposed § 1024.35(b). The proposed comment provides examples of categories of excluded errors that would not be considered covered errors pursuant to proposed § 1024.35(b). These include matters relating to the origination or underwriting of a mortgage loan, matters relating to a subsequent sale or securitization of a mortgage loan, and matters relating to a sale, assignment, or transfer of the servicing of a mortgage loan other than the transfer of information for a borrower's mortgage loan account. The Bureau believes that a mortgage servicer is generally not in a position to investigate or resolve borrower complaints regarding potential errors that may have occurred during an origination, underwriting, sale, or securitization process. The Bureau requests comment regarding whether any errors that may fall within the examples of excluded errors should instead be included as covered errors.

Paragraph 35(b)(1)

Proposed paragraph 35(b)(1) includes as a covered error a servicer's failure to accept a payment that conforms to the servicer's written requirements for the borrower to follow in making payments.

Section 6(k)(1)(C) of RESPA prohibits a servicer from failing to take timely action to respond to a borrower's request to correct errors relating to the allocation of payments for a borrower's account. Paragraph 35(b)(1) is an example of one type of error that fits within the broad statutory prohibition. A failure to accept a proper payment will necessarily have implications for the correct application of borrower payments. Further, proper acceptance of payments is, by definition, ''servicing,'' as that term is defined in section 6(i)(3) of RESPA and already subject to the qualified written request procedure set forth in section 6(e) of RESPA and current § 1024.21(e) of Regulation X.

The Bureau further believes that proper acceptance of borrower payments is a standard servicer duty as set forth in section 6(k)(1)(C) of RESPA. Section 6(k)(1)(C) of RESPA states that a servicer shall not fail to take timely action to respond to a borrower's request to correct errors relating three specific categories as well as those relating to ''other standard servicer duties.'' The Bureau believes that standard servicer duties are those typically undertaken by servicers in the ordinary course of business. Such duties include not only the obligations that are specifically identified in section 6(k)(1)(C), but also those duties that are defined as ''servicing'' by RESPA, as well as duties customarily undertaken by servicers to investors and consumers in connection with the servicing of a mortgage loan. These include duties that may not be contemplated within the definition of ''servicing'' in RESPA, such as duties to comply with investor agreements and servicing program guides, to advance payments to investors, to process and pursue mortgage insurance claims, to monitor coverage for insurance (*e.g.* hazard

insurance), to monitor tax delinquencies, to respond to borrowers regarding mortgage loan problems, to report data on loan performance to investors and guarantors, and to work with investors and borrowers on options to mitigate losses for defaulted mortgage loans. Throughout this proposal, the Bureau refers to these standard servicer duties, in the parlance of section 6(k)(1)(C) of RESPA, as typical servicer duties to reflect the plain language connotation that such duties are those typically performed by servicers in the normal course of business.

As set forth above, the Bureau is proposing § 1024.35(b)(1) to implement section 6(k)(1)(C) of RESPA. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(2)

Proposed paragraph 35(b)(2) would include as a covered error a servicer's failure to apply an accepted payment to the amounts due for principal, interest, escrow, or other items pursuant to the terms of the mortgage loan and applicable law.

Section 6(k)(1)(C) of RESPA prohibits a servicer from failing to take timely action to respond to a borrower's request to correct errors relating to the allocation of payments for a borrower's account. Paragraph 35(b)(2) implements the prohibition in section 6(k)(1)(C) of RESPA. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(3)

Proposed paragraph 35(b)(3) includes as an error a servicer's failure to credit a payment to a borrower's mortgage loan account as of the date of receipt, where such failure has resulted in a charge to the consumer or the furnishing of negative information to a consumer reporting agency.

Proper crediting of payments to consumers is required by section 129F of TILA, which was added by section 1464 of the Dodd-Frank Act and would be implemented by proposed § 1026.36(c) in the 2012 TILA Servicing Proposal. For a mortgage loan secured by a principal dwelling, TILA section 129F mandates that servicers shall not fail to credit a payment to a consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer, or in the furnishing of negative information to a consumer reporting agency. *See* 15 U.S.C. 1639f. TILA section 129F provides a specific exception for payments that do not conform to a servicer's written requirements, but nonetheless are accepted by the servicer, in which case the servicer shall credit the payment as of five days after receipt. *See* 15 U.S.C. 1639(f)(b). Servicers of mortgage loans covered by TILA section 129F have a duty to comply with that provision.

Section 6(k)(1)(C) of RESPA prohibits a servicer from failing to take timely action to respond to a borrower's request to correct errors relating to the allocation of payments for a borrower's account. Paragraph 35(b)(3) implements this prohibition. A failure to credit a payment will necessarily have implications for the correct application of borrower payments. A servicer's failure to properly credit a payment will cause the servicer to report to a borrower improper information regarding the amounts owed by the borrower and may cause a servicer to misapply other payments received by the borrower. Further, a servicer's failure to properly credit borrower payments may generate improper late fees and other charges.

The Bureau also observes that proper crediting of borrower payments is, by definition, ''servicing,'' as that term is defined in section 6(i)(3) of RESPA and, therefore, is subject to the qualified written request procedure set forth in section 6(e) of RESPA and current § 1024.21(e) of Regulation X.

For these reasons, the Bureau proposes to implement section 6(k)(1)(C) of RESPA by prohibiting servicers from failing to correct errors relating to proper crediting of borrower payments. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(4)

Proposed paragraph 35(b)(4) includes as an error a servicer's failure to make disbursements from an escrow account for taxes, insurance premiums (including flood insurance), or other charges, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay, as required by current § 1024.17(k), or to refund an escrow account balance in a timely manner as required by proposed § 1024.34(b).

In the normal course of business, servicers typically engage in collecting payments from borrowers to fund escrow accounts and disburse payments from escrow accounts to pay borrower obligations for taxes, insurance premiums, and other charges. Servicers typically undertake this obligation on behalf of investors because a borrower's maintenance of an escrow account reduces risk for investors that unpaid taxes may generate tax liens that are higher in priority than a lender's mortgage lien and that unpaid insurance may cause lapses in insurance coverage that present risk for investors in the event of a loss. Servicers are required to make disbursements from escrow accounts in a timely manner pursuant to section 6(g) of RESPA and are required to account for the funds credited to an escrow account pursuant to section 10 of RESPA. The Bureau further observes that proper disbursement of escrow funds is, by definition, ''servicing,'' as that term is defined in section 6(i)(3) of RESPA and, therefore, is currently subject to the qualified written request procedure set forth in section 6(e) of RESPA and current § 1024.21(e) of Regulation X.

Proposed paragraph 35(b)(4) would require a servicer to correct errors relating to a typical servicer duty and implements section 6(k)(1)(C) of RESPA. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(5)

Proposed paragraph 35(b)(5) includes as an error a servicer's imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower.

Servicers should not impose fees on borrowers that are not bona fide—that is, fees that a servicer does not have a reasonable basis to impose upon a borrower. Examples of non-bona fide charges include such common sense errors as late fees for payments that were not late, default property management fees for borrowers that are not in a delinquency status that would justify the charge, charges for services from service providers that were not actually rendered with respect to a borrower's mortgage loan account, and charges for force-placed insurance where a servicer lacks a reasonable basis to impose the charge on the borrower as set forth in proposed § 1024.37.

Improper fees harm both mortgage loan borrowers and the investors that are mortgage servicers' principals. Improper and uncorrected fees harm borrowers by taking funds that may otherwise be used to keep a mortgage loan current. Further, improper fees reduce recovery values available to investors from foreclosures or loss mitigation activities.

Servicers that operate in good faith in the normal course of business refrain from imposing charges on borrowers that the servicer does not have a reasonable basis to impose and correct errors relating to those fees when they arise. The Bureau believes that it is a typical servicer duty, both to the borrower and to the servicer's principal, to ensure that the servicer has a reasonable basis to impose a charge on a borrower.

Proposed paragraph 35(b)(5) would require a servicer to correct errors relating to a typical servicer duty and implements section 6(k)(1)(C) of RESPA. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(6)

Proposed paragraph 35(b)(6) includes as an error a servicer's failure to provide an accurate payoff balance to a borrower upon request pursuant to 12 CFR 1026.36(c)(1)(iii).

Borrowers require accurate payoff statements to manage their mortgage loan obligations. A payoff statement is necessary anytime a borrower repays a mortgage loan and servicers routinely provide payoff statements for borrowers to refinance or pay in full mortgage loan obligations. However, consumer advocates have indicated servicers have failed, or refused, to provide payoff statements to certain borrowers or have required borrowers to make a payment on a mortgage loan as a condition of fulfilling the borrower's request for a payoff statement.[76] Any such conduct has the perverse effect of impeding a borrower's ability to pay a mortgage loan obligation in full.

Servicers already have an obligation to comply with the timing requirements of section 129G of TILA with respect to any mortgage loan that constitutes a ''home loan'' as used in section 129G of TILA. The Bureau believes that, in order to implement the prohibition set forth in section 6(k)(1)(C) of RESPA regarding a servicer's failure to correct errors relating to final balances for purposes of paying off the loan, a servicer should be required to comply with the requirements within a reasonable time frame. Because servicers will be required to comply with the timeframes set forth in 12 CFR 1026.36(c)(1)(iii) with respect to certain mortgage loans they service, the Bureau does not believe that requiring servicers to correct errors for mortgage loans that may not constitute home loans as that term is used in section 129G of TILA within error resolution timeframes imposes additional burden on servicers.

Proposed paragraph 35(b)(6) implements section 6(k)(1)(C) of RESPA with respect to a servicer's obligation to correct errors relating to final balance for purposes of paying of a mortgage loan. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(7)

Proposed paragraph 35(b)(7) includes as an error a servicer's failure to provide accurate information to a borrower with respect to loss mitigation options available to the borrower and foreclosure timelines that may be applicable to the borrower's mortgage loan account, as required by proposed §§ 1024.39–1024.40.

In order to pursue loss mitigation options that may benefit both the borrower and the owner or assignee of the borrower's mortgage loan, a borrower requires accurate information about the loss mitigation options available to the borrower, the requirements for receiving an evaluation for any such loss mitigation option, and the applicable timelines relating to both the evaluation of the borrower for the loss mitigation options and any potential foreclosure process. Although the Bureau does not generally believe a failure to provide a required disclosure to a borrower should constitute an error requiring compliance with the error resolution procedures in proposed § 1024.35, borrowers may benefit from asserting errors with respect to a servicer's failure to provide information regarding loss mitigation options that may be available to the borrower but for which the servicer has not provided information to the borrower. By correcting this error and providing the borrower with accurate information regarding loss mitigation options that may be available to the borrower, a servicer can help a borrower receive an evaluation for the loss mitigation option pursuant to proposed § 1024.41 and may be able to reach agreement with the borrower on a loss mitigation option that is mutually beneficial to the borrower and the owner or assignee of the borrower's mortgage loan.

Proposed paragraph 35(b)(7) implements section 6(k)(1)(C) of the Dodd-Frank Act. Specifically, proposed paragraph 35(b)(7) implements a servicer's obligation to correct errors relating to avoiding foreclosure. Further, the Bureau believes that the National Mortgage Settlement, servicer participation in Home Affordable Modification Program (HAMP) sponsored by the U.S. Department of the Treasury (Treasury) and HUD, and service participation in other loss mitigation programs required by Fannie Mae and Freddie Mac demonstrate that servicers typically provide borrowers with information regarding loss mitigation options and foreclosure and

[76] *See, e.g., Mortgage Servicing: An Examination of the Role of Federal Regulators in Settlement Negotiations and the Future of Mortgage Servicing Standards: Joint Hearing Before the Subcommittee on Financial Institutions and Consumer Credit and Subcommittee on Oversight and Investigations of the House Financial Services Comm.,* No. 112–44, 112th Cong. 76 (July 7, 2011) (statement of Mike Calhoun, President, Center for Responsible Lending).

that providing such information to borrowers is a typical servicer duty.

The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(8)

Proposed paragraph 35(b)(8) would include as an error a servicer's failure to accurately and timely transfer information relating to a borrower's mortgage loan account to a transferee servicer.

In the normal course of business, servicers typically anticipate that they will be required to transfer servicing for some mortgage loans they service. Owners or assignees of mortgage loans typically have rights to transfer servicing for a mortgage loan pursuant to the requirements set forth in mortgage servicing agreements. Servicers are required to develop capacity for transferring information to transferee servicers in order to comply with such obligations to owners or assignees of mortgage loans. Further, servicers are required to develop capacity to onboard data for transferred mortgage loans onto the servicer's servicing platform.

Borrowers may be harmed, however, if information that is transferred to transferee servicers is not accurate or current. In certain circumstances, such failure may cause errors to occur relating to allocating payments, calculating final balances for purposes of paying off a mortgage loan, or avoiding foreclosure.

Pursuant to proposed § 1024.38(a), servicers would be required to have policies and procedures to achieve the objectives set forth in proposed § 1024.38(b), which includes an objective of facilitating servicing transfers. An objective of the servicer's policies and procedures would be to timely transfer all information and documents 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 requirements of this subpart and the terms of the transferee servicer's contractual obligations to the owner or assignee of the mortgage loan.

The Bureau believes that by defining a servicer's failure to accurately and timely transfer information relating to a borrower's mortgage loan account to a transferee servicer, a borrower will have a remedy to ensure that a transferor servicer will update the information transferred to provide information to a transferee servicer that accurately reflects the borrower's account consistent with the obligations applicable to a servicer's information management policies and procedures.

Proposed paragraph 35(b)(8) implements a servicer's obligation to take timely action to correct errors relating to typical servicer duties pursuant to section 6(k)(1)(C) of RESPA. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Paragraph 35(b)(9)

Proposed paragraph 35(b)(9) would include as an error a servicer's failure to suspend a scheduled foreclosure sale in the circumstances described in proposed § 1024.41(g). Pursuant to proposed § 1024.41(g), a servicer that offers loss mitigation options to borrowers in the ordinary course of business would be prohibited from proceeding with a foreclosure sale when a borrower has submitted a complete application for a loss mitigation option unless the servicer denies the borrower's application for a loss mitigation option (including any appeal thereof), the borrower rejects the servicer's offer of a loss mitigation option, or the borrower fails to perform an agreement on a loss mitigation option. For further information, see discussion of proposed section § 1024.41 below.

The Bureau continues to consider whether to include as an error a servicer's evaluation of a borrower for a loss mitigation option. The Bureau observes that the manner in which a borrower is evaluated for a loss mitigation option is complex and includes factors that are subjective.[77] Further, the Bureau believes that the appeal process provided in proposed § 1024.41(h) provides an appropriate procedural means for borrowers to address issues relating to a servicer's evaluation of a borrower for a loan modification program.

The Bureau requests comment regarding whether to include as an error a servicer's failure to correctly evaluate a borrower for a loss mitigation option. The Bureau further requests comment regarding standards for determining if a borrower has been correctly evaluated for a loss mitigation option, including whether a servicer should be required to comply with the servicer's own standards, standards promulgated by major investors and guarantors, and standards promulgated in connection with Federal- or State-sponsored loss mitigation options.

Proposed paragraph 35(b)(9) implements section 6(k)(1)(C) of the Dodd-Frank Act. Specifically, proposed paragraph 35(b)(9) implements a servicer's obligation to correct errors relating to avoiding foreclosure. The Bureau also relies on its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA. Further, the Bureau relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

35(c) Contact Information for Borrowers To Assert Errors

Proposed § 1024.35(c) permits a servicer to establish a telephone number and address that a borrower must use to assert an error. If a servicer chooses to establish a separate telephone number and address for receiving errors, a servicer must provide the borrower a written notice that states that the borrower may assert an error at the telephone number and address established by the servicer for that purpose. Proposed comment 35(c)–2 would clarify that the written notice to the borrower may be set forth in another written notice provided to the borrower, such as a notice of transfer, periodic statement, or coupon book.

The purpose of establishing a telephone number and address that a borrower must use to assert an error is

[77] *See, e.g.,* Special Inspector General for the Troubled Asset Relief Program, *The Net Present Value Test's Impact on the Home Affordable Modification Program,* at 7–8 (Jun.. 18, 2012), available at: *http://www.sigtarp.gov/Audit%20Reports/NPV_Report.pdf* (demonstrating that major HAMP servicers differed in their determinations regarding whether to apply a risk premium to the discount rate used to calculate net present value for determining eligibility for HAMP loan modifications).

to allow servicers to direct oral and written errors to appropriate personnel that have been trained to ensure that the servicer responds appropriately. At larger servicers with other consumer financial service affiliates, many personnel simply do not typically deal with mortgage servicing-related issues. For instance, at a major bank servicer, a borrower may incorrectly believe that local bank branch staff will be required to comply with error resolution requirements for mortgage servicing errors. If a servicer establishes a telephone number and address that a borrower must use, a servicer would not be required to comply with the error resolution requirements for errors that may be received by the servicer through a different method. Proposed comment 35(c)–1 clarifies, however, that if a servicer has not designated a telephone number and address that a borrower must use to assert an error, then a servicer will be required to comply with the error resolution requirements for any notice of error received by any office of the servicer.

The Bureau believes it is reasonable, especially in light of the expanded burden of requiring compliance with error resolution for oral notices of error, to allow servicers to manage the intake of notices of error to designated telephone numbers and addresses. Further, allowing a servicer to designate a specific telephone number and address is consistent with current requirements of Regulation X with respect to qualified written requests. Current § 1024.21(e)(1) permits a servicer to designate a ''separate and exclusive office and address for the receipt and handling of qualified written requests.'' Moreover, the Bureau believes that identifying a specific telephone number and address for receiving errors and information requests will benefit consumers as well. By providing a specific telephone number and address, servicers will identify to consumers the office capable of addressing errors identified by consumers. The Bureau is proposing in the concurrent 2012 TILA Servicing Proposal to require that any telephone number or address identified by a servicer must appear on the periodic statement or other payment form supplied by the servicer. *See* 2012 TILA Servicing Proposal at proposed § 1026.41(d)(6).

Multiple offices. Proposed § 1024.35(c) would require a servicer to use the same telephone number and address it designates for receiving notices of error for receiving information requests pursuant to proposed § 1024.36(b), and vice versa. The Bureau believes that if servicers designate separate telephone numbers and addresses for notices of error and information requests, borrower attempts to provide notices of error and information requests to servicers could be impeded. Further, proposed comment 35(c)–3 clarifies that any telephone numbers or address designated by a servicer for any borrower may be used by any other borrower to submit a notice of error. This clarifies that a servicer may not determine that a notice of error is invalid if it was received at any telephone number or address designated by the servicer for receipt of notices of error just because it was not received by the specific phone number or address identified to a specific borrower. Proposed comment 35(c)–5 clarifies that a servicer may use automated systems, such as an interactive voice response system, to manage the intake of borrower calls. Prompts for asserting errors must be clear and provide the borrower the option to connect to a live representative.

Internet intake of notices of error. Proposed comment 35(c)–4 would clarify that a servicer is not required to establish a process for receiving notices of error through email, Web site, or other online methods. If a servicer establishes a process for receiving notices of error through online methods, comment 35(c)–4 is intended to clarify that the process established is the only online intake process that a borrower can use to assert an error. Thus, a servicer would not be required to provide a written notice to a borrower in order to gain the benefit of the online process being considered the exclusive online process for receiving notices of error. Proposed comment 35(c)–4 further clarifies that a servicer's decision to accept notices of error through an online intake method shall not have any impact on a servicer's obligation to comply with the requirements of § 1024.35 with respect to notices of error received in writing or orally.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(C) and 6(k)(1)(E) of RESPA to implement the notice of error requirements. Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in section 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

35(d) Acknowledgment of Receipt

Proposed § 1024.35(d) would require a servicer to provide a borrower a written acknowledgement of a notice of error within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving a notice of error. Proposed § 1024.35(d) would implement section 1463(c) of the Dodd-Frank Act which amended the current acknowledgement deadline of 20 days for qualified written requests to five days. Proposed § 1024.35(d) further applies the same timeline applicable to a qualified written request to any notice of error.

The Bureau relies on its authority in section 6(k)(1)(C) and 6(k)(1)(E) of RESPA to implement the notice of error requirements. Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

35(e) Response to Notice of Error

Proposed § 1024.35(e) would set forth requirements on servicers for responding to notices of error.

35(e)(1) Investigation and Response Requirements

Proposed paragraph 35(e)(1) would require a servicer to correct an error within 30 days unless the servicer concludes after a reasonable investigation that no error occurred.

Notices to borrower. If a servicer corrects the error identified by the borrower, it must provide the borrower with written notification that indicates that the error was corrected, the effective date of the correction, and a telephone number the borrower can use to get further information.

If a servicer determines that no error occurred, it is required to have conducted a reasonable investigation and to provide the borrower a notice that the servicer has determined that no error has occurred, the reason(s) the servicer believes that no error has occurred, and contact information for servicer personnel that can provide further assistance. A servicer would also be required to inform the borrower in the notice that the borrower may request

documents relied on by the servicer in reaching its determination and how the borrower can request such documents.

Borrower right to request documents. Proposed § 1024.35(e)(4) would require that if a servicer determines no error occurred, the servicer is required to include a statement in its response that the borrower can request documents relied upon by the servicer. A servicer must provide the documents within 15 days of the servicer's receipt of the borrower's request. The Bureau believes that this requirement strikes an appropriate balance that does not subject the servicer to undue paperwork burden while assuring that the borrower can access the underlying documentation if necessary. Further, in certain cases, a borrower may determine that the servicer's response resolves an issue and that reviewing documents would be unnecessary and requiring a servicer to provide documents only upon a borrower's request limits burden. Proposed comment 35(e)(4)–1 clarifies that a servicer need only provide documents actually relied upon by the servicer to determine that no error occurred, not all documents reviewed by a servicer. Further, the proposed comment states that where a servicer relies upon entries in its collection systems, a servicer should provide print-outs reflecting the information entered into the system.

A servicer would be required to provide information regarding the right to receive documents only if a servicer determines that no error has occurred. Proposed paragraph 35(e)(1)(i) would not require a servicer who determines that an error has occurred, and corrects the error, to provide documents to a borrower that were the basis for that determination or to provide a statement in the notice to the borrower about requesting documents. The Bureau believes that the purpose of the proposed rule is to facilitate the prompt correction of errors and borrowers likely do not need documents and information when errors are corrected per the borrower's request. The Bureau does not believe it is necessary to require servicers to provide documents to a borrower if a servicer corrects an asserted error.

Multiple responses. Proposed comment 35(e)(1)(i)–1 clarifies that if a notice of error asserts multiple errors, a servicer may respond to those errors through a single or separate written responses that address the alleged errors. The Bureau believes that the purpose of the rule, which is to require prompt resolution of errors, is facilitated by allowing a servicer to respond to multiple errors set forth in a single notice of error through separate communications. For example, a servicer could correct one error, and send a notice regarding the correction of that error, while an investigation is in process regarding another error that is the subject of the same notice of error. Further, a servicer's obligation to provide a borrower with documents relied upon by the servicer only relates to any asserted errors that the servicer determines are not errors. A servicer is not required to provide documents with respect to any other errors in a notice of error that the servicer corrects.

Different or additional error. Proposed paragraph 35(e)(1)(ii) would provide that if a servicer, during the course of a reasonable investigation, determines that a different or additional error has occurred, a servicer is required to correct that different or additional error and provide a borrower a written notice about the error, the corrective action taken, the effective date of the corrective action, and contact information for further assistance. Because the servicer would be correcting an error, a servicer would not be required to provide documents to the borrower regarding the error identified for the reasons discussed above.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(C) and 6(k)(1)(E) of RESPA to implement the notice of error requirements. Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

35(e)(2) Requesting Documentation From Borrower

Proposed § 1024.35(e)(2) states that a servicer could request that a borrower provide documentation if needed to investigate an error but may not require the borrower to provide such documentation as a condition of investigating the asserted error. Nor may the servicer determine that no error occurred because the borrower failed to provide the requested documentation. The purpose of this provision is to allow servicers to obtain information that may assist in resolving notices of error. However, the Bureau believes that the process for obtaining that information should not prejudice the ability of the borrower to seek the resolution of the error.

35(e)(3) Time Limits

Paragraph 35(e)(3)(i)

Proposed paragraph 35(e)(3)(i) would require a servicer to respond to a notice of error not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the borrower notifies the servicer of the asserted error, with two exceptions: Errors relating to accurate payoff balances and errors relating to failure to suspend a scheduled foreclosure sale where a borrower has submitted a complete application for a loss mitigation option.

Shortened time limit to correct errors relating to payoff balances. Pursuant to proposed paragraph 35(e)(3)(i)(A), if a borrower submits a notice of error asserting that a servicer has failed to provide an accurate payoff balance as set forth in proposed paragraph 35(b)(6), a servicer must respond to the notice of error not later than five days (excluding legal public holidays, Saturdays, and Sundays) after the borrower notifies the borrower of the alleged error. The Bureau believes that a 30-day deadline for responding to this type of notice of error does not provide adequate protection for a borrower because the servicer's failure to correct the error will prevent a borrower from pursuing options that protect the borrower, including, for example, a refinancing transaction. Based on discussions with servicers, the Bureau believes that a five day timeframe is reasonable for a servicer to correct an error with respect to calculating a payoff balance.

The Bureau relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA with respect to qualified written requests, as well as its authority in sections 6(k)(1)(C) and 6(k)(1)(E) with respect to error resolution requirements to mandate a shorter time period for responding to notices that assert errors with respect to accurate payoff balances. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to make such exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA.

The Bureau requests comment regarding whether five days (excluding legal public holidays, Saturdays, and Sundays) is an appropriate timeframe

for a servicer to correct an error with respect to a payoff balance.

Shortened time limit to correct certain errors relating to foreclosure. Pursuant to proposed paragraph 35(e)(3)(i)(B), if a borrower submits a notice of error asserting that a servicer has failed to suspend a scheduled foreclosure sale, a servicer would be required to investigate and respond to the notice of error by the earlier of 30 days (excluding legal public holidays, Saturdays, and Sundays) or the date of a scheduled foreclosure sale. The Bureau believes that a timeframe that allowed a servicer to investigate and respond to the notice of error after the date of a scheduled foreclosure sale would cause irreparable harm to a borrower. Proposed comment 35(e)(3)(i)(B)–1 would clarify that a servicer could maintain a 30-day timeframe to respond to the notice of error if it cancels or postpones the scheduled foreclosure sale and a subsequent sale is not scheduled before the expiration of the 30-day deadline.

Extensions of time limits. Proposed § 1024.35(e)(3)(ii) would permit a servicer to extend the time period for investigating and responding to a notice of error by 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period set forth in proposed § 1024.35(e)(3)(i)(C), the servicer notifies the borrower of the extension and the reasons for the delay in responding. Proposed comment 35(e)(3)(ii)–1 clarifies that if a notice of error asserts multiple errors, a servicer may extend the time period for investigating and responding to those errors for which extensions are permissible pursuant to proposed § 1024.35(e)(3)(ii). Section 1463(c)(3) of the Dodd-Frank Act amended section 6(e) of RESPA to provide a 15-day extension of time and proposed § 1024.35(e)(3)(ii) would implement this provision.

The Bureau proposes not to apply the extension allowance of proposed § 1024.35(e)(3)(ii) to investigate and respond to errors relating to payoff statement or to a servicer's failure to suspend a scheduled foreclosure sale. For the reasons set forth above, the Bureau does not believe that allowing a servicer to extend the time period for investigating and responding to these types of errors will provide timely resolution of errors.

Legal authority. The Bureau relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA with respect to qualified written requests, as well as its authority in sections 6(k)(1)(C) and 6(k)(1)(E) with respect to error resolution requirements to mandate a shorter time period for responding to notices that assert errors for a servicer's failure to suspend a scheduled foreclosure sale. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to make such exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA.

35(f) Alternative Compliance

Proposed § 1024.35(f) states that a servicer is not required to comply with paragraphs (d) and (e) of proposed § 1024.35 in two situations. First, a servicer that corrects the error identified by the borrower within five days of receiving the notice of error, and notifies the borrower of the correction in writing, is not required to comply with paragraphs (d) and (e). Because such errors are corrected, an investigation would not be required. Second, a servicer that receives a notice of error for failure to suspend a scheduled foreclosure sale, pursuant to paragraph 35(b)(9), seven days or less before a scheduled foreclosure, is not required to comply with paragraphs (d) and (e), if, within the time period set forth in paragraph (e)(3)(i)(B), the servicer responds to the borrower, orally or in writing, and corrects the error or states the reason the servicer has determined that no error has occurred.

The Bureau proposes these alternative compliance methods for two reasons. First, feedback from servicers, and especially small servicers, indicates that the majority of errors are addressed promptly after a borrower's communication and generally within five days. SERs communicated to the Small Business Review Panel that small servicers have a high-touch customer service model, which made it very easy for borrowers to report errors or make inquiries, and to receive real-time responses.[78] The Bureau believes the alternative compliance method is appropriate to reduce unnecessary burden of an acknowledgement on servicers, and especially small servicers, that are able to correct borrower errors within five days consistent with the Small Business Review Panel recommendation that the Bureau consider requirements that provide flexibility to small servicers.

Second, the Bureau believes that reduced requirements are appropriate when servicers receive a notice of error that may impact a scheduled foreclosure scale less than five days before a scheduled foreclosure sale. Only notices of errors identified in proposed paragraph 35(b)(9) implicate this concern. Numerous entities, including other federal agencies and SERs during the Small Business Review Panel outreach, expressed concern about borrower use of error resolution requirements as a procedural tool to impede proper foreclosures and promote litigation.[79] The Bureau believes that reducing the procedural requirements for servicers to follow when a notice asserting an error identified in paragraph (b)(9) is submitted less than 5 days before a scheduled foreclosure sale mitigates this concern while maintaining protection for consumers. The Bureau believes that this alternative compliance method is also consistent with the Small Business Review Panel recommendation that the Bureau provide flexibility to small servicers and responds to SERs' concern that error resolution procedures may be used in unwarranted litigation.[80] Further, the Bureau understands the timing to be consistent with account reviews required by the GSEs to document that all required actions have occurred permitting the servicer to proceed with a scheduled foreclosure sale.[81]

The Bureau relies on its authority in section 6(k)(1)(C) and 6(k)(1)(E) of RESPA to implement the notice of error requirements. Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

The Bureau requests comment regarding whether the Bureau should consider other alternative compliance methods or should adjust the requirements of the proposed alternative compliance methods.

35(g) Requirements Not Applicable

Proposed § 1024.35(g) would state that the error resolution requirements of proposed § 1024.35 would not apply to

[78] *See* Small Business Review Panel Report at 30.

[79] *See* Small Business Review Panel Report at 30.

[80] *See* Small Business Review Panel Report at 29–30.

[81] *See, e.g.,* Fannie Mae Announcement SVC–2011–08R (September 7, 2011).

certain types of notices of error if the servicer complies with proposed § 1024.35(g)(2). The types of notice of error to which the requirements would not apply would be set forth in § 1024.35(g)(1). The Bureau solicits comments regarding whether additional types of notices of error should be identified in proposed § 1024.35(g)(1).

35(g)(1) In General

Proposed paragraph 35(g)(1) would state that a servicer is not required to comply with the requirements of § 1024.35(d) and (e) if the servicer reasonably makes certain determinations specified in paragraphs (g)(1)(i), (ii), or (iii). A servicer may be liable to the borrower for its unreasonable determination and resulting failure to comply with proposed § 1024.35(d) and (e).

Paragraph 35(g)(1)(i)

Proposed paragraph 35(g)(1)(i) would state that a servicer is not required to comply with the notice of error requirements in proposed § 1024.35(d) and (e) with respect to a notice of error where the asserted error is substantially the same as an error previously asserted by or on behalf of the borrower for which the servicer has previously complied with its obligation to respond to the notice of error pursuant to § 1024.35(e)(1), unless the borrower provides new and material information. New and material information means information that was not reviewed by the servicer in connection with investigating the prior notice of error and is reasonably likely to change a servicer's determination with respect to the existence of an error. The Bureau believes that both elements of this requirement are important. First, the information must not have been reviewed by the servicer. If the information was reviewed by the servicer, then such information is not new and requiring a servicer to re-open an investigation will create unwarranted burden and delay. Second, even if the information is new, it must be material to the asserted error. A servicer may not have reviewed information because the information may not have been material to the error asserted by the borrower.

The purpose of this proposed paragraph is to ensure that a servicer is not required to expend resources conducting duplicative investigations of notices of error unless there is a reasonable basis for re-opening a prior investigation because of new and material information.

Proposed comment 35(g)(1)(i)–1 clarifies that a dispute regarding a servicer's interpretation of information previously reviewed, including the materiality of that information, does not itself constitute new and material information and, consequently, does not require a servicer to re-open a prior, resolved investigation of a notice of error.

Paragraph 35(g)(1)(ii)

Proposed paragraph 35(g)(1)(ii) provides that a servicer is not required to comply with the notice of error requirements in proposed § 1024.35(d) and (e) with respect to a notice of error that is overbroad or unduly burdensome. The rule defines ''overbroad'' and ''unduly burdensome'' for this purpose. A notice of error is overbroad if a servicer cannot reasonably determine from the notice of error the specific covered error that a borrower asserts has occurred on a borrower's account. A notice of error is unduly burdensome if a diligent servicer could not respond to the notice of error without either exceeding the maximum timeframe permitted by paragraph (e)(3)(ii) or incurring costs (or dedicating resources) that would be unreasonable in light of the circumstances.

Consumers, consumer advocates, servicers, and servicing industry representatives have indicated to the Bureau that the current qualified written request process is not typically utilized by consumers to resolve errors. Rather, the process is more frequently used strategically to obtain documents and a servicer's responses to claims as a preliminary form of civil litigation discovery. During the Small Business Review Panel outreach, SERs expressed that typically qualified written requests received from borrowers were vague forms found online or forms used by advocates as a form of pre-litigation discovery.[82] Servicers and servicing industry representatives indicated that these types of qualified written requests are unreasonable and unduly burdensome. SERs in the Small Business Review Panel outreach requested that the Bureau consider an exemption for abusive requests, or requests made with the intent to harass the servicer.[83]

The Bureau is likewise concerned that, in light of the expanded requirements for servicers to respond to notices of error, including adding new categories of covered errors that do not specifically relate to ''servicing'' as defined in RESPA as well as errors asserted orally, a requirement for servicers to respond to notices of error that are overbroad or unduly burdensome may harm consumers and frustrate servicers' ability to comply with the new error resolution requirements. The effect of the proposed rule is to expand a servicer's obligation to undertake the obligations similar to those currently applicable to qualified written requests to a broader universe of potential notices of error, including notices of error made orally to a servicer. Requiring servicers to respond to overbroad or unduly burdensome notices of error from some borrowers may cause servicers to expend fewer resources to address other errors that may be more clearly stated and more clearly require servicer attention. Further, the Bureau does not believe that the error resolution procedures are the appropriate forum for borrowers to prosecute wide-ranging complaints against mortgage servicers that are more appropriate for resolution through litigation.

Proposed paragraph 35(g)(1)(ii) provides that if a servicer determines that a notice of error is overbroad or unduly burdensome, the servicer is required to notify the borrower, pursuant to proposed § 1024.35(g)(2), that it is not required to comply with the requirements of proposed § 1024.35(d) and (e). Further, the notice must state that the notice of error was overbroad or unduly burdensome, but does not need to state the specific basis for such a determination. Proposed comment 35(g)(1)(ii)–1 sets forth characteristics that may indicate if a notice of error is overbroad or unduly burdensome. If a servicer can identify a proper assertion of a covered error in a notice of error that is otherwise overbroad or unduly burdensome, a servicer would be required to respond to the covered error submissions it can identify.

The Bureau requests comment regarding whether a servicer should not be required to undertake the error resolution procedures in proposed § 1024.35(d) and (e) for notices of error that are overbroad or unduly burdensome. The Bureau further requests comment on the appropriate definition of overbroad or unduly burdensome notices of error and on the appropriate indicia for identifying notices of error that should be subject to the exclusion.

Paragraph 35(g)(1)(iii)

Proposed paragraph 35(g)(1)(iii) provides that a servicer is not required to comply with the notice of error requirements in proposed § 1024.35(d) and (e) for an untimely notice of error—that is, a notice of error received by a

[82] *See* Small Business Review Panel Report at 23.

[83] *Id.*

servicer more than one year after either servicing for the mortgage loan that is the subject of the notice of error was transferred by that servicer to a transferee servicer or the mortgage loan amount was paid in full, whichever date is applicable. The purpose of this proposed paragraph is to set a specific and clear time that a servicer may be responsible for correcting errors for a mortgage loan.

The purpose of the proposed paragraph is to achieve the same goal that currently exists in Regulation X with respect to qualified written requests. Specifically, current § 1024.21(e)(2)(ii) states that ''a written request does not constitute a qualified written request if it is delivered to a servicer more than one 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.''

35(g)(3) Notice to Borrower

Proposed § 1024.35(g)(3) states that if a servicer determines it is not required to comply with the notice of error requirements in proposed § 1024.35(d) and (e) with respect to a notice of error, the servicer must provide a notice to the borrower informing the borrower of the servicer's determination. The notice must be sent not later than five days (excluding legal public holidays, Saturdays, and Sundays) after the servicer's determination and must set forth the basis upon which the servicer has made the determination and the applicable provision of proposed § 1024.35(g)(1).

The Bureau believes that borrowers should be notified that a servicer does not intend to take any action on the asserted error. The Bureau also believes borrowers should know the basis for the servicer's determination. By providing borrowers with notice of the basis for the servicer's determination, a borrower will know the servicer's basis and will have the opportunity to bring a legal action to challenge that determination where appropriate. The Bureau requests comment regarding the requirement that servicers provide a notice to the borrower and the appropriate content for the notice.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(C) and 6(k)(1)(E) of RESPA to implement the notice of error requirements in proposed § 1024.35(g). Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA.

35(h) Payment Requirements Prohibited

Proposed § 1024.35(h) would prohibit a servicer from charging a fee, or requiring a borrower to make any payment that may be owed on a borrower's account, as a condition of investigating and responding to a notice of error. The Bureau is implementing this provision for three reasons. First, section 1463(a) of the Dodd-Frank Act added section 6(k)(1)(B) to RESPA, which prohibits a servicer from charging fees for responding to valid qualified written requests. Proposed § 1024.35(h) would implement that provision with respect to qualified written requests. Second, the Bureau believes that a servicer's practice of charging for responding to a notice of error impedes borrowers from pursuing valid notices of error. Third, the Bureau understands that, in some instances, servicer personnel have demanded that borrowers make payments before the servicer will correct errors or provide information requested by a borrower. The Bureau believes that a servicer should be required to correct errors notwithstanding the payment status of a borrower's account.

The Bureau relies on its authority in section 6(k)(1)(B), (C), and (E) of RESPA to implement the notice of error requirements. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA.

35(i) Effect on Servicer Remedies

Adverse Information. Proposed § 1024.35(i)(1) states that a servicer may not furnish adverse information regarding any payment that is the subject of a notice of error to any consumer reporting agency for 60 days after receipt of a notice of error. RESPA section 6(e) sets forth this prohibition on servicers with respect to a qualified written request that asserts an error. Proposed § 1024.35(i)(1) would implement Section 6(e) of RESPA with respect to qualified written requests.

The Bureau proposes to maintain the 60-day timeframe set forth in section 6(e)(3) of RESPA. Even though a notice of error may be resolved by no later than 45 days pursuant to proposed § 1024.35(e)(3)(ii), the Bureau believes that the 60-day timeframe is appropriate in the event that there are follow-up inquiries or additional information provided to the borrower.

The Bureau relies on its authority in section 6(e)(3), 6(k)(1)(C), and 6(k)(1)(E) of RESPA to implement the adverse information requirements for qualified written requests and notices of error. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA.

Ability to pursue foreclosure. Proposed § 1024.35(i)(2) states that a servicer's obligation to comply with the requirements of proposed § 1024.35 would not prohibit a lender or servicer from pursuing any remedies, including proceeding with a foreclosure sale, permitted by the applicable mortgage loan instrument, with one exception. The purpose of this provision is to clarify that, in general, a notice of error could not be used to require a servicer to suspend a scheduled foreclosure sale. The purpose of requiring prompt correction of errors is not furthered by allowing a notice of error to impede a lender's or servicer's ability to pursue remedies permitted by the applicable mortgage loan instrument.

The Bureau is proposing one exception because it believes it is inappropriate for a servicer to proceed with a scheduled foreclosure sale in the circumstances described in proposed § 1024.41(g). Failure to suspend a potential foreclosure sale during such periods has caused borrower harm, as discussed below.

Defining as an error a servicer's failure to suspend a scheduled foreclosure sale in the circumstances described in proposed § 1024.41(g) is consistent with section 17 of RESPA. The Bureau observes that the requirements of proposed § 1024.41 would not impede a lender's or servicer's ability to pursue a foreclosure action, or maintain a scheduled foreclosure sale. Rather, the requirements in proposed § 1024.41 establish procedures that servicers must

follow for reviewing loss mitigation applications. Servicers are capable of complying with the requirements prior to a scheduled foreclosure sale. Nothing in this proposed requirement affects the validity or enforceability of the mortgage loan or lien. Further, a servicer has the opportunity to retain its remedies when a borrower submits a completed application for a loss mitigation option. A servicer may establish a deadline by which a borrower must submit a completed application for a loss mitigation option, and, so long as the servicer fulfills its duty to evaluate the borrower for a loss mitigation option before the date of a scheduled foreclosure sale, a servicer may comply with the requirements of § 1024.35 without suspending the scheduled foreclosure sale.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(C), and 6(k)(1)(E) of RESPA to implement the error resolution requirements. To the extent the error resolution requirements relate to qualified written requests, the Bureau also relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA.

Section 1024.36 Requests for Information

Proposed § 1024.36 contains requirements servicers would be required to follow for information requests received from borrowers. Proposed § 1024.36 implements the servicer prohibitions set forth in section 6(k)(1)(B) and 6(k)(1)(D) of RESPA, as well as other obligations the Bureau believes to be appropriate to carry out the consumer protection purposes of RESPA pursuant to section 6(k)(1)(E) of RESPA.

36(a) Information Requests

Proposed § 1024.36(a) would require a servicer to comply with the requirements of proposed § 1024.36 for an information request from a borrower that includes the borrowers name, enables the servicer to identify the borrower's mortgage loan account, and states the information the borrower is requesting for the borrower's mortgage loan account.

The Bureau proposes to allow a borrower to make an information request either orally or in writing. Based on the Bureau's discussions with consumers, consumer advocates, servicers, and industry trade associations, it appears that the vast majority of borrowers orally request information from servicers. As is the case for notices of error, a requirement that an information request must be in writing generally serves as a barrier that unduly restricts the ability of borrower to have errors resolved. Further, as with notices of error, servicers and servicer representatives stated that allowing an information request to be provided orally would create new burdens for servicers. The Bureau recognizes the burdens on servicers to ensure compliance with this proposed rule and incorporates the discussion above with respect to oral notices of error. Responding to oral information requests will impose costs on servicers to ensure that such requests receive responses, but the Bureau believes it is important for consumers to receive the benefit of a requirement that servicers provide information requested by the borrowers.

The Bureau further believes that elements of the proposed rule would assist in mitigating servicer burden. These elements include, for example, a proposal to allow servicers to designate a specific telephone number for receiving oral information requests and an alternative compliance provision that allows a servicer to provide information orally if the information is provided within five days of the borrower's request. The Bureau has learned from discussions with servicers, including the SERs in the Small Business Review Panel outreach, that most information requests are responded to by servicers either on the same telephone call with the borrower or within an hour of a borrower's communication.[84] The Bureau believes that allowing servicers to respond to information requests orally significantly reduces burden associated with the proposed information request requirements on servicers. Further, the Bureau believes that this requirement provides flexibility for small servicers consistent with the recommendations of the Small Business Review Panel and mitigates concerns by the SERs regarding compliance costs.[85]

The Bureau requests comment regarding whether servicers should be required to apply the information request requirements to requests received orally from borrowers. The Bureau further requests comment regarding whether small servicers (as that term is defined in the 2012 TILA Servicing Proposal) should be exempt from the information request requirements for information requests received orally.

Qualified written requests. Similar to the proposed requirements for notices of error, proposed § 1024.36(a) would require a servicer to treat information requests, whether oral or written, the same way it treats a qualified written request that requests information. The Bureau's intention is to propose servicer obligations applicable to an information request that are exactly the same as obligations applicable to a qualified written request. Thus, under proposed § 1024.36(a), there is no reason for a borrower to send a qualified written request nor is there a reason for a servicer to reject a qualified written request because it does not meet the requirements for a qualified written request in section 6(e) of RESPA when the request would otherwise constitute an information request pursuant to proposed § 1024.36.

Borrower's representative. Proposed comment 36(a)–1 would clarify that an information request submitted by a person acting as an agent of the borrower is treated the same as a request by the borrower. This requirement is substantially similar as the current requirement existing under section 6(e)(1)(A) of RESPA for a qualified written request. Specifically, section 6(e)(1)(A) of RESPA states that a qualified written request may be provided by a ''borrower (or an agent of the borrower).'' *See* RESPA section 6(e)(1)(A).

Information subject to information request procedures. In general, any information requested by a borrower is subject to the information request requirements in proposed § 1024.36 unless such information is subject to proposed § 1024.36(f). Proposed comment 36(a)–2 would clarify that if a borrower requests information regarding the owner or assignee of a mortgage loan, a servicer identifies the owner or assignee of the mortgage loan by identifying the entity that holds the legal right to receive payments from a mortgage loan. Proposed comments 36(a)–2.i and 36(a)–2.ii provide examples of which party is the owner or assignee of a mortgage loan for different forms of mortgage loan ownership. These include situations when a mortgage loan is held in portfolio by an affiliate of a servicer, when a mortgage loan is owned by a trust in connection with a private label securitization transaction, and when a mortgage loan

[84] *See, e.g.,* Small Business Review Panel Report at 30.

[85] *See* Small Business Review Panel Report at 23–24, 29.

is held in connection with a GSE or Ginnie Mae guaranteed securitization transaction. The Bureau believes that it would not provide additional consumer protection to impose an obligation on a servicer to identify entities that may have an interest in a borrower's mortgage loan other than the owner or assignee of the mortgage loan.

Servicers generally have not expressed concerns to the Bureau regarding the obligation to provide borrowers with the type of information subject to the information request requirements. Specifically, in the Small Business Review Panel outreach, SERs indicated that they felt fairly comfortable with the types of information that would be subject to the requirements, indicating that this information was generally in the borrower's mortgage loan file.[86]

The SERs did express concern regarding the obligation to provide information regarding the owner or assignee of a mortgage loan. The SERs stated that servicers may not have contact information for owners or assignees of mortgage loans, that such owners or assignees are not prepared to handle calls from borrowers, and that a typical servicer duty is to handle customer complaints so that owners or assignees of mortgage loans do not have to handle that responsibility.[87] Certain owners, assignees, and guarantors of mortgage loans, including other federal agencies, have expressed similar concerns to the Bureau.

The Bureau understands the concerns asserted by servicers, owners, assignees, guarantors, and other federal agencies that requiring servicers to provide this information to borrowers may confuse borrowers and lead to attempts to communicate with owners or assignees that are unprepared or unwilling to engage in such communications. The requirement that servicers identify to the borrower the owner or assignee of a mortgage loan was added as section 6(k)(1)(D) of RESPA by the Dodd-Frank Act and is not a discretionary exercise of the Bureau's authority. The Dodd-Frank Act clearly requires that information regarding the owner or assignee of a mortgage loan must be provided to borrowers. The Bureau proposes comment 36(a)–2 to implement this requirement.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(E) of RESPA to implement the information request requirements. To the extent the information request requirements relate to qualified written requests, the Bureau also relies on its authority in sections 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(k)(1)(D) of RESPA to implement information request requirements for requests for the identity of the owner or assignee of a mortgage loan. The Bureau further relies on section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA.

36(b) Contact Information for Borrowers To Request Information

Proposed § 1024.36(b) permits a servicer to establish a telephone number and address that a borrower must use to request information. If a servicer chooses to establish a separate telephone number and address for receiving information requests, a servicer must provide the borrower a written notice that states that the borrower should only assert an error at the telephone number and address established by the servicer for that purpose. Proposed comment 36(b)–2 would clarify that the written notice to the borrower may be set forth in another written notice provided to the borrower, such as a notice of transfer, periodic statement, or coupon book.

As discussed above for proposed § 1024.35(c), the purpose of establishing a telephone number and address that a borrower must use to request information is to allow servicers to direct oral and written errors to appropriate personnel that have been trained to ensure that the servicer responds appropriately. Proposed comment 36(b)–1 clarifies that if a servicer has not designated a telephone number and address that a borrower must use to request information then a servicer will be required to comply with the information request requirements for any information request received by any office of the servicer.

The Bureau believes it is reasonable, especially in light of the expanded burden of requiring compliance with error resolution and information requests, to allow servicers to manage the intake of information requests to designated telephone numbers and addresses. Further, allowing a servicer to designate a specific telephone number and address is consistent with current requirements of Regulation X with respect to qualified written requests. Current § 1024.21(e)(1) permits a servicer to designate a ''separate and exclusive office and address for the receipt and handling of qualified written requests.'' Moreover, the Bureau believes that identifying a specific telephone number and address for receiving errors and information requests will benefit consumers as well. By providing a specific telephone number and address, servicers will identify to consumers the office capable of responding to information requests. The Bureau is proposing in the concurrent 2012 TILA Servicing Proposal to require that any telephone number or address identified by a servicer must appear on the periodic statement or other payment form supplied by the servicer. *See* 2012 TILA Servicing Proposal at proposed § 1026.41(d)(6).

Internet intake of information requests. Proposed comment 36(b)–4 would clarify that a servicer is not required to establish a process for receiving information requests through email, Web site, or other online methods. In the event a servicer establishes a process for receiving information requests through online methods, comment 36(b)–4 is intended to clarify that the process established is the only online intake process that a borrower can use to make an information request. Thus, a servicer would not be required to provide a written notice to a borrower in order to gain the benefit of the online process being considered the exclusive online process for receiving information requests.

Multiple offices. Proposed § 1024.36(b), similar to proposed § 1024.35(c) for notices of error, would require a servicer to use the same telephone number and address it designates for receiving notices of error for receiving information requests pursuant to proposed § 1024.36(b), and vice versa. Further, proposed comment 36(b)–3 clarifies that any telephone numbers or address designated by a servicer for any borrower may be used by any other borrower to submit an information request. This clarifies that a servicer may not determine that an information request is invalid if it was received at any telephone number or address designated by the servicer for receipt of information requests just because it was not received by the specific phone number or address identified to a specific borrower. Proposed comment 36(b)–5 clarifies that a servicer may use automated systems, such as an interactive voice response system, to manage the intake of borrower calls. Prompts for requesting information must be clear and provide

[86] *See* Small Business Review Panel Report at 24.

[87] *Id.*

the borrower the option to connect to a live representative.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(E) of RESPA to implement the proposed information request requirements. To the extent the information request requirements relate to qualified written requests, the Bureau also relies on its authority in section 6(e) and 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(k)(1)(D) of RESPA to implement information request requirements for requests for the identity of the owner or assignee of a mortgage loan. The Bureau further relies on section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA.

36(c) Acknowledgment of Receipt

Proposed § 1024.36(c) would require a servicer to provide a borrower a written acknowledgement of an information request within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving an information request. Proposed § 1024.36(c) would implement section 1463(c) of the Dodd-Frank Act which amended the current acknowledgement deadline of 20 days for qualified written requests to five days. Proposed § 1024.36(c) would further apply the same timeline applicable to a qualified written request to any information request.

The Bureau relies on its authority in section 6(k)(1)(E) of RESPA to implement the information request requirements. Further, to the extent the requirements are also applicable to qualified written requests, the Bureau relies on its authority in section 6(e), including the amendment to section 6(e) of RESPA set forth in section 1463(c) of the Dodd-Frank Act, as well as section 6(k)(1)(B) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

36(d) Response to Information Request

Proposed § 1024.36(d) would set forth requirements on servicers for responding to information requests.

36(d)(1) Investigation and Response Requirements

Proposed paragraph 36(d)(1) would require a servicer to respond to an information request within 30 days by either (i) providing the borrower with the requested information and contact information for further assistance, 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 or cannot reasonably be obtained by the servicer, as appropriate, the basis for the servicer's determination, and contact information for further assistance. A servicer would only be required to provide a written notice to the borrower in response to the information request if the information requested by the borrower is not available or cannot reasonably be obtained by the servicer. A servicer would be able to respond either orally or in writing to the borrower (or electronically with the borrower's consent) if the servicer is providing the information requested by the borrower. The Bureau believes that the goal of providing information to borrowers is furthered by allowing servicers to respond orally. Additionally, allowing oral communication reduces burden on servicers.

A servicer could demonstrate its compliance with this requirement by, for example, retaining a copy of any written correspondence to the borrower that includes the information, retaining tapes of telephone conversations during which the borrower is provided the requested information, or by making a notation in a collector's notes that the information requested was provided to the borrower. The Bureau believes that the flexibility for a servicer to develop systems that are appropriate for that servicer addresses the Small Business Review Panel recommendation that the Bureau consider adopting a more flexible process for small servicers to demonstrate compliance with the information request requirements.[88]

Information not available. Proposed comment 36(d)(1)(ii)–1 clarifies that information should not be considered as available to a servicer if the information is not in the servicer's possession or control and the servicer cannot retrieve the information in the ordinary course of business through reasonable efforts.

The purpose of the information request requirements is to provide an efficient means for borrowers to obtain information regarding their mortgage loan accounts and the Bureau believes that imposing obligations on servicers to provide information in response to an information request is an efficient means of achieving the goal of providing a borrower with access to requested information. The Bureau believes that burden for information requests will greatly increase, however, if a servicer is required to undertake an investigation for documents that are not in a servicer's possession or control. The same inefficiency exists even if information is in a servicer's possession or control but, for appropriate business reasons, is stored in a medium that is not accessible by a servicer in the ordinary course of business. The Bureau believes that the marginal benefit of additional information available to borrowers is outweighed by the significant burdens that such investigations may incur.

Accordingly, the Bureau believes that servicers should not be required to provide documents in response to an information request that are not in the possession or control of the servicer and cannot be retrieved through reasonable efforts in the ordinary course of business. Proposed comment 36(d)(1)(ii)–1 provides examples of when documents should and should not be considered to be available to a servicer in response to an information request.

The Bureau has authority pursuant to section 6(k)(1)(E) of RESPA to set forth servicer obligations to provide information in response to information requests. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA. The Bureau further relies on its authority in section 19(a) of RESPA to make such rules and regulations necessary to achieve the consumer protection purposes of RESPA.

36(d)(2) Time Limits

Paragraph 36(d)(2)(i)

Proposed paragraph 36(d)(2)(i) would require a servicer to respond to an information request not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the information request, with one exception discussed below.

Legal authority. Section 1463(b) of the Dodd-Frank Act amended section 6(e)(2) of RESPA to require a servicer to investigate and respond to a qualified written request within 30 days. Proposed paragraph 36(e)(e)(i) would implement this provision of RESPA

[88] Small Business Review Panel Report at 30.

with respect to qualified written requests.

Shortened time limit to provide information regarding the identity of the owner or assignee. Under proposed paragraph 36(d)(2)(i)(A), if a borrower submits a request for information regarding the identity of, and address or relevant contact information for, the owner or assignee of a mortgage loan, a servicer shall respond to the information request with ten days (excluding legal public holidays, Saturdays, and Sundays).

Section 1463(a) of the Dodd-Frank Act added section 6(k)(1)(D) to RESPA, which sets forth a ten business day limitation on a servicer to respond to an information request with respect to the owner or assignee of a mortgage loan. Proposed paragraph 36(d)(2)(i)(A) implements this provision of RESPA. Proposed § 1024.36(d)(2)(i)(A) would require a servicer to provide the requested information within ten days (excluding legal public holidays, Saturdays, and Sundays) instead of ''10 business days.'' The Bureau interprets the ''10 business day'' requirement in section 6(k)(1)(D) of RESPA to mean ten calendar days with an exclusion for intervening legal public holidays, Saturdays, and Sundays, and proposes to implement that interpretation in proposed § 1024.36(d)(2)(i)(A). Section 19(a) of RESPA provides the Bureau with authority to make interpretations that are necessary to achieve the consumer protection purposes of RESPA.

Extensions of time limits. Proposed § 1024.36(d)(2)(ii) permits a servicer to extend the time period for responding to an information request by 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period set forth in proposed § 1024.36(d)(2)(i)(B), the servicer notifies the borrower of the extension and the reasons for the delay in responding. Section 1463(c)(3) of the Dodd-Frank Act amended section 6(e) of RESPA to provide a 15-day extension of time and proposed § 1024.36(d)(2)(ii) would implement this provision with respect to qualified written requests. The Bureau has authority pursuant to section 6(k)(1)(E) and 6(j)(3) of RESPA to apply the extension of time provision to information requests as well. The Bureau further has authority under section 19(a) of RESPA to make such rules and regulations, and to make such interpretations necessary to achieve the consumer protection purposes of RESPA.

The Bureau proposes not to apply the extension allowance of proposed § 1024.36(d)(2)(ii) to information requests with respect to the owner or assignee of a mortgage loan. The Bureau does not believe that the burden of obtaining this information for any borrower will be significant enough to justify an extension beyond the ten days (excluding legal public holidays, Saturdays, and Sundays) established by Congress. Servicers generally have access to identification of investors as that information is necessary to determine where to direct mortgage loan payments and reports with respect to the performance of serviced assets. The benefit to the borrower of obtaining the information, which Congress has required, outweighs the costs to servicers of complying within ten days (excluding legal public holidays, Saturdays, and Sundays).

36(e) Alternative Compliance

Proposed § 1024.36(e) would provide that a servicer is not required to comply with the requirements of paragraphs (c) and (d) of proposed § 1024.36 if the information requested by a borrower is provided to the borrower within five days along with contact information the borrower can use for further assistance. A servicer may provide the information requested either orally or in writing (including electronically, with the borrower's consent). A servicer's records should indicate that a servicer has provided the information requested to the borrower. A servicer may demonstrate its compliance with this requirement by, for example, retaining a copy of any written correspondence to the borrower that includes the information, retaining tapes of telephone conversations during which the borrower is provided the requested information, or by making a notation in a collector's notes that the information requested was provided to the borrower. As discussed above, the Bureau believes that the flexibility for a servicer to develop systems that are appropriate for that servicer addresses the Small Business Review Panel recommendation that the Bureau consider adopting a more flexible process for small servicers to demonstrate compliance with the information request requirements.[89]

36(f) Requirements Not Applicable

Proposed § 1024.36(f) would state that the information request requirements of proposed § 1024.36 would not apply to certain types of information requests if the servicer complies with proposed § 1024.36(f)(2). The types of information requests to which the requirements would not apply would be set forth in § 1024.36(f)(1). The Bureau solicits comments regarding whether any forms of information requests should be removed from proposed § 1024.36(f)(1) or whether additional potential forms of information requests should be identified in proposed § 1024.36(f)(1).

36(f)(1) In General

Paragraph 36(f)(1)

Proposed paragraph 36(f)(1) would state that a servicer is not required to comply with the information request requirements in proposed § 1024.36(c) and (d) if the servicer reasonably makes certain determinations specified in paragraphs (f)(1)(i), (ii), (iii), (iv), or (v). A servicer may be liable to the borrower for its unreasonable determination and resulting failure to comply with proposed § 1024.36(c) and (d).

Paragraph 36(f)(1)(i)

Proposed paragraph 36(f)(1)(i) would state that a servicer is not required to comply with the information request requirements in proposed § 1024.36(c) and (d) with respect to an information request that requests information that is substantially the same as information previously requested by or on behalf of the borrower, and for which the servicer has previously complied with its obligation to respond to the information request. The purpose of this proposed paragraph is to ensure that a servicer is not required to expend resources conducting duplicative searches for documents.

Paragraph 36(f)(1)(ii)

Proposed paragraph 36(f)(1)(ii) provides that a servicer is not required to comply with the information request requirements in proposed § 1024.36(c) and (d) with respect to an information request that requests confidential, proprietary, or general corporate information of a servicer.

The Bureau believes that the purposes of the provision, which is to provide borrowers with a means to request information regarding a borrower's mortgage loan account, are not furthered by permitting borrowers to request confidential, proprietary, or general corporation information of a servicer. Proposed comment 36(f)(1)(ii)–1 provides examples of confidential, proprietary, or general corporate information. These include information requests regarding: Management and profitability of a servicer; other mortgage loans than the borrower's; investor reports; compensation, bonuses, and personnel actions for servicer personnel; the servicer's training programs; investor agreements; the evaluation or exercise of any owner or assignee remedy; the servicer's

[89] Small Business Review Panel Report at 30.

servicing program guide; investor instructions or requirements regarding loss mitigation options, examination reports, compliance audits or other investigative materials.

The Bureau believes the protection in proposed paragraph 36(f)(1)(ii) is appropriate to fulfill the purpose of the proposed rule, which is to provide a means for borrowers to obtain information from servicers regarding their own mortgage loan accounts. Permitting information requests for confidential, proprietary, or general corporate information does not further the purposes of the proposed rule.

Paragraph 36(f)(1)(iii)

Proposed paragraph 36(f)(1)(iii) would provide that a servicer is not required to comply with the information request requirements in proposed § 1024.36(c) and (d) with respect to a request for information that is not directly related to the borrower's mortgage loan account. The Bureau believes the protection in proposed paragraph 36(f)(1)(iii) is appropriate to fulfill the purpose of the proposed rule, which is to provide a means for borrowers to obtain information from servicers regarding their own mortgage loan accounts.

Paragraph 36(f)(1)(iv)

Proposed paragraph 36(f)(1)(iv) provides that a servicer is not required to comply with the request for information requirements in proposed § 1024.36(c) and (d) with respect to a request for information that is overbroad or unduly burdensome. The rule defines ''overbroad'' and ''unduly burdensome'' for this purpose. An information request is overbroad if a borrower requests a servicer provide an unreasonable volume of documents or information to a borrower. A notice of error is unduly burdensome if a diligent servicer could not respond to the information request without either exceeding the maximum timeframe permitted by paragraph (e)(3)(ii) or incurring costs (or dedicating resources) that would be unreasonably in light of the circumstances.

As discussed above for proposed paragraph 35(g)(1)(ii), consumers, consumer advocates, servicers, and servicing industry representatives have indicated to the Bureau that the current qualified written request process is not typically utilized by consumers to request information. During the Small Business Review Panel outreach, SERs expressed that typically qualified written requests received from borrowers were vague forms found online or forms used by advocates as a form of pre-litigation discovery.[90] Servicers and servicing industry representatives indicated that these types of qualified written requests are unreasonable and unduly burdensome. SERs in the Small Business Review Panel outreach requested that the Bureau consider an exemption for abusive requests, or requests made with the intent to harass the servicer.[91]

The Bureau is concerned that, in light of the expanded requirements for servicers to respond to information requests, a requirement for servicers to respond to information requests that are overbroad or unduly burdensome may harm consumers and frustrate servicers' ability to comply with the new information request requirements. The effect of the proposed rule is to expand a servicer's obligation to undertake the obligations similar to those currently applicable to qualified written requests to a broader universe of information requests, including requests made orally to a servicer and requests for information that do not specifically relate to ''servicing'' as defined in RESPA. Requiring servicers to respond to overbroad or unduly burdensome information requests from some borrowers may impose unjustified and unmanageable burdens on servicers. Further, the Bureau does not believe that the request for information requirements should replace or supplant civil litigation document requests and should not be used as a forum for pre-litigation discovery.

Proposed paragraph 36(f)(1)(iv) provides that if a servicer determines that an information request is overbroad or unduly burdensome, the servicer is required to notify the borrower, pursuant to proposed § 1024.36(f)(2), that the servicer is not required to comply with the requirements of proposed § 1024.36(c) and (d). Further, the servicer must identify the specific basis for the servicer's determination so that the borrower is informed that the basis of the servicer's determination was that the information request was overbroad or unduly burdensome. Proposed comment 36(f)(1)(iv)–1 sets forth characteristics that may indicate if an information request is overbroad or unduly burdensome. A servicer bears the risk that its determination that an information request is overbroad or unduly burdensome is found to be unjustified. If a servicer can identify a proper information request from an information request that is otherwise overbroad or unduly burdensome, a servicer would be required to respond to those information requests it could identify.

The Bureau requests comment regarding whether a servicer should not be required to undertake the information request requirements in proposed § 1024.36(c) and (d) for information requests that are overbroad or unduly burdensome.

Paragraph 36(f)(1)(v)

Proposed paragraph 36(f)(1)(v) would provide that a servicer is not required to comply with the information request requirements in proposed § 1024.36(c) and (d) with respect to an information request that is delivered to a servicer more than one year after either servicing for the mortgage loan that is the subject of the information request was transferred from the servicer to a transferee servicer or the mortgage loan amount was paid in full, whichever date is applicable.

The purpose of this proposed paragraph is to set a bound on the time that a servicer may be responsible for responding to information requests with respect to a mortgage loan. The effect of the proposed paragraph is to achieve the same limitation that currently exists in Regulation X with respect to qualified written requests. Specifically, current § 1024.21(e)(2)(ii) states that ''a written request does not constitute a qualified written request if it is delivered to a servicer more than one 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.'' The Bureau requests comment regarding the requirement that servicers provide a notice to the borrower and the appropriate content for the notice.

36(f)(2) Notice to Borrower

Proposed § 1024.36(f)(2) provides that if a servicer determines it is not required to comply with the information request requirements in proposed § 1024.36(c) and (d) with respect to an information request because the information requests meets one of the categories in proposed § 1024.36(f)(1), the servicer must provide a notice to the borrower informing the borrower of the servicer's determination. The notice must be sent not later than five days (excluding legal public holidays, Saturdays, and Sundays) after the servicer's determination and must set forth the basis upon which the servicer has made the determination, with a reference to the applicable provision of proposed § 1024.36(f)(1).

The Bureau's intention for proposing this requirement is to ensure that borrowers are notified that a servicer

[90] *See* Small Business Review Panel Report at 23.

[91] *Id.*

does not intend to otherwise respond to the information requests and that borrowers are informed of the basis for the servicer's determination that it is not required to comply with the information request requirements in proposed § 1024.36(c) and (d).

By receiving a notice that sets forth for the servicer's determination, a borrower will have the opportunity to assert any claims the borrower may have with respect to the reasonableness of the servicer's determination that the servicer is not required to comply with the information request requirements in proposed § 1024.36(c) and (d).

Legal authority. The Bureau relies on its authority pursuant to section 6(k)(1)(E) of RESPA to set forth information requests requirements. Further, to the extent the information request requirements apply to qualified written requests, the Bureau further relies on its authority in section 6(e) and 6(k)(1)(B) of RESPA with respect to qualified written requests. The Bureau has authority pursuant to section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA. The Bureau further relies on its authority in section 19(a) of RESPA to make such rules and regulations necessary to achieve the consumer protection purposes of RESPA.

36(g) Payment Requirement Limitations

Proposed § 1024.36(g) would prohibit a servicer from charging a fee, or requiring a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to an information request. The Bureau is implementing this provision for three reasons. First, section 1463(a) of the Dodd-Frank Act added section 6(k)(1)(B) to RESPA, which prohibits a servicer from charging fees for responding to valid qualified written requests. Proposed § 1024.36(g) would implement that provision with respect to qualified written requests that for information relating to the servicing of a mortgage loan. Second, the Bureau does not believe that a servicer practice of charging for responding to an information request facilitates the purpose of the information request requirements, which is to provide a tool for borrowers to obtain information regarding their mortgage loan accounts. Rather, such a practice would improperly impede borrowers from pursuing valid information requests. Third, the Bureau has learned from outreach with consumer advocates that, in some instances, servicers have demanded that borrowers make payments before the servicer will provide a borrower with information requested by the borrower or will correct errors identified by a borrower. The Bureau believes that a servicer is required to provide a borrower with information about the borrower's mortgage loan account notwithstanding the payment status of a borrower's account.

Legal authority. The Bureau relies on its authority in section 6(k)(1)(B) and 6(k)(1)(E) of RESPA. The Bureau believes the limitations of fees are appropriate to carry out the consumer protection purposes of RESPA, pursuant to section 6(k)(1)(E) of RESPA.

In addition to the authority, the Bureau also has authority pursuant to section 6(j)(3) and 19(a) of RESPA to establish requirements to carry out section 6 of RESPA or to make such rules and regulations as appropriate to achieve the consumer protection purposes of RESPA.

The Bureau requests comment regarding whether the Bureau should carve out from the prohibition on charging fees for responding to an information request any fees charged in connection with providing payoff statements or State law beneficiary notices. The Bureau further requests comment regarding whether other types of information requests should be excluded from a proposed prohibition on charging fees for responding to an information request.

36(h) Servicer Remedies

Proposed § 1024.36(h) states that the existence of an outstanding information request does not prohibit a servicer from furnishing adverse information to any consumer reporting agency or from pursuing any remedies, including proceeding with a foreclosure sale, permitted by the applicable mortgage loan instrument. This proposed requirement is consistent with section 6(e)(3) of RESPA and clarifies that prohibitions on furnishing adverse information only apply to qualified written requests that assert an error with respect to a mortgage loan, not to a qualified written request that requests information. The Bureau relies on its authority in section 6(k)(1)(E) to apply this provision to information request requirements. The Bureau further relies on its authority in section 6(j)(3) to establish any requirement to carry out section 6 of RESPA and its authority in section 19(a) to make such interpretations as may be necessary to carry out the consumer protection purposes of RESPA.

Section 1024.37 Force-Placed Insurance

37(a) Definitions

37(a)(1) Force-Placed Insurance

Section 1463 of the Dodd-Frank Act amended RESPA section 6 by adding a new section 6(k)(2), which sets forth that for purposes of RESPA section 6(k)–(m), ''force-placed insurance'' means ''hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.'' The Bureau proposes to implement RESPA section 6(k)(2) by adding new § 1024.37(a)(1) to Regulation X to define ''force-placed insurance'' to mean hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan on a property securing such loan.

The Bureau's definition of force-placed insurance is broader than the statutory definition of force-placed insurance. Virtually all mortgage loan contracts require borrowers to maintain hazard insurance during the term of the loan, and permit lenders to charge borrowers for any hazard insurance lenders obtain if borrowers fail to maintain hazard insurance coverage.[92] The Bureau recognizes that force-placed insurance is hazard insurance that servicers are contractually required to obtain on behalf of the owner or assignee of a mortgage loan when the servicer is unable to obtain evidence that the borrower has complied with the borrower's obligation to maintain hazard insurance.[93] But in its review of issues related to force-placed insurance, the Bureau has learned that in recent years, some servicers might have improperly obtained force-placed insurance when they arguably knew or should have known that the borrower already had hazard insurance.[94] The

[92] *See, e.g.,* Fannie Mae/Freddie Mac Note at ¶ 5.

[93] *See, e.g.,* Fannie Mae Single-Family Servicing Guide, Part II, Ch. 2 (2012) (''Part of a servicer's responsibility for protecting Fannie Mae's interest in the security property is to ensure that hazard insurance (including flood insurance), under the terms specified in Fannie Mae's *Guides,* is in place at all times. If the servicer is unable to obtain evidence of acceptable hazard insurance for a property, the servicer should obtain alternative insurance coverage (so-called ''force-placed'' or ''lender-placed'' insurance) to protect Fannie Mae's interests, available at *https://www.efanniemae.com/sf/guides/ssg/svcg/svc031412.pdf.*

[94] *See, e.g., United States of America* v. *Fairbanks Capital Corp.,* Civ. Action No. 03–12219–DPW, Complaint at ¶ 17 (D. Mass. Nov. 12, 2003) (alleging that Fairbanks improperly obtained force-placed insurance when it knew or should have known that borrowers already had insurance), available at:

Continued

Bureau has met with servicers and insurance companies that write force-placed insurance. They have told the Bureau that when they detect a gap in borrower-obtained hazard insurance coverage, they typically communicate with the borrower to confirm the absence of borrower-obtained hazard insurance before obtaining force-placed insurance. According to industry, force-placed insurance is an uncommon occurrence.[95] It appears that the new Dodd-Frank requirements on force-placed insurance, such as, for example, requiring servicers to provide advance notice over a 45-day notice period before charging borrowers for force-placed insurance, discussed further below, reflect common practice for the majority of the mortgage servicing market.[96] But the Bureau has learned that there does not appear to be an industry standard for providing advance notice before a servicer renews or replaces existing force-placed insurance. As discussed further below, the Bureau proposes to exercise its authority under RESPA sections 6(j)(3), 6(k)(1)(E) and 19(a) to add new § 1024.37(e), which would require servicers to follow an advance notice process before they renew or replace existing force-placed insurance.

The Bureau also believes that obtaining force-placed insurance when servicers arguably knew or should have known that the borrower already had insurance is problematic for individual borrowers, particularly borrowers experiencing financial hardship. Force-placed insurance is generally substantially more expensive than hazard insurance a borrower could purchase.[97] It also generally provides less protection against loss than insurance that a borrower could purchase.[98] Consumer advocates have asserted that the higher cost of force-placed insurance could drive borrowers into default.[99] According to Fannie Mae, ''[force-placed insurance] should only be issued after the servicer has exhausted all means to keep the borrower's insurance policy in force.'' [100] The Bureau also notes that it finds problematic the incentives that have reportedly influenced some servicers' decision to obtain force-placed insurance, such as the receipt of commissions or reinsurance fees by servicers and their insurance affiliates on the force-placed insurance policies they obtain,[101] or that a servicer or an affiliate of the servicer may have an ownership interest in an insurance company that writes force-placed insurance.[102] For similar reasons, the Bureau is proposing to require that servicers continue paying for a borrower's hazard insurance when practicable if the borrower has escrowed for hazard insurance, as discussed previously in the Bureau's discussion of proposed § 1024.17(k)(5).

The statutory definition in RESPA section 6(k)(2), discussed previously, may convey that ''force-placed insurance'' used in RESPA section 6(k)–(m) is limited to hazard insurance obtained when the borrower has in fact failed to maintain or renew hazard insurance. Based on its review of issues concerning force-placed insurance discussed above, the Bureau has concluded that defining force-placed insurance broadly is appropriate to carry out the consumer protection purposes of the new Dodd-Frank requirements on force-placed insurance.

As discussed previously in the Bureau's discussion of proposed § 1024.30, the Bureau's proposed subpart C would maintain Regulation X's current exclusion for all open-end lines of credit (home-equity plans) from the servicer requirements of Regulation X. Although virtually all mortgage loan contracts require borrowers to maintain hazard insurance during the term of the loan, the majority of open-end home-equity plans are subordinate liens.[103] The Bureau has learned that servicers generally obtain force-placed insurance on behalf of first-lien holders, not subordinate-lien holders. Accordingly, the Bureau believes it is appropriate to maintain the exemption in current Regulation X for open-end lines of credit (home-equity plans) from the Bureau's proposed force-placed insurance regulations. The Bureau understands that the one exception to servicers obtaining force-placed insurance for open-end lines of credit (home-equity plans) is when flood insurance is required by the FDPA. As discussed below, however, the Bureau is proposing to exempt hazard insurance to protect against flood loss obtained by a servicer as required by the FDPA from the Bureau's proposed definition of force-placed insurance. The Bureau, however, invites comment on whether the Bureau's proposed force-placed insurance regulations should be extended cover open-end lines of credit (home-equity plans).

Legal authority. As discussed previously, section 1463 of the Dodd-Frank Act amended RESPA section 6 by adding a new section 6(k)(2), which sets forth the definition of ''force-placed insurance'' for purposes of RESPA section 6(k)–(m). The Bureau is proposing to implement section 6(k)(2) of RESPA, pursuant to its authority under section 6(j)(3) of RESPA by adding new § 1024.37(a)(1) to Regulation X to define ''force-placed insurance'' to mean hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan on a property securing such loan. Section 6(j)(3) of RESPA authorizes the Bureau to set forth any requirements necessary to carry out section 6 of RESPA. Section1024.37(a)(1) is additionally

http://ftc.gov/os/2003/11/0323014comp.pdf; see also Ocwen Federal Bank FSB, OTS Docket No. 04592 (April 19, 2004) (requiring the bank to take reasonable actions to determine whether appropriate hazard insurance is already in place before it obtained force-placed insurance, available at *http://files.ots.treas.gov/93606.pdf.*

[95] *See* Assurant Specialty Property, Lender-Placed Insurance (Assurant Specialty Property), available at *http://newsroom.assurant.com/releasedetail.cfm?ReleaseID=645046&ReleaseType=Featured%20News.* According to Assurant, approximately 13% of the loans it monitors are identified as loans with a potential lapse in insurance, but approximately only 2% of that group of loans gets force-placed insurance because Assurant uses an advance notification process that resolves most of the lapses with the borrower renewing or replacing coverage on their own.

[96] *See, e.g.,* Letter from the Financial Services Roundtable re: Outline of Proposals Under Consideration and Alternatives Considered in connection with the Small Business Review Panel for Mortgage Servicing Rulemaking to Peter Carroll, Consumer Financial Protection Bureau (May 31, 2012), at 5. *See also* Small Business Review Panel Report at 21–22.

[97] *See* Assurant Specialty Property (estimating that the force-placed insurance Assurant writes costs, on average, 1.5 to 2 times more than the prior hazard insurance purchased by the borrower.), available at: *http://newsroom.assurant.com/releasedetail.cfm?ReleaseID=645046&ReleaseType=Featured%20News.*

[98] *Id.* (''Lender-placed insurance provides coverage for the structural property. It typically does not extend to liability coverage or a homeowner's personal contents, as the lender has no collateral interest in these items''). In contrast, a homeowner's policy offers a much broader scope of coverage. In addition to insuring the homeowner's personal contents against loss, it also pays a homeowner's additional living expenses while the home is being repaired, and covers a homeowner's personal liability for injuries to other people or their property while they are on the property.

[99] *See* The National Consumer Law Center and Center and the Center for Economic Justice, *The Consumer Financial Protection Bureau Should Rein in Mortgage Servicers' Use of Force-Placed Insurance* (May 2012), available at: *http://www.nclc.org/images/pdf/regulatory_reform/ib-force-placed-insurance.pdf.*

[100] *See* Fannie Mae March 2012 Servicing Guide Announcement, available at: *https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2012/svc1204.pdf.*

[101] *See, e.g.,* Jeff Horowitz, *Ties to Insurers Could Land Mortgage Servicers in More Trouble,* The American Banker (November 10, 2010).

[102] *See The Need for National Mortgage Servicing Standards: Hearing Before the Subcomm. on Housing, Transportation, and Community Affairs of the Senate Comm. on Banking and Urban Affairs,* S. Hrg. 112–139, 112th Cong. 125 (2011) (statement of Laurie Goodman).

[103] Donghoon Lee *et al., A New Look at Second Liens,* n.5 (February 2012).

proposed pursuant to the Bureau's authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to make such rules and regulations, and to make such interpretations, as may be necessary to achieve the consumer protection purpose of RESPA.

37(a)(2) Types of Insurance Not Considered Force-Placed Insurance

Paragraph 37(a)(2)(i)

Proposed § 1024.37(a)(2)(i) would exempt hazard insurance to protect against flood loss obtained by a servicer as required by the FDPA from the definition of force-placed insurance for the purposes of § 1024.37. The Bureau understands that pursuant to section 102(e) of the FDPA, lenders or the servicers acting on the lenders' behalf must obtain force-placed flood insurance under certain circumstances. The Bureau understands that the circumstances are as follows: (1) The lender determines at any time during the life of the loan that the property securing the loan is located in a Special Flood Hazard Area (SFHA); (2) flood insurance under the ''Act'' (referring to both the National Flood Insurance Act of 1968 and the FDPA, as revised by the National Flood Insurance Reform Act of 1994) is available; (3) the lender determines that flood insurance coverage is inadequate or does not exist; and (4) after required notice, the borrower fails to buy the appropriate amount of coverage within 45 days.[104]

Since servicers are already subject to regulations when obtaining force-placed flood insurance as required by the FDPA,[105] the Bureau proposes to exempt hazard insurance to protect against flood loss obtained by a servicer as required by the FDPA from the definition of force-placed insurance for purposes of proposed § 1024.37.

As discussed previously, to implement Dodd-Frank Act section 1463, the Bureau's proposed definition of ''hazard insurance'' would include hazard insurance to protect against flood loss. Additionally, the Bureau has proposed to define ''force-placed insurance'' as a type of ''hazard insurance'' to implement RESPA section 6(k)(2). If the Bureau does not propose an exemption for hazard insurance to protect against flood loss obtained by a servicer as required by the FPDA, such insurance would be considered ''force-placed insurance'' under the definition of ''force-placed insurance'' set forth in proposed § 1024.37(a)(1). In turn, servicers who obtain force-placed flood insurance as required by the FDPA would be subject to the Bureau's proposed § 1024.37 as well if the Bureau does not propose the exemption. Without the Bureau's proposed exemption, the Bureau believes the result would be the creation of overlapping servicer obligations. For example, section 6(l) of RESPA, discussed in greater detail below, requires a servicer to provide a borrower with two written notices over a 45-day notice period before charging the borrower for force-placed insurance. The FDPA also provides a 45-day notice period, but only one notice is required. Additionally, the FPDA was recently amended to require the lender or servicer to terminate force-placed flood insurance and refund to the borrower all force-placed flood insurance premiums and related fees paid by the borrower during any period when the borrower had insurance coverage in force within 30 days of receiving confirmation of a borrower's existing flood insurance coverage.[106] In contrast, section 6 of RESPA, as amended by Dodd-Frank Act section 1463, requires a servicer to cancel force-placed insurance and refund any premium and fees paid during the period of overlapping coverage within 15 days of receiving confirmation of a borrower's existing hazard insurance coverage.

The requirements set forth in Dodd-Frank Act section 1463 with respect to servicers' purchase of force-placed insurance represent the establishment of new consumer protections where protection did not exist before. The FDPA, however, has established a separate consumer protection paradigm to protect consumers when servicers are required by the FDPA to obtain force-placed flood insurance. As discussed above, the FDPA requires advance notice to consumers, and provides consumers with 45 days to provide evidence of flood insurance. Also as discussed above, the FDPA now contains termination and refund provisions with respect to force-placed flood insurance obtained by servicers as required by the FDPA. Accordingly, the Bureau believes it is consistent with the consumer protection purposes of RESPA to exempt hazard insurance to protect against flood loss obtained by a servicer as required by the FPDA from the Bureau's proposed definition of ''force-placed insurance.'' For similar reasons, the Bureau proposes to exempt charges authorized by the FDPA from the proposed requirement that charges related to force-placed insurance (other than charges subject to State regulation as the business of insurance) must be bona fide and reasonable for purposes of proposed § 1024.37(h), discussed below.

The Bureau notes that the proposed exemption would only apply to servicers that obtain hazard insurance to protect against flood loss as required by the FDPA. The Bureau understands that the FDPA does not currently apply to a mortgaged property that is not located in a SFHA.[107] The Bureau further understands that the FDPA does not currently apply to mortgage loans made by and kept in the portfolio of a private mortgage lender.[108] The Bureau's proposed § 1024.37 would apply in situations where the FDPA does not apply. The Bureau, however, recognizes that operational complexity may be introduced if a servicer had to continuously monitor its servicing portfolio to identify when it is required to comply with the FDPA and when it is required to comply with proposed § 1024.37. As discussed above, the Bureau invites comment on whether the Bureau's definition of ''hazard insurance'' should exclude hazard insurance to protect against flood loss. An alternative to excluding hazard insurance to protect against flood loss from the definition of ''hazard insurance'' is to exclude hazard insurance to protect against flood loss obtained by a servicer from the definition of ''force-placed insurance.'' The Bureau also seeks comment on this alternative. The Bureau recognizes that another possible alternative exists, and it is to harmonize the force-placed insurance requirements set forth in Dodd-Frank Act section 1463 with the FDPA. Accordingly, the Bureau invites comments on how the force-placed insurance requirements set forth in Dodd-Frank Act section 1463 could be harmonized with the FDPA.

Legal authority. The Bureau proposes to exempt hazard insurance to protect against flood loss obtained by a servicer as required by the FDPA from the

[104] 76 FR 64175, 64181 (October 17, 2011) (addressing the requirement for the force placement of flood insurance the under the Act).

[105] *See* 61 FR 45684 (August 29, 1996) (announcing the regulations originally adopted by the Board, the OCC, the FDIC, the FCA, NCUA, and the Office of Thrift Supervision (OTS) with respect to requirements for lenders and servicers when purchasing force-placed insurance for loans secured by properties located in SHFAs).

[106] Moving Ahead for Progress in the 21st Century Act of 2012, PL 112–141, 126 Stat 405 (2012)

[107] Federal Emergency Management Administration, *Mandatory Purchase of Flood Insurance Guidelines* (2007), at 40 (explaining that a lender or servicer has statutory authority to purchase flood insurance for a property and charge the premium to the borrower if the property is in a SFHA).

[108] *Id.* at 23.

definition of force-placed insurance for purposes of proposed § 1024.37 by adding new § 1024.37(a)(2)(i), pursuant to its authority under section 19(a) of RESPA. Section 19(a) of RESPA provides the Bureau with authority to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of RESPA. As previously discussed, the FDPA has established a separate consumer protection paradigm to protect consumers when servicers are required by the FDPA to obtain force-placed flood insurance. Furthermore, for reasons discussed above, the exemption will reduce regulatory burden.

Paragraph 37(a)(2)(ii)

Proposed § 1024.37(a)(2)(ii) provides that hazard insurance obtained by a borrower but renewed by the borrower's servicer as required by § 1024.17(k)(1), (k)(2), or (k)(5) is not force-placed insurance for purposes of § 1024.37. A servicer that complies with § 1024.17(k)(1), (k)(2), or proposed § 1024.17(k)(5) would be continuing the borrower's hazard insurance.

Paragraph 37(a)(2)(iii)

Proposed § 1024.37(a)(2)(iii) provides that hazard insurance renewed by the servicer at its discretion if the servicer is not required to renew the borrower's hazard insurance as required by § 1024.17(k)(1), (k)(2), or (k)(5) is not force-placed insurance for purposes of § 1024.37. The Bureau believes that proposed § 1024.37(a)(2)(iii) would provide an incentive for servicers to work with non-escrowed borrowers to renew hazard insurance obtained by these borrowers.

Legal authority. The Bureau proposes to add new § 1024.37(a)(2)(ii)–(iii) pursuant to its authority under section 6(j)(3) of RESPA, which authorizes the Bureau to establish any requirements necessary to carry out the purposes of section 6 of RESPA. As discussed previously, the Bureau is proposing to define ''force-placed insurance'' as hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan on a property securing such loan in proposed § 1024.37(a)(1). The Bureau believes it is necessary and appropriate to clarify that the term does not apply to hazard insurance obtained by a borrower and renewed by a borrower's servicer. It will reduce regulatory burden and may, as discussed above, incentivize servicers to work with non-escrowed borrowers to renew the hazard insurance obtained by such borrowers. Section 1024.37(a)(2)(ii)–(iii) is additionally proposed pursuant to the Bureau's authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA.

37(b) Basis for Obtaining Force-Placed Insurance

The Bureau is proposing a new § 1024.37(b) to implement new section 6(k)(1)(A) of RESPA, added by section 1463 of the Dodd-Frank Act, which requires a servicer to have a reasonable basis to believe that the borrower has failed to comply with the loan contract's requirement to maintain property insurance before obtaining force-placed insurance. Proposed § 1024.37(b) sets forth that a servicer may not obtain 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.

Proposed comment 37(b)–1 provides examples of ''reasonable basis'' for borrowers with escrow. The comment clarifies that a servicer has a reasonable basis to believe that a borrower with an escrow account established for hazard insurance has failed to maintain hazard insurance if, for example, by a reasonable time leading up to the expiration date of the borrower's hazard insurance (*e.g.,* 30 days before the expiration date), the servicer has not received a renewal bill. It also sets forth that the receipt by a servicer of a notice of cancellation or non-renewal from the borrower's insurance company before payment is due for the borrower's hazard insurance provides a servicer with a reasonable basis to believe that the borrower has failed to maintain hazard insurance.

Proposed comment 37(b)–2 provides an example of ''reasonable basis'' for borrowers without escrow. The comment provides that a servicer has a reasonable basis to believe a borrower without an escrow account established for hazard insurance has failed to maintain hazard insurance if, for example, a servicer receives a notice of cancellation or non-renewal from the borrower's insurance company.

The Bureau believes it is appropriate to distinguish situations where the borrower has escrowed for hazard insurance from situations where the borrower has not done so. For a borrower who has escrowed for hazard insurance, a servicer receives a request to pay a borrower's existing hazard insurance before the insurance lapses. When a borrower has not escrowed for hazard insurance, the Bureau understands that a servicer does receive a payment request and thus may not learn of the lapse in insurance until the borrower's coverage has expired.

Legal authority. As discussed above, the Bureau is proposing a new § 1024.37(b) to implement new section 6(k)(1)(A) of RESPA. The Bureau proposes to implement section 6(k)(1)(A) pursuant to its authority under RESPA section 6(j)(3) to establish any requirements necessary to carry out the purposes of section 6 of RESPA. The Bureau has additional authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA.

37(c) Requirements for Charging Borrower Force-Placed Insurance

37(c)(1) In General

Section 1463 of the Dodd-Frank Act amended section 6 of RESPA by setting forth certain requirements a servicer must follow before imposing any charge on a borrower for force-placed insurance with respect to any property securing a mortgage by adding new section 6(l)(1)(A)–(C) to RESPA. RESPA section 6(l)(1)(A) requires servicers to use first-class mail to send a written notice to the borrower 45 days before charging a borrower for force-placed insurance. RESPA section 6(l)(1)(B) requires servicers to use first-class mail to send a second written notice to the borrower at least 30 days after mailing the notice required by RESPA section 6(l)(1)(A). RESPA section 6(l)(1)(C) permits a servicer to charge a borrower for force-placed insurance at the end of the 45-day notice period only if the servicer has not received any demonstration of hazard insurance coverage during the 45-day notice period.

Legal authority. The Bureau proposes to implement RESPA section 6(l)(1)(A)–(C), pursuant to its authority under RESPA section 6(j)(3) to establish any requirements necessary to carry out section 6 of RESPA by adding new § 1024.37(c)(1) to Regulation X. The Bureau has additional authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to prescribe such rules and

regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA.

Proposed § 1024.37(c)(1), in implementing RESPA section 6(l)(1)(A)–(C), states that a servicer may not charge a borrower for force-placed insurance unless: (1) The servicer delivers to the borrower or places in the mail a written notice with the disclosures set forth in proposed § 1024.37(c)(2) at least 45 days before the premium charge or any fee is assessed; (2) the servicer delivers to the borrower or places in the mail a written notice in accordance with § 1024.37(d)(1); and (3) during the 45-day notice period, the servicer has not received verification that the borrower has hazard insurance in place continuously. Determining whether the borrower has hazard insurance in place continuously shall take account of any grace period provided under State or other applicable law.

Proposed 1024.37(c)(1) permits a servicer to choose between delivering the written notice to the borrower or mailing the written notice required by RESPA section 6(l)(1)(A) and 6(l)(1)(B). In some situations, a borrower who receives the written notice via courier may get it faster than a borrower who gets the notice in the mail. The Bureau believes allowing servicers to deliver the notice is appropriate to carry out the consumer protection purposes of RESPA.

Proposed comment 37(c)(1)–1 clarifies that the 45-day notice period set forth in § 1024.37(c)(1) begins on the day that the servicer delivers or mails the notice to the borrower and expires 45 days later. The servicer may assess the premium charge and any fees for force-placed insurance beginning on the 46th day if the servicer has fulfilled the requirements of § 1024.37(c) and (d). As discussed previously, virtually all mortgage loan contracts provide that lenders may charge borrowers for hazard insurance lenders obtain if borrowers fail to maintain hazard insurance coverage, and that the obligation to obtain the coverage typically falls on servicers. Accordingly, proposed comment 37(c)(1)–1 clarifies that if not prohibited by State or other applicable law, the servicer may retroactively charge a borrower for force-placed insurance obtained during the 45-day notice period.

The Bureau notes, however, pursuant to proposed § 1024.37(g) discussed below, if a servicer receives verification that the borrower had hazard insurance in place during some or all of the 45-day notice period, then, if the servicer retroactively charged the borrower for force-placed insurance during the notice period, the servicer would have to refund the force-placed insurance premium charges and related fees paid by the borrower for the period of time during the notice period during which the borrower's hazard insurance was in place. The servicer would also have to remove all force-placed insurance premium charges and related fees from the borrower's account for that period of time.

Proposed comment 37(c)(1)(iii)–1 provides examples of borrowers having hazard insurance in place continuously. A borrower's prior hazard insurance might have expired on January 2. But so long as a borrower's current hazard insurance takes effect January 3, then the borrower has hazard insurance in place continuously. When there is a grace period, the servicer must take the grace period into account when determining whether the borrower has hazard insurance in place continuously. For example, a borrower's prior hazard insurance might have an expiration date of June 1, but a grace period extends the effectiveness of the borrower's prior hazard insurance to June 10. Accordingly, so long as the borrower obtains hazard insurance, effective June 11, then the borrower has hazard insurance in place continuously.

37(c)(2) Content of Notice

RESPA section 6(l)(1)(A)(i)–(iv) requires the following disclosures in the notice required pursuant to RESPA section 6(l)(1)(A) and (1)(B): (1) A reminder of the borrower's obligation to maintain hazard insurance on the property securing the federally related mortgage; (2) a statement that the servicer does not have evidence of insurance coverage of such property; (3) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and (4) a statement that the servicer may obtain such coverage at the borrower's expense if the borrower does not provide such demonstration of the borrower's existing coverage in a timely manner.

Additionally, RESPA section 6(l)(2) requires a servicer to accept any reasonable form of written confirmation from a borrower of existing force-placed coverage, which ''shall include the existing insurance policy number along with the identity of, and contact information for the insurance company or agent, or as otherwise required by the Bureau of Consumer Financial Protection.'' The Bureau believes that it is the servicer's obligation to verify a borrower's hazard insurance status, and that RESPA section 6(l)(2) means that for purposes of verification, the servicer must accept from the borrower information that contains the borrower's existing insurance policy number, and the name, mailing address, and phone number of the borrower's insurance company or the borrower's insurance agent if the borrower provides the information to the servicer in writing. To implement RESPA section 6(l)(2), the Bureau is requiring a servicer to provide, in the notice required by proposed § 1024.37(c)(1)(i), a statement requesting the borrower to promptly provide the servicer with the insurance policy number and the name, mailing address and phone number of the borrower's insurance company or the borrower's insurance agent.

Proposed § 1027.37(c)(2) would require servicers to provide, in the notice required by proposed § 1024.37(c)(1)(i), the following disclosures: (1) The date of the notice; (2) the servicer's name and mailing address; (3) the borrower's name and mailing address; (4) a statement that requests the borrower to provide hazard insurance information for the borrower's property and identifies the property by its address; (5) a statement that the borrower's hazard insurance is expiring or expired, as applicable, and that the servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date. For a borrower that has more than one type of hazard insurance on the property, the servicer must identify the type of hazard insurance for which the servicer lacks evidence of coverage; (6) a statement that hazard insurance is required on the borrower's property and that the servicer has obtained or will obtain, as applicable, insurance at the borrower's expense; (7) a statement requesting the borrower to promptly provide the servicer with the insurance policy number and the name, mailing address and phone number of the borrower's insurance company or the borrower's insurance agent; (8) a description of how the borrower may provide the information requested pursuant to § 1024.37(c)(2)(vii). A servicer that will only accept the requested information in writing must disclose that fact in the notice; (9) the cost of the force-placed insurance, stated as an annual premium. If the cost of the force-placed insurance is not known as of the date of the disclosure, a good faith estimate shall be disclosed and be identified as such; (10) a statement that insurance the servicer obtains may cost significantly more than hazard insurance obtained by the borrower and may not provide as much coverage as hazard insurance obtained by the borrower; and (11) the servicer's

telephone number for borrower questions. Proposed § 1024.37(c)(2) is subject to the general disclosure requirements of proposed § 1024.32, including, for example, proposed § 1024.32's clear and conspicuous requirement. As discussed previously, proposed § 1024.32 also permits servicers to combine disclosures required pursuant to subpart C of Regulation X with disclosures required by applicable law, including state law.

Proposed comment 37(c)(2)(v)–1 explains that if a borrower has purchased a homeowner's insurance policy and a separate hazard insurance policy to insure loss against hazards not covered under his or her homeowner's insurance policy, the servicer must disclose whether it is the borrower's homeowner's insurance policy or the separate hazard insurance policy for which it lacks evidence of coverage to comply with § 1024.37(c)(2)(v). As discussed previously, certain hazards are covered by policies separate from a homeowner's insurance policy. The Bureau believes that it is important to specify the type of hazard insurance that the borrower is required to maintain if the borrower has a hazard insurance policy the borrower uses to protect against loss by hazards excluded from his or her homeowner's insurance policy.

As discussed in part III.B, above, the Bureau tested the force-placed insurance disclosures required by the Dodd-Frank Act in three rounds of consumer testing. Participant response in consumer testing suggests that knowing about the higher cost of force-placed insurance could motivate borrowers to act promptly and thus avoid being charged with force-placed insurance. All participants said that they would immediately contact their insurance provider to find out whether or not their hazard insurance has expired or purchase new hazard insurance because they would not want to pay for the higher cost of force-placed insurance. Accordingly, in proposed § 1024.37(c)(2)(ix) discussed above, the Bureau is proposing to supplement the disclosure requirements of the Dodd-Frank Act by requiring servicers to disclose the cost of the force-placed insurance, stated as an annual premium. If the cost of the force-placed insurance is not known as of the date of the disclosure, a good faith estimate shall be disclosed and be identified as such.

Proposed comment 37(c)(2)(ix)–1 explains that the good faith estimate of the cost of the force-placed insurance the servicer may obtain should be consistent with the best information reasonably available to the servicer at the time the disclosure is provided. Differences between the amount of the estimated cost disclosed under § 1024.37(c)(2)(ix) and the actual cost do not necessarily constitute a lack of good faith, so long as the estimated cost was based on the best information reasonably available to the servicer at the time the disclosure was 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(c)(2)(ix). The Bureau believes its proposed good faith standard balances the concern that some servicers may underestimate the cost of force-placed insurance and mislead borrowers into believing the cost of the force-placed insurance to be less than it actually is and the fact that the cost may change due to legitimate reasons between the time the disclosure is made and the time the borrower is charged.

The Bureau is also proposing to supplement the disclosure requirements of the Dodd-Frank Act with the requirement, discussed above, that servicers disclose to borrowers that insurance obtained by the servicer may cost significantly more than hazard insurance obtained by the borrower and that such insurance may not provide as much coverage as hazard insurance obtained by the borrower. As discussed previously, the consequences of servicers obtaining force-placed insurance may be significant and negative for borrowers. Accordingly, the Bureau believes it is appropriate to inform borrowers about the fact that force-placed insurance may not provide as much coverage as insurance borrowers could purchase for themselves, even though force-placed insurance may be significantly more expensive.

Legal authority. The Bureau is proposing a new § 1024.37(c)(2) to Regulation X pursuant to its authority under section 6(j)(3) of RESPA to implement new section 6(l)(1)(A)(i)–(iv) and 6(l)(2) of RESPA, added by section 1463 of the Dodd-Frank Act. Section 6(j)(3) of RESPA authorizes the Bureau to establish any requirements necessary to carry out the purposes of section 6 of RESPA. The Bureau has additional authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA. The disclosures in proposed § 1024.37(c)(2) are additionally proposed pursuant to Dodd Frank Act section 1032. Consistent with this provision, the Bureau believes that proposed disclosures will ensure that the costs, benefits, and risks associated with the service that servicers provide in servicing the loan by obtaining force-placed insurance are fully, accurately, and effectively disclosed to borrowers, in light of the facts and circumstances.

37(c)(3) Format

Proposed 1024.37(c)(3) provides the disclosures set forth in § 1024.37(c)(2) must be in a format substantially similar to form MS–3(A), set forth in appendix MS–3. Disclosures made pursuant to § 1024.37(c)(2)(vi) and (c)(2)(ix) must be in bold text. Disclosure made pursuant to § 1024.37(c)(2)(iv) must be in bold text, except that the physical address of the borrower's property may be in regular text. The Bureau believes the use of highlighting (bold text) to bring attention to important information allows borrowers to find the information quickly and efficiently. The Bureau believes it is important that borrowers can promptly identify the purpose of the notice. Additionally, the Bureau believes it is important to bring attention to the cost of force-placed insurance so borrowers have a clear understanding of the cost to them of the service that servicers provide in obtaining force-placed insurance. The Bureau further believes it is important for borrowers to understand that the servicer's purchase of force-placed insurance arises from the borrower's obligation to maintain hazard insurance. Although the notice contains additional information that are important, the Bureau believes the usefulness of highlighting in focusing a borrower's attention on important information decreases if highlighting is used unsparingly.

Legal authority. As previously discussed, section 6(l)(1) of RESPA requires a servicer to provide a borrower with two notices before charging a borrower for force-placed insurance. The Bureau believes that model forms facilitate compliance with the new Dodd-Frank Act requirements concerning force-placed insurance disclosures and the Bureau's proposed supplemental disclosures. To implement section 6(l)(1) of RESPA, the Bureau is proposing a new § 1024.37(c)(3) to Regulation X pursuant

to its authority under section 6(j)(3) of RESPA. Section 6(j)(3) of RESPA authorizes the Bureau to establish any requirements necessary to carry out the purposes of section 6 of RESPA. The Bureau has additional authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA. The model form MS–3(A) in appendix MS–3 is additionally proposed pursuant to Dodd-Frank Act section 1032(b).

37(d) Reminder Notice

37(d)(1) In General

As discussed above, section 6(l) of RESPA, as added by section 1463 of the Dodd-Frank Act, requires that servicers send two written notices to the borrower prior to charging the borrower for force-placed insurance. Specifically, RESPA section 6(l)(1)(B) requires servicers to use first-class mail to send a second written notice to the borrower at least 30 days after mailing the initial notice required by RESPA section 6(l)(1)(A).

Proposed § 1024.37(d)(1) implements section 6(l)(B) of RESPA by providing that one written notice in addition to the written notice required pursuant to § 1024.37(c)(1)(i) must be delivered to the borrower or placed in the mail prior to a servicer charging a borrower for force-placed insurance. The servicer may not deliver or place the written notice required pursuant to § 1024.37(d)(1) in the mail until 30 days after delivering to the borrower or placing in the mail the written notice set forth in § 1024.37(c)(1)(i). A servicer that receives no insurance information after delivering or placing in the mail the written notice set forth in § 1024.37(c)(1)(i) must provide the disclosures set forth in § 1024.37 (d)(2)(i). A servicer that receives insurance information after delivering or placing in the mail the written notice set forth in § 1024.37(c)(1)(i) but does not receive verification that the borrower has hazard insurance coverage continuously must provide the disclosures set forth in § 1024.37(c)(1)(ii).

Proposed comment 37(d)(1)–1 explains that 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, on June 1, the servicer places in the mail the written notice required pursuant to § 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 one written notice, with the content set forth in § 1024.37(d)(2)(i), 15 days before the servicer charges Borrower A for force-placed insurance. Take the example above, except that Borrower A provides the servicer with insurance information on June 18. But the servicer cannot verify that Borrower A has had continuous insurance coverage 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 one reminder notice, with the content set forth in § 1024.37(d)(2)(ii), 15 days before charging Borrower A for force-placed insurance it obtains for the period between June 10 and June 15.

Legal authority. The Bureau proposes to implement RESPA section 6(l)(1)(B) pursuant to its authority under RESPA section 6(j)(3) by adding new § 1024.37(d)(1) to Regulation X. Section 6(j)(3) of RESPA authorizes the Bureau to establish any requirements necessary to carry out the purposes of section 6 of RESPA. The Bureau has additional authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA.

37(d)(2) Content of Reminder Notice

37(d)(2)(i) Servicer Receiving No Insurance Information

Proposed § 1024.37(d)(2)(i) implements RESPA section 6(l)(1)(B). It provides that a servicer that has not received any insurance information from the borrower within 30 days after delivering or placing in the mail the notice required pursuant to § 1024.37(c)(1)(i) must provide a reminder notice that contains the disclosures set forth in § 1024.37(c)(2)(ii) to (c)(2)(xi), the date of the notice, and a statement that the notice is the second and final notice. The Bureau believes that the date of the notice and a statement that the notice is the second and final notice helps to distinguish the notice from the notice required pursuant to § 1024.37(c)(1)(i). Because the servicer has not received any insurance information, the Bureau believes it is appropriate to require the servicer to provide the disclosures set forth in § 1024.37(c)(2)(ii) to (c)(2)(xi).

Legal authority. The Bureau proposes to implement section 6(l)(1)(B) of RESPA by adding new § 1024.37(d)(2)(i) pursuant to its authority under section 6(j)(3) of RESPA. Section 6(j)(3) of RESPA authorizes the Bureau to establish any requirements necessary to carry out the purposes of section 6 of RESPA. The Bureau has additional authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA. The disclosures in proposed § 1024.37(d)(2)(i) are additionally proposed pursuant to Dodd-Frank Act section 1032. Consistent with this provision, the Bureau believes that proposed disclosures will ensure that the costs, benefits, and risks associated with the service that servicers provide in servicing the loan by obtaining force-placed insurance are fully, accurately, and effectively disclosed to borrowers, in light of the facts and circumstances.

The Bureau notes that proposed § 1024.37(d)(2)(i) is subject to the general disclosure requirements proposed § 1024.32, including, for example, proposed § 1024.32's clear and conspicuous requirement. As discussed previously, proposed § 1024.32 also permits servicers to combine disclosures required pursuant to subpart C of Regulation X with disclosures required by applicable law, including state law.

37(d)(2)(ii) Servicer Not Receiving Verification of Continuous Coverage

Proposed § 1024.37(d)(2)(ii) provides that a servicer that has received insurance information from the borrower within 30 days after delivering to the borrower or placing in the mail the written notice set forth § 1024.37(c)(1)(i), but not verification that the borrower has hazard insurance in place continuously, must deliver or place in the mail a written notice that contains the following: (1) The date of the notice; (2) a statement that the notice is the second and final notice; (3) the disclosures set forth in § 1024.37(c)(2)(ii), (c)(2)(iii), (c)(2)(iv), and (c)(2)(xi); (4) a statement that the servicer has received the hazard insurance information that the borrower provided; and (5) a statement that indicates to the borrower that the servicer is unable to verify that the borrower has hazard insurance in place continuously; and (6) a statement that

the borrower will be charged for insurance the servicer obtains for the period of time where the servicer is unable to verify hazard insurance coverage unless the borrower provides the servicer with hazard insurance information for such period.

As discussed previously, new RESPA section 6(l)(1) requirements added by section 1463 of the Dodd-Frank Act require servicers to provide advance written notice to borrowers 45 days before charging a borrower for force-placed insurance. RESPA section 6(l)(1)(B) provides that the notice required pursuant to RESPA section 6(l)(1)(B) must contain all of the information set forth in the first written notice. The Bureau believes that a borrower that provides his or her servicer with the information requested after receiving the initial written notice might become angry and confused if he or she receives a second notice containing information they previously received. However, if a borrower's servicer cannot verify that the borrower has hazard insurance in place continuously based on the information the borrower provided, the Bureau believes it benefits the borrower to receive the reminder notice required pursuant to proposed § 1024.37(d)(1) because it would be useful in helping borrowers avoid force-placed insurance charges. Accordingly, the Bureau is proposing to require servicers to disclose different information in the notice required pursuant to proposed § 1024.37(d)(1), as set forth in proposed § 1024.37(d)(2)(i) and (d)(2)(ii).

Legal authority. The Bureau proposes to implement section 6(l)(1)(B) of RESPA by adding new § 1024.37(d)(2)(ii) pursuant to its authority under section 6(j)(3) of RESPA. Section 6(j)(3) of RESPA authorizes the Bureau to establish any requirements necessary to carry out the purposes of section 6 of RESPA. The Bureau has additional authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA. The disclosures in proposed § 1024.37(d)(2)(ii) are additionally proposed pursuant to Dodd-Frank Act section 1032. Consistent with this provision, the Bureau believes that proposed disclosures will ensure that the costs, benefits, and risks associated with the service that servicers provide in servicing the mortgage loan by obtaining force-placed insurance are fully, accurately, and effectively disclosed to borrowers, in light of the facts and circumstances.

The Bureau notes that proposed § 1024.37(d)(2)(ii) is subject to the general disclosure requirements proposed § 1024.32, including, for example, proposed § 1024.32's clear and conspicuous requirement. As discussed previously, proposed § 1024.32 also permits servicers to combine disclosures required pursuant to subpart C of Regulation X with disclosures required by applicable law, including state law.

37(d)(3) Format

Proposed § 1024.37(d)(3) provides that the disclosures set forth in paragraph (d)(2)(i) of this section must be in a format substantially similar to form MS–3(B), and the disclosures set forth in paragraph (d)(2)(ii) of this section must be in a format substantially similar to form MS–3(C). The model forms are set forth in appendix MS–3. Disclosures required by § 1024.37(d)(2)(i)(B), (d)(2)(ii)(B), and (d)(2)(ii)(F) of this section must be in bold text. The Bureau discussed the use of highlight (bold text) previously. It is proposing that disclosures required by § 1024.37(d)(2)(i)(B), (d)(2)(ii)(B), and (d)(2)(ii)(F) of this section must be in bold text for reasons previously discussed.

Legal authority. As previously discussed, section 6(l)(1) of RESPA requires a servicer to provide a borrower with two notices before charging a borrower for force-placed insurance, and that the Bureau believes that model forms facilitate compliance with the new Dodd-Frank Act requirements concerning force-placed insurance disclosures and the Bureau's proposed supplemental disclosures. To implement section 6(l)(1) of RESPA, the Bureau is proposing a new § 1024.37(d)(3) to Regulation X pursuant to its authority under section 6(j)(3) of RESPA. Section 6(j)(3) of RESPA authorizes the Bureau to establish any requirements necessary to carry out the purposes of section 6 of RESPA. The Bureau has additional authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA. The forms MS–3(B) and MS–3(C) are additionally proposed under Dodd-Frank Act section 1032(b).

37(d)(4) Updating Notice With Borrower Information

Proposed § 1024.37(d)(4) provides that if a servicer receives hazard insurance information from a borrower after a written notice required pursuant to § 1024.37(d)(1) has been put into production, the servicer is not required to update the notice so long the notice was put into production within a reasonable time prior to the servicer delivering the notice to the borrower or placing the notice in the mail. Proposed comment 37(d)(4)–1 provides that a servicer may have to prepare the written notice required pursuant to § 1024.37(d)(1) in advance of delivering or placing the notice in the mail. If the notice has already been put into production, the servicer is not required to update the notice with insurance information received from the borrower after production has started so long as the notice was put into production within a reasonable time prior to the servicer delivering or placing the notice in the mail. The Bureau proposes to provide guidance that 5 days prior is a reasonable time. The Bureau invites comment on whether, in certain circumstances, a longer time frame is reasonable.

Legal authority. The Bureau recognizes that servicers may receive borrower's hazard insurance information after they have put the notices required pursuant to § 1024.37(d)(1) into production, and that it may be impracticable for them to stop production to update the notices. Accordingly, the Bureau is using its authority under RESPA section 6(k)(1)(E) to provide a safe harbor in proposed § 1024.37(d)(4). Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA. The Bureau has additional authority under section 6(j)(3) of RESPA to establish any requirements necessary to carry out the purposes of section 6 of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA.

37(e) Renewal or Replacement of Force-Placed Insurance

37(e)(1) In General

Proposed § 1024.37(e)(1) provides that a servicer may not charge a borrower for renewing or replacing existing force-placed insurance unless: (1) The servicer delivers or places in the mail a written notice to the borrower with the disclosures set forth in § 1024.37(e)(2) at

least 45 days before the premium charge or any fee is assessed; and (2) during the 45-day notice period, the servicer has not received evidence that the borrower has obtained hazard insurance. Proposed § 1024.37(e)(1) further provides that notwithstanding § 1024.37(e)(1)(i) and (e)(ii), a servicer that has renewed or replaced the existing force-placed insurance during the 45-day notice period may charge the borrower for the renewal or replacement promptly after the servicer receives verification that hazard insurance obtained by the borrower did not provide the borrower with insurance coverage for any period of time following the expiration of the existing force-placed insurance.

Proposed comment 37(e)(1)(iii)–1 illustrates when a servicer may charge a borrower for the renewal or replacement of the borrower's existing force-placed insurance before the end of the 45-day notice period. In the example, on January 2, the servicer sends the notice required by § 1024.37(e)(1). On January 12, the existing force-placed insurance the servicer had obtained on the borrower's property expires and the servicer replaces the expired force-placed insurance policy with a new force-placed insurance policy effective January 13. On February 5, the servicer receives verification that the borrower obtained hazard insurance effective January 31. The servicer may charge the borrower for force-placed insurance from January 13 to January 30, as early as February 5.

Legal authority. As discussed previously, there does not appear to be an industry standard that applies to renewal procedures for force-placed insurance. Moreover, incentives like commissions paid to servicers or their insurance affiliates may cause servicers to prefer renewing or replacing existing force-placed insurance coverage over providing borrowers with an opportunity to obtain hazard insurance. The Bureau's proposal could help a borrower avoid incurring the cost to the borrower associated his or her servicer renewing or replacing existing force-placed insurance because the proposal provides for advance notice that allows a borrower the time the borrower may need to buy hazard insurance before being charged for the cost of force-placed insurance. The Bureau proposes to add new § 1024.37(e)(1) pursuant to its authority under RESPA section 6(k)(1)(E), which authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA. The Bureau has additional authority under section 6(j)(3) of RESPA to establish any requirements necessary to carry out the purposes of section 6 of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA.

37(e)(2) Content of Renewal Notice

Except as set forth below, proposed § 1024.37(e)(2) would require servicers to provide the disclosures set forth in proposed § 1024.37(c)(2) in the notice required by proposed § 1024.37(e)(1). The main differences between the disclosures set forth in proposed § 1024.37(c)(2) and proposed § 1024.37(e)(2) is that in proposed § 1024.37(e)(2), servicers must provide a statement that: (1) The servicer previously obtained 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; and (2) the servicer has the right to maintain insurance by renewing or replacing the insurance it previously obtained because insurance is required. The Bureau believes the differences are necessary to distinguish the notice required pursuant to § 1024.37(e)(1) from the notice required pursuant to proposed § 1024.37(c)(1).

Paragraph 37(e)(2)(vii)

Proposed § 1024.37(e)(2)(vii) would require a servicer to set forth the cost of the force-placed insurance, stated as an annual premium. If the cost of the force-placed insurance is not known as of the date of the disclosure, a good faith estimate shall be disclosed and be identified as such. Proposed comment 37(e)(2)(vii)–1 provides that the good faith requirement set forth in § 1024.37(e)(2)(vii) is the same good faith requirement set forth in § 1024.37(c)(2)(ix).

Legal authority. The Bureau proposes to add new § 1024.37(e)(2) to Regulation X pursuant to its authority under section 6(k)(1)(E) of RESPA. Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA. As discussed above, the Bureau's proposal to require servicers to provide a written notice before charging a borrower for the renewal or replacement of existing hazard insurance could help a borrower avoid incurring the cost to the borrower associated his or her servicer renewing or replacing existing force-placed insurance. The Bureau has additional authority under section 6(j)(3) of RESPA to establish any requirements necessary to carry out the purposes of section 6 of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA. The disclosures in proposed § 1024.37(e)(2) are additionally proposed pursuant to Dodd-Frank Act section 1032. Consistent with this provision, the Bureau believes that proposed disclosures will ensure that the costs, benefits, and risks associated with the service that servicers provide in the loan by obtaining force-placed insurance to renew or replace existing force-placed insurance are fully, accurately, and effectively disclosed to borrowers, in light of the facts and circumstances.

The Bureau notes that proposed § 1024.37(e)(2) is subject to the general disclosure requirements proposed § 1024.32, including, for example, proposed § 1024.32's clear and conspicuous requirement. As discussed previously, proposed § 1024.32 also permits servicers to combine disclosures required pursuant to subpart C of Regulation X with disclosures required by applicable law, including state law.

37(e)(3) Format

Proposed § 1024.37(e)(3) provides that the disclosures set forth in § 1024.37(e)(2) must be in a format substantially similar to form MS–3(D), set forth in appendix MS–3. Disclosures made pursuant to § 1024.37(e)(2)(vi)(B) and 37(e)(2)(vii) must be in bold text. Disclosures made pursuant to § 1024.37(e)(2)(iv) must be in bold text, except that the physical address of the property may be in regular text. The Bureau discussed the usefulness of highlighting (bold text) important information to borrowers previously, and is proposing that disclosures discussed above be in bold text for similar reasons.

Legal authority. The Bureau proposes to exercise its authority under RESPA section 6(k)(1)(E) to add new § 1024.37(e)(3) to Regulation X. As discussed above, the Bureau believes model forms facilitate compliance. Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA. The Bureau has additional authority under section 6(j)(3) of RESPA to establish any requirements necessary to carry out the purposes of section 6 of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA. The model form MS–3(D) is additionally

proposed under Dodd-Frank Act section 1032(b).

37(e)(4) Compliance

Proposed § 1024.37(e)(4) provides that before the first anniversary of a servicer obtaining force-placed insurance on a borrower's property, the servicer shall deliver to the borrower or place in the mail the notice required by § 1024.37(e)(1). Subsequently, a servicer is not required to comply with § 1024.37(e)(1) before charging a borrower for renewing or replacing existing force-placed insurance more than once every 12 months.

The Bureau expects borrowers should be able to retain the notice proposed in proposed § 1024.37(e)(1) over the course of a 12-months period. Additionally, the Bureau notes that because it is proposing to require a servicer to state the annual cost of force-placed insurance, the borrower would be informed of the annualized cost of the force-placed insurance. Accordingly, the Bureau does not believe that receiving more than one renewal or replacement notice every 12-month period would significantly benefit borrowers. The Bureau solicits comment on whether providing the renewal or replacement notice once during a 12-month period adequately informs borrowers about the costs, benefits, and risks associated with servicers' renewal or replacement of existing force-placed insurance.

Legal authority. The Bureau proposes to exercise its authority under RESPA sections 6(k)(1)(E) add § 1024.37(e)(4) to Regulation X. Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA. For reasons discussed above, the Bureau does not believe that receiving more than one renewal or replacement notice every 12-month period would significantly benefit borrowers. Section 1024.37(e)(4) is additionally proposed under section 6(j)(3) of RESPA to establish any requirements necessary to carry out the purposes of section 6 of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA.

37(f) Mailing the Notices

RESPA section 6(l)(1), discussed previously, requires servicers to send the notices required under RESPA section 6(l)(1)(A) and (B) by first-class mail. The Bureau proposes to implement RESPA section 6(l)(1) by adding new § 1024.37(f) to Regulation X to provide that if a servicer mails a notice required pursuant to § 1024.37(c)(1)(i), (d)(1) and (e)(1) of this section, as applicable, the servicer must use a class of mail not less than first-class mail. Although the notice required proposed § 1024.37(e)(1) is not required by statute, the Bureau believes that proposing that the same mailing requirements to any notice required pursuant to § 1024.37 facilitates compliance by promoting consistency.

Legal authority. The Bureau proposes to implement RESPA section 6(l)(1), pursuant to its authority under RESPA section 6(j)(3) to establish any requirements necessary to carry out section 6 of RESPA by adding new § 1024.37(f) to Regulation X. Section 1024.37(f) is additionally proposed pursuant to the Bureau's authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA.

37(g) Cancellation of Force-Placed Insurance

Section 1463 amended RESPA by adding new section 6(l)(3) to RESPA. RESPA section 6(l)(3) provides that within 15 days of receipt by a servicer of confirmation of a borrower's existing coverage, the servicer must: (1) Terminate the force-placed insurance; and (2) refund to the borrower all force-placed insurance premium charges and related fees charged to the borrower during any period in which the borrower's insurance and the force-placed insurance were each in effect.

Proposed § 1024.37(g) provides that within 15 days of receiving verification that the borrower has hazard insurance in place, a servicer must: (1) Cancel force-placed insurance obtained for a borrower's property; and (2) for any period during which the borrower's hazard insurance was in place, refund to the borrower all force-placed insurance premium charges and related fees paid by the borrower for such period and remove all force-placed insurance charges and related fees from the borrower's account for such period that the servicer has assessed to the borrower. Proposed comment 37(g)–1 provides an example of how to comply with proposed § 1024.37(g). Assume that a servicer obtains force-placed insurance, effective January 1, and the premium and related charges are paid by the borrower in monthly installments, due on the first of each month. After the borrower paid the April installment, the servicer receives insurance information from the borrower, and verifies that the borrower had obtained hazard insurance and that the insurance had been in place since March 15. To comply with § 1024.37(g), within 15 days of receiving such verification, the servicer must: (1) Cancel the force-placed insurance; (2) provide a refund for force-placed insurance premium charges and related fees paid by the borrower for the period between March 15 and April 30; and (3) remove from the borrower's account any force-placed insurance premium charges and related fees for the period after March 15 that the servicer has assessed to the borrower but the borrower has not yet paid.

Legal authority. The Bureau proposes to implement RESPA section 6(l)(3), pursuant to its authority under RESPA section 6(j)(3) to establish any requirements necessary to carry out section 6 of RESPA by adding new § 1024.37(g) to Regulation X. Section 1024.37(g) is additionally proposed pursuant to the Bureau's authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations as may be necessary to achieve the purposes of RESPA.

37(h) Limitation on Force-Placed Insurance Charges

Section 1463 of the Dodd-Frank Act amended RESPA section 6 by adding new section 6(m) to RESPA to require that all charges, apart from charges subject to State regulation as the business of insurance, related to force-placed insurance imposed on the borrower by or through the servicer must be bona fide and reasonable.

Proposed § 1024.37(h)(1) provides that except for charges subject to State regulation as the business of insurance and charges authorized by the FDPA, all charges related to force-placed insurance assessed to a borrower by or through the servicer must be bona fide and reasonable. Proposed § 1024.37(h)(2) provides that that 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.

As previously discussed, RESPA section 6(m) provides that charges subject to State regulation as the business of insurance are not subject to RESPA 6(m)'s ''bona fide and

reasonable'' requirement. Furthermore, the Bureau believes it is important to clarify that proposed § 1024.37(h) does not regulate charges authorized by the FDPA. As discussed previously in the discussion of proposed § 1024.37(a)(2)(i), certain servicers are required by the FDPA to obtain force-placed flood insurance. The FDPA provides that notwithstanding any Federal or State law, any servicer for a loan ''secured by improved real estate or a mobile home'' may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a SFHA. *See* 42 U.S.C. 4012a(h). As discussed previously, the Bureau is concerned about issuing regulations that would overlap with regulations issued pursuant to the FDPA. Accordingly, the Bureau proposes to use its exemption authority pursuant to RESPA section 19(a) to exempt charges authorized by the FDPA from proposed § 1024.37(h).

Also as previously discussed, force-placed insurance is substantially more expensive than hazard insurance a borrower could obtain for himself and some servicers may be incentivized to obtain force-placed insurance even though helping a borrower to renew hazard insurance obtained by the borrower when practicable is better for the borrower and the owners and assignees of mortgage loans. The Bureau believes it is important to ensure that these servicers do not try to inflate the already-high cost of force-placed insurance by assessing charges to borrowers that are not for services actually performed, do not bear a reasonable relationship to the servicer's cost of providing the service, and is prohibited by applicable law. Accordingly, the Bureau believes its proposed definition of bona fide and reasonable charge, discussed above, is appropriate.

Legal authority. The Bureau proposes to implement RESPA section 6(m), pursuant to its authority under RESPA section 6(j)(3), to establish any requirements necessary to carry out section 6 of RESPA by adding § 1024.37(h) to Regulation X. Section 1024.37(h) is additionally proposed pursuant to the Bureau's authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions, as may be necessary to achieve the purposes of RESPA.

37(i) Relationship to Flood Disaster Protection Act of 1973

Section 1463 of the Dodd-Frank Act amended RESPA section 6 to add new section 6(l)(4) to provide that the new Dodd-Frank Act requirements concerning force-placed insurance do not prohibit servicers from sending a simultaneous or concurrent notice of a lack of flood insurance pursuant to section 102(e) of the FDPA. Proposed § 1024.37(i) provides that if permitted by regulation under section 102(e) of the Flood Disaster Protection Act of 1973, a servicer subject to the requirements of § 1024.37 may deliver to the borrower or place in the mail any notice required by § 1024.37 together with the notice required by section 102(e) of the Flood Disaster Protection Act of 1973.

Legal authority. The Bureau proposes to implement RESPA section 6(l)(4), pursuant to its authority under RESPA section 6(j)(3) to establish any requirements necessary to carry out section 6 of RESPA by adding § 1024.37(i) to Regulation X. Section 1024.37(i) is additionally proposed pursuant to the Bureau's authority under section 6(k)(1)(E) of RESPA to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions, as may be necessary to achieve the purposes of RESPA.

Section 1024.38 Reasonable Information Management Policies and Procedures

Background. A servicer's obligation to maintain accurate and timely information regarding a mortgage loan account is one of the most basic servicer duties. A servicer cannot comply with its myriad obligations to investors and under applicable law, unless it maintains accurate information regarding a mortgage loan account, including accurate and timely information with respect to borrower payments. Notwithstanding these obligations, recent evaluations of mortgage servicer practices have indicated that borrowers have been harmed as a result of servicer's lacking adequate practices to provide servicer personnel with appropriate borrower information. Federal regulatory agencies reviewing mortgage servicing practices have found that certain servicers demonstrated ''significant weaknesses in risk-management, quality control, audit, and compliance practices.''[109]

Further, and as discussed in detail above, major servicers demonstrated failures to document and verify, in accordance with applicable law, information relating to borrower mortgage loan accounts in connection with foreclosure proceedings.[110] Examinations by prudential regulators found ''critical deficiencies in foreclosure governance processes, document preparation processes, and oversight and monitoring of third parties * * * [a]ll servicers [examined] exhibited similar deficiencies, although the number, nature, and severity of deficiencies varied by servicer.'' [111]

38(a) In General

Proposed § 1024.38(a) would require a servicer to establish reasonable policies and procedures for maintaining and managing information and documents relating to borrower mortgage loan accounts. The proposed rule would provide that a servicer meets this requirement if the servicer's policies and procedures are reasonably designed to achieve the objectives set forth in proposed § 1024.38(b) and are reasonably designed to ensure compliance with the standard requirements in proposed § 1024.38(c).

Proposed comment 38(a)–1 clarifies that a servicer may determine the specific methods by which it will implement reasonable information management policies and procedures to achieve the required objectives. Servicers have flexibility to design the operations that are reasonable in 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. This clarification is intended to provide servicers, including

[109] *Problems in Mortgage Servicing From Modification to Foreclosure: Hearings Before the Senate Comm. on Banking, Housing and Urban Affairs,* S. Hrg. 111–987, 111th Cong. 360 (2010) (statement of Daniel K. Tarullo, Board of Governors, Federal Reserve System), available at: *http://www.federalreserve.gov/newsevents/testimony/tarullo20101201a.htm.*

[110] The National Mortgage Settlement is available at: *http://www.nationalmortgagesettlement.com/.*

[111] *Failure to Recover: The State of Housing Markets, Mortgage Servicing Practices and Foreclosures: Hearings Before the House Committee on Oversight and Government Reform,* No. 112–134, 112th Cong. 17 (2012) (statement of Morris Morgan, Office of the Comptroller of the Currency), available at: *http://www.occ.gov/news-issuances/congressional-testimony/2012/pub-test-2012-47-written.pdf.*

small servicers, flexibility to design policies and procedures that are appropriate for their servicing businesses. When this proposal was discussed with SERs during the Small Business Review Panel outreach, the SERs were supportive of a definition that provides inherent flexibility for small servicers to design policies and procedures that reflect the needs of their servicing operations.[112] Consistent with the Small Business Review Panel recommendations,[113] the Bureau requests comment on further guidance that should be included to clarify the types of policies and procedures that would be reasonable for small servicers.

Proposed § 1024.38(a)(2) provides a safe harbor, which states that a servicer satisfies the requirement in proposed § 1024.38(a)(1) if the servicer does not engage in a pattern or practice of failing to achieve any of the objectives set forth in proposed § 1024.38(b) and does not engage in a pattern or practice of failing to comply with any of the standard requirements in proposed § 1024.38(c). The purpose of this provision is to establish an objectives-based test for determining if a servicer's policies and procedures are reasonable. Thus, servicers have flexibility to develop policies and procedures that a servicer determines are appropriate so long as those policies and procedures do not result in a pattern or practice of failing to achieve an enumerated objective or comply with a standard requirement. If a servicer demonstrates a pattern or practice of failing to achieve an objective or comply with a standard requirement, a servicer may violate this provision if the policies and procedures are not reasonable. Proposed comment 38(a)(1)–1 provides examples of potential pattern and practice failures by servicers. Proposed comment 38(a)(2)–1 clarifies that in the event a servicer fails to comply with the safe harbor in proposed § 1024.38(a)(2) because the servicer has a pattern or practice of failing to achieve the objectives set forth in proposed § 1024.38(b) or failing to ensure compliance with the standard requirements in proposed § 1024.38(c), a servicer may still comply with the requirements of proposed § 1024.38 if the servicer's policies and procedures were reasonably designed to achieve the objectives set forth in proposed § 1024.38(b) and to ensure compliance with the standard requirements in proposed § 1024.38(c).

A servicer's failure to achieve each of the objectives harms borrowers because such failures create the potential for adverse consequences. These may include, without limitation, imposing improper fees on borrowers, inability to reasonably evaluate loss mitigation applications for loss mitigation options that may benefit borrowers and owners or assignees of mortgage loans, unwarranted costs to borrowers, and the potential for fraud upon courts through inaccurate or unverifiable legal pleadings.

The Bureau relies on its authority in section 6(k)(1)(E) of RESPA to establish obligations appropriate to carry out the consumer protection purposes of RESPA to propose § 1024.38(a). The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

38(b) Objectives

38(b)(1) Accessing and Providing Accurate Information

Proposed § 1024.38(b)(1) would mandate that a servicer's policies and procedures for maintaining and managing information and documents must be designed to enable the servicer to (1) provide accurate and timely disclosures to borrowers, (2) investigate, respond to, and, as appropriate, correct errors, (3) provide borrowers with requested information, (4) provide owners or assignees of mortgage loans with accurate and current information about any mortgage loans they own, and (5) submit documents or filings required for a foreclosure process that reflect accurate and current information and comply with applicable law.

For the reasons stated above in the background to proposed § 1024.38, the Bureau believes it is necessary to achieve the consumer protection purposes of RESPA that servicers implement policies and procedures to achieve the objectives set forth in proposed § 1024.38(b)(1). These objectives provide reasonable and appropriate protections for borrowers against harms resulting from actions based on improper or inaccurate servicer documentation or information. Further, the requirement in proposed § 1024.38(b)(4) ensures that owners and assignees of mortgage loans get better information reporting about the mortgage loans they own. Owners and assignees can play an important role in ensuring that servicers comply with requirements of the owner or assignee, which may inure to the benefit of consumers. For example, when a servicer improperly obtains force-placed insurance for a delinquent borrower, the costs of that insurance may push a borrower further into delinquency and ultimately foreclosure, where the costs of the more expensive policy will reduce the ultimate recovery to the owner or assignee.

The Bureau requests comment regarding whether the Bureau had identified the appropriate objectives and whether objectives should be removed, or other objectives included, in the requirements.

Legal authority. The Bureau relies on its authority pursuant to section 6(k)(1)(E) of RESPA to require servicers to comply with any obligation found by the Bureau to be appropriate to carry out the consumer protection purposes of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

38(b)(2) Evaluating Loss Mitigation Options

Proposed § 1024.38(b)(2) would mandate that a servicer's policies and procedures for maintaining and managing information and documents must be designed to enable the servicer to (1) provide accurate information to borrowers regarding loss mitigation options, (2) identify all loss mitigation options for which a borrower may be eligible, (3) provide prompt access to all documents and information submitted by a borrower in connection with a loss mitigation option, (4) identify documents and information that a borrower is required to submit to make a loss mitigation application complete, and (5) evaluate borrower applications, and any appeals, as appropriate.

The Bureau believes that requiring servicers to have reasonable policies and procedures to maintain and manage information and documents that are designed to enable the servicer to evaluate borrower's for loss mitigation options facilitates compliance with proposed § 1024.41. Further, such policies and procedures will lead to processes that are more protective of consumers by requiring servicers to consider, in advance of the potential delinquency of a particular mortgage loan, the loss mitigation options that are generally available to borrowers.

[112] *See* Small Business Review Panel Report at 31.

[113] *Id.*

Loss mitigation options for which borrowers may be eligible. In order to meet the objectives, a servicer will have to determine, on a loan by loan basis, which loss mitigation options offered by the servicer are available to borrowers. The Bureau anticipates that for servicers that service mortgage loans held by the servicer or an affiliate in portfolio, this determination will not present significant burdens with respect to such mortgage loans as any such policies likely will be uniformly set forth by the servicer or affiliate. Similarly, the Bureau anticipates that servicers that service mortgage loans that are included in securitizations guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae, or insured by FHA or other government sponsored insurance programs, will be familiar with policies that will be set forth by those entities regarding the requirements for loss mitigation options.

Servicers that service mortgage loans that are securitized through private label securities will be required to undertake more burdensome efforts to identify which, if any, loss mitigation programs offered by the servicer are available to mortgage loan borrowers whose mortgage loans are owned by the securitization trust pursuant to the terms of any servicing agreement.

Servicer failures to achieve optimal loss mitigation efforts. The Bureau believes that regulations relating to the evaluation of borrowers for loss mitigation options, including the requirements of proposed § 1024.38(b)(2) and proposed § 1024.41 are necessary in light of the current servicing industry structure.

Servicing industry compensation is not structured to incentivize servicers to engage in loss mitigation efforts. In that regard, ''the servicing industry's combination of two distinct business lines— transaction processing and default management—encourage servicers to underinvest in default management capabilities, leaving them with limited ability to mitigate losses.'' [114] Direct servicing compensation is generally fixed per loan. A servicer of a prime mortgage loan may earn 25 basis points for servicing that loan, whereas a servicer of a subprime mortgage loan may earn 50 basis points for servicing that loan.[115] The increased fee for servicing a loan with a lower credit quality should reflect the increased cost a servicer may incur to service the loans because of the higher default or cash flow advance assumptions related to those loans. However, the Bureau's outreach with consumers, servicers, GSEs, investors, and other federal regulators indicates that servicers have failed to invest in systems and processes necessary to undertake the work necessary to service mortgage loans that are not performing.

Further, mortgage servicing cash flows, including servicer expenses like advances to investors, incentivize servicers to pursue foreclosure. Servicers are required to advance payments to investors so long as a mortgage loan has not been ''charged off.'' When a servicer modifies a mortgage loan on behalf of an investor, it is sometimes unclear how the modified payment amounts should be treated and whether a servicer must continue to advance funds to the investor to make up for any deficiency between a borrower's modified payment and the scheduled payment owed to an investor.

The Bureau observes that servicers have begun to alter the manner in which they invest in infrastructure and are changing their approach to default management. Notwithstanding these developments, reasonable policies and procedures to maintain and manage information and documents that are designed to enable a servicer to evaluate loss mitigation options impose a reasonable burden on servicers that will benefit borrowers in future years as servicers transition from reacting to the current crisis to a more steady market punctuated by regional spikes in delinquencies and foreclosures. Servicers that have not invested in improving loss mitigation functions may find less incentivize to do so as housing markets recover, leading to continued inadequate infrastructure during future regional or national housing downturns, which may lead to future borrower harm.

The Bureau requests comment regarding whether the Bureau had identified the appropriate objectives and whether objectives should be removed, or other objectives included, in the requirements.

Legal authority. The Bureau relies on its authority pursuant to section 6(k)(1)(E) of RESPA to require servicers to comply with any obligation found by the Bureau to be appropriate to carry out the consumer protection purposes of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

38(b)(3) Facilitating Oversight of, and Compliance by, Service Providers

Proposed § 1024.38(b)(3) would mandate that a servicer's policies and procedures for maintaining and managing information and documents must be designed to enable the servicer to provide appropriate servicer personnel with accurate and current information reflecting actions performed by service providers, facilitate periodic reviews of service providers, and facilitate the sharing of accurate and current information among servicer personnel and service providers.

Recent evaluations of mortgage servicer practices have found that some major servicers ''did not properly structure, carefully conduct, or prudently manage their third-party vendor relationships[.]'' [116] For example, certain servicers supervised by the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency did not monitor third-party vendor foreclosure law firms compliance with the servicer's standards, did not retain copies of documents maintained by third-party law firms, and did not provide formal guidance, policies, or procedures governing the selection, ongoing management, and termination of law firms used to manage foreclosures.[117] Similar failures were present in connection with servicer relationships with default management service providers and Mortgage Electronic Registration Systems, Inc. (MERS).[118] The Federal Reserve Board stated to Congress that federal regulatory agencies identified significant ''shortcomings in staff training, coordination among loan modification and foreclosure staff, and management and oversight of service providers, including legal services.'' [119] These

[114] Levitin and Twomey, 28 Yale J. on Reg. 69 (2011).

[115] Robert W. Lee, Presentation, *MBA's Accounting, Tax and Financial Analysis Conference 2008 Mortgage Servicing Rights Discussion,* available at: *http://www.mortgagebankers.org/files/Conferences/2008/2008Accounting,Tax&FinancialAnalysisConference/2008Accounting,Tax&FinancialAnalysisConferenceR.Lee12-17-08.pdf*

[116] Federal Reserve System, Office of the Comptroller of the Currency, and Office of Thrift Supervision, *Interagency Review of Foreclosure Policies and Practices,* at 5 (April 2011), available at: *http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf.*

[117] *Id.* at 9.

[118] *Id.* at 10.

[119] *Problems in Mortgage Servicing From Modification to Foreclosure: Hearings Before the Senate Comm. on Banking, Housing and Urban Affairs,* S. Hrg. 111–987, 111th Cong. 360 (2010) (statement of Daniel K. Tarullo, Board of Governors, Federal Reserve System), available at: *http://www.federalreserve.gov/newsevents/testimony/tarullo20101201a.htm.*

failures have manifested in significant harms for borrowers, including imposing unwarranted fees on borrowers and harms relating to so-called ''dual tracking'' from miscommunications between service providers and servicer loss mitigation personnel.

The Bureau requests comment regarding whether the Bureau had identified the appropriate objectives and whether objectives should be removed, or other objectives included, in the requirements.

Legal authority. The Bureau relies on its authority pursuant to section 6(k)(1)(E) of RESPA to require servicers to comply with any obligation found by the Bureau to be appropriate to carry out the consumer protection purposes of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

38(b)(4) Facilitating Servicing Transfers

Proposed § 1024.38(b)(4) would mandate that a servicer's policies and procedures for maintaining and managing information and documents must be designed to ensure the timely transfer of all information and documents relating to a transferred mortgage loan to a transferee servicer in a form and manner that enables the transferee servicer to comply with the requirements of subpart C and the terms of the transferee servicer's contractual obligations to owners or assignees of the mortgage loans. Further, proposed § 1024.38(b)(4) provides that a transferee servicer shall have documents and information regarding the status of discussions with a borrower regarding loss mitigation options, any agreements with a borrower for a loss mitigation option, and any analysis be a servicer with respect to potential recovery from a non-performing mortgage loan, as appropriate (typically called a final recovery determination).

Servicing transfers give rise to potential harms to consumers. Servicers may experience problems relating to inaccurate transfer of past payment information, failures to transfer documents provided to a transferor servicer, and inaccurate transfer of information relating to loss mitigation discussions with borrowers. Borrowers engaged in loss mitigation efforts may be transferred to transferee servicers who had no knowledge of the existence or status of the loss mitigation efforts.

The Bureau believes it is a typical servicer duty for servicers to be able to effectuate sales, assignments, and transfers of mortgage servicing in a manner that does not adversely impact mortgage loan borrowers. Servicers generally should expect that servicing may be sold, assigned, or transferred for certain loans they service. Servicers owe a duty to investors to ensure that mortgage servicing can be transferred without adversely impacting the value of the investor's asset.

The Bureau believes it is appropriate for servicers to implement reasonable information management policies and procedures to ensure that in the event of any such transfer, documents and information regarding mortgage loan accounts are identified and transferred to a transferee servicer in a manner that permits the transferee servicer to continue providing appropriate service to the borrower.

The Bureau requests comment regarding whether the Bureau had identified the appropriate objectives and whether objectives should be removed, or other objectives included, in the requirements.

Legal authority. The Bureau relies on its authority pursuant to section 6(k)(1)(E) of RESPA to require servicers to comply with any obligation found by the Bureau to be appropriate to carry out the consumer protection purposes of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

38(c) Standard Requirements

In addition to the objectives set forth in proposed § 1024.38(b), proposed § 1024.38(c) sets forth two standard requirements that servicers must include in the required policies and procedures. These include provisions for record retention and identification of a servicing file. With respect to record retention, proposed § 1024.38(c)(1) would require a servicer to retain documents and information relating to a mortgage file until one year after a mortgage loan is paid in full or servicing of a mortgage loan was transferred to a successor servicer. The Bureau observes that proposed §§ 1024.35 and 1024.36 require servicers to respond to notices of error and information requests provided up to one year after a mortgage loan is paid in full or servicing of a mortgage loan was transferred to a successor servicer and the Bureau believes the record retention requirement is necessary for servicer compliance with obligations set forth in §§ 1024.35 and 1024.36. Further, the Bureau observes that servicers will require accurate information for the life of the mortgage loan in order to provide accurate payoff balances to borrowers or to exercise a right to foreclose for a mortgage loan account.

The Bureau requests comment regarding whether servicers should be required to retain documents and information relating to a mortgage file until one year after a mortgage loan is paid in full or servicing of a mortgage loan was transferred to a successor servicer and the potential burden of this requirement.

Proposed § 1024.38(c)(2) would require a servicer to provide a borrower upon request a servicing file, which shall contain a schedule of all payments credited or debited to the mortgage loan account, including any escrow account as defined in § 1024.17(b) and any suspense account; a copy of the borrower's mortgage note; a copy of the borrower's deed of trust; any collection notes created by servicer personnel reflecting communications with borrowers about the mortgage loan account; a report of any data fields relating to a borrower's mortgage loan account created by a servicer's electronic systems in connection with collection practices, including records of automatically or manually dialed telephonic communications; and copies of any information or documents provided by a borrower to a servicer in accordance with the procedures set forth in §§ 1024.35 or 1024.41.

While document and information management practices vary among servicers, many large servicers maintain documents and information relating to a borrower's mortgage loan account in many different places and forms, including on separate electronic systems. The Bureau understands that in the absence of a required convention for storage of servicing related documents and information, servicers have difficulty identifying a central file containing all necessary information regarding a borrower's mortgage loan account, including collector's notes, payment histories, note and deed of trust documents, and account debit and credit information, including escrow account information. Proposed § 1024.38(c)(2) would require servicers, as part of the reasonable information management policies and procedures to adopt practices to provide an accurate,

complete, and defined ''servicing file'' to a borrower upon request and would create a commonly understood industry convention.

The Bureau requests comment regarding whether servicers should be required to adopt reasonable information management policies and procedures that facilitate providing a defined servicing file to a borrower upon request. The Bureau requests comment on the burden of adopting this requirement. Further, the Bureau requests comment regarding whether the Bureau has identified the appropriate components of a servicing file and whether certain categories of documents and information should be included or removed from the proposed requirement.

Legal authority. The Bureau relies on its authority pursuant to section 6(k)(1)(E) of RESPA to require servicers to comply with any obligation found by the Bureau to be appropriate to carry out the consumer protection purposes of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Section 1024.39 Early Intervention Requirements for Certain Borrowers

Background. How a servicer manages a borrower's delinquency plays a significant role in whether the borrower cures the delinquency or ends up in foreclosure.[120] However, for a variety of reasons, servicers have not been consistent in managing delinquent accounts to provide borrowers with an opportunity to avoid foreclosure. At the outset of the recent financial crisis, many servicers had not developed the institutional capacity to manage delinquent accounts.[121] While servicers have gained some experience managing loss mitigation programs, incentives remain that may discourage servicers from addressing a delinquency quickly, and in some cases may even cause them to favor foreclosure.[122]

For their part, delinquent borrowers may not make contact with servicers to discuss their options because they may be unaware that they have options[123] or that their servicer is able to assist them.[124] As a result of these impediments to borrower-servicer communication, many borrowers are not informed of their options to avoid foreclosure at the early stages of a delinquency, when it can be most critical for them to reach out. There is significant risk to consumers as a result of this delay because the longer a borrower remains delinquent, the more difficult it can be to avoid foreclosure.[125]

Private lenders and investors, Fannie Mae and Freddie Mac, and Federal agencies, such as FHA and VA, already have early intervention servicing standards in place for delinquent borrowers.[126] However, there are currently no uniform minimum national standards for all servicers of federally related mortgage loans. In order to ensure that servicers are providing delinquent borrowers with information about their options at the early stages of delinquency, the Bureau is proposing to establish minimum early intervention requirements under RESPA.

Proposed section 1024.39 would require servicers to provide delinquent borrowers with two notices. First, proposed § 1024.39(a), would require servicers to notify or make good faith efforts to notify a borrower orally that the borrower's payment is late and that loss mitigation options may be available, if applicable. Servicers would be required to take this action 30 days after the payment due date, unless the borrower satisfies the payment during that period. Second, proposed § 1024.39(b) would require servicers to provide a written notice with information about the foreclosure process, housing counselors and the borrower's State housing finance authority, and, if applicable, information about loss mitigation options that may be available to the borrower. The servicer would be required to provide the written notice not later than 40 days after the payment due date, unless the borrower satisfies the payment during that period. These two notices are designed primarily to encourage delinquent borrowers to work with their servicer to identify their options for avoiding foreclosure. The Bureau recognizes that not all delinquent borrowers who receive these notices may respond to the servicer and pursue available loss mitigation options. However, the Bureau believes that the notices will ensure, at a minimum, that all borrowers have an opportunity to do so at the early stages of a delinquency.

39(a) Oral Notice

If a borrower is late in making a payment sufficient to cover principal,

[120] *See* Diane Thompson, *Foreclosure Modifications: How Servicer Incentives Discourage Loan Modifications,* 86 Wash. L. Rev. 755, 768 (2011); Kristopher Gerardi & Wenli Li, *Mortgage Foreclosure Prevention Efforts,* 95 Fed. Reserve Bank of Atlanta Econ. Rev. 1, 8–9 (Nov. 2, 2010); Michael A. Stegman *et al., Preventative Servicing is Good for Business and Affordable Homeownership Policy,* 18 Housing Pol'y Debate 243, 274 (2007).

[121] *See, e.g., The Need for National Mortgage Servicing Standards: Hearing Before the Subcomm. on Housing, Transportation, and Community Affairs of the Senate Comm. on Banking and Urban Affairs,* S. Hrg. 112–139, 112th Cong. 122 (2011) (statement of Laurie Goodman).

[122] *See, e.g., The Need for National Mortgage Servicing Standards: Hearing Before the Subcomm. on Housing, Transportation, and Community Affairs of the Senate Comm. on Banking and Urban Affairs,* S. Hrg. 112–139, 112th Cong. 72–73 (2011) (statement of Diane Thompson); *see generally* Thompson, 86 Wash. L. Rev. 755 (2011). The Bureau is aware that the GSEs and other programs, such as HAMP, align servicer incentives to encourage early intervention. *See, e.g.,* Fannie Mae Single-Family Servicing Guide, Part VII § 602.04.05 (2012); Freddie Mac Single-Family Seller/Servicing Guide, Volume 2, Ch. 65.42 (2012); Making Home Affordable Program Handbook, v3.4, at 106 (December 15, 2011). Through this rulemaking, the Bureau is proposing to make early intervention a uniform minimum national standard and part of established servicer practice.

[123] *See, e.g., Are There Government Barriers to the Housing Recovery?: Hearing Before the Subcomm. on Insurance, Housing, and Community Opportunity of the House Comm. on Financial Services,* No. 112–7, 112th Cong. 50–51 (2011) (statement of Phyllis Caldwell, Chief, Homeownership Preservation Office, U.S. Dept. of the Treasury); Freddie Mac, *Foreclosure Avoidance Research II: A Follow-Up to the 2005 Benchmark Study* 8 (2008), available at: *http://www.freddiemac.com/service/msp/pdf/foreclosure_avoidance_dec2007.pdf*; Freddie Mac, *Foreclosure Avoidance Research* (2005), available at: *http://www.freddiemac.com/service/msp/pdf/foreclosure_avoidance_dec2005.pdf.*

[124] *See* Office of the Comptroller of the Currency, *Foreclosure Prevention: Improving Contact with Borrowers,* Insights (June 2007), available at: *http://www.occ.gov/topics/community-affairs/publications/insights/insights-foreclosure-prevention.pdf.*

[125] *See, e.g.,* John C. Dugan, Comptroller, Office of the Comptroller of the Currency, Remarks Before the NeighborWorks America Symposium on Promoting Foreclosure Solutions (June 25, 2007), available at *http://www.occ.gov/news-issuances/speeches/2007/pub-speech-2007-61.pdf*, at 2–3; Laurie S. Goodman *et al., Modification Effectiveness: The Private Label Experience and Their Public Policy Implications,* Amherst Mortgage Insight (Amherst Securities Group LP, June 19, 2012), at 5–6; Stegman *et al., Preventative Servicing,* 18 Housing Pol'y Debate 245; Amy Crews Cutts & William A. Merrill, *Interventions in Mortgage Default: Policies and Practices to Prevent Home Loss and Lower Costs* 11–12 (Freddie Mac, Working Paper No. 08–01, Mar. 2008).

[126] HUD and the VA have promulgated regulations and issued guidance on servicing practices for loans guaranteed or insured by their programs. *See* 24 CFR 203 subpart C (HUD); HUD Handbook 4330.1 rev-5, Chapter 7; 38 CFR 36 subpart A (VA). Fannie Mae and Freddie Mac have established recommended servicing practices for delinquent borrowers in their servicing guidelines and align their modification incentives with the number of days the mortgage loan is delinquent when the borrower enters a trial period plan. *See* Fannie Mae Single-Family Servicing Guide, Part VII (2012); Fannie Mae, Outbound Call Attempts Guidelines (Oct. 1, 2011), available at: *https://www.efanniemae.com/home/index.jsp*; Fannie Mae, Letters and Notice Guidelines (Apr. 25, 2012), available at: *https://www.efanniemae.com/home/index.jsp*; Freddie Mac Single-Family Seller/Servicing Guide, Volume 2, Chapters 64–69 (2012).

interest, and, if applicable, escrow, proposed § 1024.39(a) would require the servicer to notify or make good faith efforts to notify the borrower orally of that late payment and that loss mitigation options, if applicable, may be available. The term ''loss mitigation options'' is defined in proposed § 1024.31 and is discussed in more detail above. The Bureau is proposing this requirement because, as discussed above, evidence suggests that one of the barriers to communication between borrowers and servicers is that borrowers do not know that servicers may be helpful or that they have options to avoid foreclosure. By notifying borrowers through live contact that loss mitigation options may be available, servicers would be able to begin working with the borrower to develop appropriate relief.

Proposed § 1024.39(a) would require servicers to notify borrowers about loss mitigation options ''if applicable.'' Thus, servicers that do not make any loss mitigation options available to borrowers would not be required to notify borrowers that loss mitigation options may be available. In addition, proposed comment 39(a)–1.ii explains that the servicer would not be required to describe any particular option, but instead would need only inform the borrower that loss mitigation options may be available. The Bureau is not proposing that servicers provide borrowers detailed information because not all borrowers may benefit from such a conversation at the time of this contact. However, as explained in proposed comment 39(a)–1.ii, nothing would preclude the servicer from providing more detailed information that the servicer believes would assist the borrower.

During the Small Business Panel Review process, small servicer representatives explained that they are able to distinguish between borrowers who had simply forgotten to mail in a payment from borrowers who were actually having trouble making a payment.[127] The Bureau recognizes that not all borrowers may require information about loss mitigation options in order to become current on their payments, but the Bureau also understands that not all borrowers may be forthcoming regarding the reasons for a delinquency. The Bureau is concerned that these borrowers may not learn about loss mitigation options unless the servicer indicates that help may be available at the time of the proposed oral notice. The Bureau invites additional comment on how servicers typically determine whether and at what stage a borrower should be informed that loss mitigation options may be available.

Proposed comment 39(a)–1.i explains that the oral notice would have to be made through live contact with the borrower, such as by telephoning or meeting in-person with the borrower, and that oral contact does not include a recorded message delivered by phone. The Bureau has included this comment because the Bureau believes that servicers are likely to learn about the circumstances surrounding a borrower's delinquency through an interactive conversation and thus, for example, would be better able to help the borrower identify an appropriate loss mitigation option.

Proposed § 1024.39(a) would also require the servicer to notify or make good faith efforts to provide the oral notice that the borrower is late in making a payment. This oral notice is intended to work in concert with the written periodic statement proposed in the Bureau's 2012 TILA Mortgage Servicing Proposal, which would inform the borrower of any late fees that the borrower faces due to a delinquency. A servicer could, for example, use the oral notice to explain any late charge appearing on the periodic statement the borrower would receive. In addition, by providing this notice through live contact, a servicer could learn about the circumstances of the borrower's delinquency and the borrower's ability to self-cure without the assistance of a loss mitigation option.

Late payment. Proposed § 1024.39(a) would require the servicer to provide the oral notice, or make good faith efforts to do so, if the borrower is late in making ''a payment sufficient to cover principal, interest, and, if applicable, escrow.'' Thus, a servicer would not be required to provide the oral notice if a borrower is late only with respect to paying a late fee for a given billing cycle. The Bureau is proposing this trigger because the Bureau believes there is low risk that borrowers will default solely because of accumulated late charges if they are otherwise current with respect to principal, interest, and escrow payments.

Regulation Z § 1026.36(c)(1)(ii) generally prohibits servicers from ''pyramiding'' late fees—*i.e.,* imposing a late fee or delinquency charge in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment.[128] ''Pyramiding'' late fees can result in future payments being deemed late even if they are paid in full within the required time period, thus permitting the servicer to charge additional late fees. This practice can cause an account to appear to be in default, and thus can give rise to charging excessive or unwarranted fees to borrowers who may be unable to catch up on payments.[129] However, because this practice is prohibited under Regulation Z and other regulations, the Bureau does not expect that borrowers would be likely to be pushed into foreclosure solely because of accumulated late charges if they are otherwise current on their payment. The Bureau has taken the same approach with respect to the written notice that would be required by proposed § 1024.39(b)(1). See the section-by-section analysis below of proposed § 1024.39(b)(1).

Proposed comment 39(a)–3 explains that, for purposes of proposed § 1024.39(a), a payment would be considered late the day after a payment due date, even if the borrower is afforded a grace period before the servicer assesses a late fee. Thus, for example, if a payment due date is January 1, the servicer would be required to notify or make good faith efforts to notify the borrower not later than 30 days after January 1 (*i.e.,* by January 31) if the borrower has not fully paid the amount owed as of January 1 and the full payment remains due during that period. Proposed comment 39(a)–3 contains a cross-reference to proposed comment 39(a)–4, which, as discussed in more detail below, addresses situations in which the borrower satisfies the payment during the 30-day period.

The Bureau recognizes that certain borrowers may be temporarily delinquent because of an accidental missed payment, a technical error in transferring funds, a short-term payment difficulty, or some other reason. These borrowers may be able to cure a delinquency without a servicer's efforts to make live contact. Thus, proposed § 1024.39(a) provides that if the borrower fully satisfies the payment before the end of the 30-day period, the servicer would not be required to provide the notice under proposed § 1024.39(a). Proposed comment 39(a)–4 explains that a servicer would not be required to notify or make good faith efforts to notify a borrower unless the

[127] *See* Small Business Review Panel Report at 25.

[128] The Bureau's 2012 TILA Mortgage Servicing Proposal would redesignate this provision as § 1026.36(c)(2).

[129] *See* 73 FR 44522, 44569 (July 30, 2008).

borrower remains late in making a payment during the 30-day period after the payment due date. To illustrate, proposed comment 39(a)–4 provides an example in which a borrower is initially overdue on a payment due January 1 but satisfies the payment on January 20. In this case, the servicer would not be required to notify or make good faith efforts to notify the borrower by January 31.

Proposed comment 39(a)–6 clarifies that a servicer would not be required under § 1024.39(a) to notify a borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment. The Bureau is proposing this clarification because the Bureau believes it would be unnecessary for a servicer to notify a borrower of a previously missed payment if the borrower is performing under a loss mitigation option designed to cure that delinquency.

30-Day period. Proposed § 1024.39(a) would require servicers to provide the oral notice not later than 30 days after a payment due date. In developing the proposed 30-day time period, the Bureau sought to harmonize the timing of the oral notice with the timing of the periodic statement under the Bureau's 2012 TILA Mortgage Servicing Proposal, as noted above. During the Small Business Review Panel process, some small servicer representatives expressed concern that those servicing loans for agencies with more restrictive timeframes and collection requirements would incur costs if they had to meet duplicative requirements.[130] To address this concern, the Bureau is proposing an outer bound timeframe for servicers to comply with the proposed oral notice. In particular, the Bureau sought to harmonize the timing of the oral notice with existing early intervention standards established by the GSEs, FHA, and VA so that servicers already complying with those standards that meet the Bureau's proposed requirements could comply with proposed § 1024.39.

Fannie Mae and Freddie Mac generally recommend that servicers initiate phone calls for borrowers who have missed a payment by the 16th day after a payment due date.[131] Similarly, HUD generally requires that servicers of FHA loans take ''prompt action'' to collect on delinquent loans.[132] Although servicers may satisfy the ''prompt action'' requirement through a variety of means, HUD recommends that servicers that choose to contact borrowers by telephone begin efforts by the 17th day of a borrower's delinquency and complete them by the end of the month.[133] Servicers of VA loans are generally required to commence efforts to contact borrowers by phone concurrent with sending a written delinquency notice by the 20th day of a borrower's delinquency.[134]

In order to provide servicers with flexibility in contacting borrowers who may have different default risk profiles, the Bureau's proposal would provide servicers with discretion to make the contact at any time during the 30-day period. Thus, servicers who are already providing an oral notice with the information required in proposed § 1024.39(a) sooner than 30 days after a missed payment would be in compliance with the Bureau's proposal. Although some servicers may choose to contact borrowers at a high risk of default within several days after a borrower misses a payment due date,[135] there are drawbacks to requiring servicers to contact all borrowers too soon. Borrowers may not think of themselves as being delinquent until after the expiration of a grace period, which may occur on the 10th or the 15th of the month, and they may consider contact by the servicer before the grace period unwarranted. As noted above, certain borrowers may be temporarily delinquent because of an accidental missed payment, a technical error in transferring funds, a short-term payment difficulty, or some other reason. The Bureau believes these borrowers frequently would be able to self-cure within 30 days of a missed payment.[136]

At the time the Bureau proposed its early intervention requirements for the Small Business Panel, the Bureau considered requiring servicers to contact a delinquent borrower 45 days after the borrower misses a payment.[137] The Bureau is not proposing a 45-day period as the deadline for the oral notice because the Bureau is concerned that allowing servicers to wait this long after a borrower misses a payment to provide initial notice of loss mitigation options may not afford the borrower sufficient time to consider and pursue loss mitigation options. In addition, by 45 days after a payment due date, a borrower may have become late on a second missed payment. The Bureau is concerned that delaying the time in which a servicer must make initial live contact with the borrower may make it more difficult for borrowers to cure their delinquency.

Moreover, based on feedback received from small servicer representatives during the Small Business Panel Review process, the Bureau does not believe a 30-day deadline for the proposed oral notice will present a significant burden. During the Small Business Panel Review process, small servicer representatives explained that they are often in touch with delinquent borrowers well before the 45-day period initially considered by the Bureau,[138] and often within the first ten days of a delinquency.[139] Based on this feedback, the Bureau believe that, with respect to the timeframe in which the Bureau is proposing for servicers to make initial contact,[140] a 30-day deadline for the oral notice would not require small servicers to change their early intervention practices.

The Bureau invites comment on whether the proposed 30-day time period provides borrowers with adequate notice of loss mitigation options while providing servicers

[130] *See* appendix A of the Small Business Review Panel Report.

[131] Freddie Mac recommends servicers contact borrowers within 3 days of a missed payment, unless the servicers uses a behavior modeling tool that would support an alternate approach. Fannie Mae recommends servicers contact ''high risk'' borrowers within 3 days of a missed payment; campaigns for non-high-risk borrowers should begin within 16 days of a missed payment. *See* Fannie Mae Single-Family Servicing Guide, Part VII (2012); Fannie Mae, Outbound Call Attempts Guidelines (Oct. 1, 2011), available at: *https://www.efanniemae.com/home/index.jsp*; Fannie Mae, Letters and Notice Guidelines (Apr. 25, 2012), available at: *https://www.efanniemae.com/home/index.jsp*; Freddie Mac Single-Family.

[132] 24 CFR 203.600.

[133] *See* HUD Handbook 4330.1 rev-5, 7–7(A).

[134] Servicers of VA loans must have collection procedures that include ''An effort, concurrent with the written delinquency notice [mailed no later than the 20th day of delinquency], to establish contact with the borrower(s) by telephone. When talking with the borrower(s), the holder should attempt to determine why payment was not made and emphasize the importance of remitting loan installments as they come due.'' 38 CFR 36.4278(g)(i) and (ii).

[135] For example, the GSEs recommend that servicers begin calling borrowers considered to be at a high risk of default within three days of a missed payment. *See* Fannie Mae Single-Family Servicing Guide, Part VII (2012); Fannie Mae, Outbound Call Attempts Guidelines (Oct. 1, 2011), available at: *https://www.efanniemae.com/home/index.jsp*; Freddie Mac Single-Family Seller/Servicing Guide, Volume 2, Ch. 64.5 (2012).

[136] *See, e.g.,* Amy Crews Cutts & William A. Merrill, *Interventions in Mortgage Default: Policies and Practices to Prevent Home Loss and Lower Costs* 10 (Freddie Mac, Working Paper No. 08–01, Mar. 2008) (explaining that, in one study, there was a ''significant cure rate out of the 30-day delinquency population without servicer intervention,'' but that ''as the time in delinquency increases so does the hurdle the borrower has to overcome to reinstate the loan and the importance of calling the servicer'').

[137] *See* Small Business Review Panel Report at 12.

[138] *Id.* at 24 and at appendix A.

[139] *Id.* at 25.

[140] Small servicers, however, did express concerns about the written early intervention notice, as discussed more in the section-by-section analysis of proposed § 1024.39(b) below.

sufficient flexibility in managing delinquent borrowers with different risk profiles. The Bureau also invites comment on whether the 30-day requirement would pose a substantial conflict with existing servicer practices. The Bureau invites comment on whether servicers should provide the oral notice by some deadline before or after the proposed 30-day period.

Borrower contacts the servicer about a late payment. To account for situations in which a borrower proactively contacts the servicer about a late payment, proposed comment 39(a)–5 explains that, if the borrower contacts the servicer at any time prior to the end of the 30-day period to explain that the borrower expects to be late in making a payment, the servicer could provide the oral notice under proposed § 1024.39(a) by informing the borrower at that time that loss mitigation options, if applicable, may be available. The Bureau recognizes that borrowers may contact the servicer proactively to explain that the borrower expects to become overdue on a payment or to acknowledge an ongoing delinquency. In such cases, it would not be necessary for the servicer to notify the borrower of the delinquency. However, the Bureau believes that borrowers who contact the servicer proactively would benefit from knowing about loss mitigation options for the reasons discussed above.

Proposed comment 39(a)–5.i provides two examples to clarify how servicers would comply with proposed § 1024.39(a) for borrowers who contact the servicer about a late payment. In the example in proposed comment 39(a)–5.i.A, a borrower contacts a servicer on January 25 to explain that he expects to miss a payment due February 1. The borrower satisfies the payment on February 8 and the servicer had not yet notified or made good faith efforts to notify the borrower that loss mitigation options may be available. In this case, the servicer would not be required to notify or make good faith efforts to notify the borrower that loss mitigation options may be available during the 30 days after February 1 because the borrower was able to satisfy the payment within the 30-day period after the payment due date. The proposed comment includes a cross-reference to proposed comment 39(a)–4, which addresses situations in which the borrower satisfies the payment within the 30-day period. The Bureau has included this example because many borrowers are only delinquent for short periods and may be able to self-cure within 30 days after a payment due date. In these cases, the Bureau does not believe it would be necessary to explain that loss mitigation options may be available.

In the example in proposed comment 39(a)–5.i.B, the borrower in the example at proposed comment 39(a)–5.i.A subsequently misses a payment due March 1. However, the borrower does not contact the servicer to explain the March 1 missed payment and the borrower remains late on that payment during the 30 days after March 1. In this case, not later than 30 days after March 1, the servicer would be required to notify or make good faith efforts to notify the borrower orally that he is overdue on the March 1 payment and that loss mitigation options, if applicable, may be available. This comment is intended to clarify that the servicer's obligations to notify a borrower of a late payment is tied to the 30-day period commencing on the date of the late or missed payment. The servicer in the example in proposed comment 39(a)–5.i.B would be required to notify the borrower of the March 1 late payment because the borrower has not contacted the servicer about that payment.

Good faith efforts. The Bureau recognizes that servicers may not always be able to reach a borrower despite the servicer's good faith efforts to make contact. Thus, under proposed § 1024.39(a), if a borrower is late in making a payment, not later than 30 days after the payment due date, the servicer would be required to notify or ''make good faith efforts to notify'' the borrower. Proposed § 1024.39(a) also provides that if the servicer attempts to notify the borrower by telephone, good faith efforts would require calling the borrower on at least three separate days in order to reach the borrower. Proposed comment 39(a)–2 clarifies that, in order to make a good faith effort by telephone, the servicer must complete the three phone calls attempting to reach the borrower by the end of the 30-day period after the payment due date. The proposed comment also explains that a servicer attempting to reach the borrower by telephone should make the first call not later than the 28 days after the payment due date, in order to make three phone call attempts by the 30th day, because each phone call would be required to occur on a separate day, assuming the first two are unsuccessful. The Bureau believes servicers attempting to contact a borrower by phone should be required to make several attempts because of the importance of making contact. The Bureau is proposing to define good faith efforts as requiring that each attempt by phone occur on a different day because the Bureau does not believe that contacting an absent borrower in quick succession on the same day would constitute good faith efforts.

The Bureau is proposing requirements for good faith efforts by telephone because it understands this is a common method by which servicers attempt to reach delinquent borrowers. However, this is not the only way to notify the borrower under proposed § 1024.39(a). Servicers may also provide the oral notice through a live, in-person meeting. The Bureau is interested in whether there are forms of communication other than oral contact that would promote a dialogue between the borrower and the servicer regarding the borrower's delinquency and any appropriate loss mitigation options. For example, the Bureau invites comment on whether text messages or email are as or more effective in communicating with a delinquent borrower and, if so, whether such communications should be required to meet any particular standards to satisfy a good faith effort.

Legal authority. As discussed above, the Bureau has authority to implement requirements for servicers to provide information about borrower options pursuant to section 6(k)(1)(E) of RESPA. As set forth above, the Bureau has determined that providing borrowers with timely information about loss mitigation options and encouraging servicers to work with borrowers to identify any appropriate loss mitigation options are necessary to provide borrowers a meaningful opportunity to avoid foreclosure. Proposed § 1024.39(a) would provide borrowers information about their options by requiring servicers to notify or make good faith efforts to notify borrowers that loss mitigation options, if applicable, may be available to assist them. Accordingly, the Bureau proposes to implement proposed § 1024.39(a) pursuant to its authority under section 6(k)(1)(E) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority under section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the consumer protection purposes of RESPA.

39(b) Written Notice

39(b)(1) In General

Proposed § 1024.39(b)(1) would require the servicer to provide borrowers who are late in making a payment with a written notice

containing information about the foreclosure process, contact information for housing counselors and the borrower's State housing finance authority, and, if applicable, loss mitigation options. This notice would be required to be provided not later than 40 days after the payment due date. The proposed content requirements are discussed in more detail below in the discussion of proposed § 1024.39(b)(2).

Proposed comment 39(b)(1)–1 explains that the written notice would be required even if the servicer provided information about loss mitigation and the foreclosure process previously during the oral notice under proposed § 1024.39(a). The Bureau is proposing to require a written disclosure because borrowers may be unable to adequately assess and recall detailed information provided orally. In addition, a written disclosure would provide borrowers with the ability to review the information or discuss it with a housing counselor or other advisor.

Based on feedback received during the Small Business Review Panel outreach, the Bureau understands that some small servicers may not provide a written notice to delinquent borrowers.[141] The Bureau recognizes that not all servicers may provide written information to borrowers because each borrower may present unique situations. However, as discussed in more detail below, the Bureau believes borrowers would benefit from receiving written information about loss mitigation options, if applicable, and the foreclosure process. To address concerns about requiring an overly-prescriptive written notice that may not account for the variety of situations posed by delinquent borrowers, the Bureau has proposed generally applicable minimum content requirements that can be tailored to specific situations, as discussed in more detail in the section-by-section analysis of proposed § 1024.39(b)(2) below.

In addition, during the Small Business Review Panel outreach, some small servicers indicated they may face costs in developing and providing the written notice.[142] To assist servicers in complying with the written notice, the Bureau has developed proposed model clauses, referenced in proposed § 1024.39(b)(3). The model clauses are discussed in the section-by-section analysis of appendix MS–4. The Bureau also notes that under proposed § 1024.32, discussed above, servicers would be permitted to provide the written notice to borrowers in electronic form, subject to compliance with the consent and other provisions of the E-Sign Act.

Late payment. Similar to the oral notice under proposed § 1024.39(a), proposed § 1024.39(b) would require the servicer to provide the written notice if a borrower is late in making a payment sufficient to cover principal, interest, and, if applicable, escrow. However, unlike the oral notice, the written notice would be required to be provided not later than 40 days after the payment due date. Proposed comment 39(b)(1)–2 includes a cross-reference to proposed comment 39(a)–3 to clarify that, for purposes of calculating when the written notice must be provided, servicers should consider a payment late in the same manner as would they would for purposes of calculating when the oral notice must be provided. Proposed comment 39(b)(1)–2 also provides an example in which a borrower misses a payment due date of January 1 and the payment remains due during the 40-day period after January 1. In this case, the servicer would be required to provide the written notice not later than 40 days after January 1—*i.e.,* by February 10.

40-Day time period. As with the oral notice, the Bureau is proposing to permit servicers to provide the written notice at any time during the 40-day period. Some servicers may choose to provide the written notice earlier for borrowers who pose a high risk of default. The Bureau is proposing a deadline that occurs after the 30-day deadline for the proposed oral notice under § 1024.39(a) to provide servicers an opportunity to tailor the written notice and other information to the borrower's individual circumstances following the oral notice. Some servicers may choose to provide the written notice prior to the oral notice. The Bureau believes servicers should retain flexibility in determining when to provide the written notice.

In addition, the Bureau has selected a 40-day time period to provide borrowers with a reasonable opportunity to cure the delinquency within ten days after servicers would be required to provide the oral notice under proposed § 1024.39(a). Accordingly, proposed comment 39(b)(1)–3 explains that a servicer would not be required to provide the written notice unless the borrower is late in paying the amount owed in full during the 40 days after the payment due date. Proposed comment 39(b)(1)–3 provides an example in which a borrower who is contacted by a servicer on January 20 regarding a missed January 1 payment later satisfies the payment by January 30. In this case, the servicer would not be required to provide the written notice 40 days after January 1—*i.e.,* by February 10. In addition, proposed comment 39(b)(1)–5 clarifies that a servicer would not be required under § 1024.39(b)(1) to notify a borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment. *See* the section-by-section analysis of comment 39(a)–6 (borrower performing under a loss mitigation option) in the discussion of proposed § 1024.39(a) above.

In developing the proposed 40-day time period, the Bureau sought to harmonize the timing of the written notice with the recommended timing for the delivery of similar written notices under standards for servicers of FHA, VA, and GSE loans. HUD generally requires servicers of FHA-insured loans to provide each mortgagor in default HUD's ''Avoiding Foreclosure'' pamphlet, or a form developed by the mortgagee and approved by HUD, not later than the 60th day of delinquency, although HUD recommends sending the form by the 32nd day of delinquency in order to prevent foreclosures from proceeding where avoidable.[143] Servicers of VA loans generally must provide borrowers with a letter if payment has not been received within 30 days after it is due and telephone contact could not be made.[144] Servicers of GSE loans are expected to send a written package soliciting delinquent borrowers to apply for loss mitigation options 31 to 35 days after a payment due date, unless the servicer has made contact with the borrower and received a promise to cure the delinquency within 30 days,[145] although GSE servicers have additional flexibility in providing the solicitation package to certain lower-risk borrowers as late as

[141] *See* appendix A of the Small Business Review Panel Report. Other small SERs, however, that they provide some form of written notice to delinquent borrowers.

[142] *Id.*

[143] *See* 24 CFR 203.602; HUD Handbook 4330.1 rev-5, 7–7(G).

[144] ''This letter should emphasize the seriousness of the delinquency and the importance of taking prompt action to resolve the default. It should also notify the borrower(s) that the loan is in default, state the total amount due and advise the borrower(s) how to contact the holder to make arrangements for curing the default.'' 38 CFR 36.4278(g)(iii).

[145] *See* Fannie Mae, Letters and Notice Guidelines (Apr. 25, 2012), available at: *https://www.efanniemae.com/home/index.jsp*; Freddie Mac Single-Family Seller/Servicing Guide, Volume 2, Chapter 64.5 (2012). During the Small Business Panel Review outreach, SERs that service for Fannie Mae and Freddie Mac generally described strict rules and tight timeframes in dealing with delinquent borrowers. *See* Small Business Review Panel Report at 25.

the 65th day of their delinquency.[146] The Bureau also understands that section 106(c)(5) of the Housing and Urban Development Act of 1968, as amended, generally requires creditors to provide notice of homeownership counseling to eligible delinquent borrowers not later than 45 days after a borrower misses a payment due date. 12 U.S.C. 1701x(c)(5)(B). Similar to the information required under section 106(c)(5) of the Housing and Urban Development Act, the written notice in proposed § 1024.39(b)(2)(vi) would include contact information for housing counselors and the borrower's State housing finance authority, although servicers would be required to provide the written notice not later than 40 days after a borrower misses a payment due date.

At the time the Bureau proposed its early intervention requirements for the Small Business Panel, the Bureau considered requiring servicers to provide delinquent borrowers with written information not later than 45 days after the borrower misses a payment.[147] The Bureau is not proposing a 45-day period for the deadline for the written notice in proposed § 1024.39(a) because, as noted above, the Bureau intended to provide borrowers with a reasonable opportunity to cure a delinquency after receiving the oral notice (which, pursuant to proposed § 1024.39(a), would be required by the 30th day of the borrower's delinquency). The Bureau is aware that some borrowers may be able to self-cure even after they become 30 days delinquent. In light of this, the Bureau invites comment on how far the deadline for the written notice could be extended to permit a borrower to self-cure, while still providing delinquent borrowers with adequate notice of loss mitigation options.

Based on feedback provided during the Small Business Review Panel outreach, the Bureau does not believe a 40-day timeframe for providing the written notice would impose a significant burden for small servicers; small servicer representatives explained that they are generally in touch with delinquent borrowers well ahead of the 45-day time period initially considered by the Bureau.[148]

During informal consultation, some commenters expressed concern that servicers may have difficulty complying with the Bureau's proposed 40-day deadline in light of existing servicer requirements. The Bureau understands that a single deadline for sending the written notice may require some servicers to change their practices with respect to certain borrowers, such as GSE servicers servicing loans for borrowers determined to be at lower risk for foreclosure. To the extent requirements proposed by Bureau overlap with standards imposed by Federal agencies, the GSEs, or others parties, the Bureau expects servicers would abide by stricter standard in order to comply with all requirements. The Bureau, however, continues to consider how it may align its requirements with best practices that help borrowers avoid foreclosure.

Some commenters recommended that the Bureau could address a compliance conflict by extending the deadline for sending the notice. The Bureau is concerned that extending the deadline for the written notice too far into a borrower's delinquency may not provide borrowers sufficient time to process loss mitigation applications before the foreclosure process begins. In addition, there is some risk that borrowers could fall further behind on their payments without knowing how to pursue loss mitigation options. The Bureau recognizes that providing the written notice to all delinquent borrowers within a 40-day period may be unnecessary for some borrowers, such as those who present a low risk of default. To mitigate this potential for unnecessary burden, the Bureau is proposing that the written notice be provided to delinquent borrowers only once every 180-day period, as discussed below in the paragraph heading, ''Frequency of the notice.'' The Bureau invites comment on whether extending the 40-day deadline for the written notice to 45 days, 65 days, or longer would provide borrowers with sufficient notice of loss mitigation options before a servicer begins the foreclosure process.

In developing the proposed 40-day deadline, the Bureau also considered whether to require servicers to provide the written notice not later than five days after a borrower contacts the servicer about the borrower's anticipated difficulty with making a payment.[149] The Bureau has not proposed this requirement but instead is proposing a single 40-day deadline in order to balance the need to provide borrowers with assistance at the early stages of a delinquency with the need to provide clear and enforceable standards. The Bureau is concerned that it may be difficult to enforce a requirement to provide the written notice based on borrowers' explaining that they may have difficulty making a payment, particularly because such a communication may be subject to interpretation. A single 40-day deadline would ensure servicers are accountable to a clear standard that avoids the question of whether borrowers had, in fact, communicated that they expect to have difficulty making payment. In addition, as previously noted, the single 40-day deadline is intended to provide servicers with flexibility to determine the most appropriate time to provide the written notice and to provide borrowers with the opportunity to self-cure. Finally, the Bureau believes that proposed § 1024.36, which would require servicers to respond to information requests, will address situations in which borrowers request information about loss mitigation and foreclosure.

Frequency of the notice. Proposed comment 39(b)(1)–4 explains that a servicer would not be required to provide the written notice under § 1024.39(b) more than once during any 180-day period beginning on the date on which the disclosure is provided. Proposed comment 39(b)(1)–4 further explains that, notwithstanding this limitation, a servicer would still be required to provide the oral notice required under § 1024.39(a) for each payment that is overdue. Proposed comment 39(b)(1)–4 provides an example in which a borrower misses a payment due March 1 and the borrower remains late on that payment during the 40 days after March 1. As would be required under § 1024.39(b)(1), the servicer provides the written disclosure 40 days after March 1—*i.e.,* by April 10. If the borrower subsequently misses another payment due April 1 and remains late on that payment during the 40 days after April 1, the servicer would not be required to provide the written notice again for the 180-day period beginning on April 10, the date the servicer last provided the written notice. However, because the borrower missed payments due on March 1 and April 1, the servicer would be required to provide the oral notice under § 1024.39(a) within the 30-day periods beginning on March 1 and April 1.

During the Small Business Panel Review outreach, a SER expressed concern about sending a written notice each month for borrowers who are consistently behind on their payments.[150] The Bureau does not

[146] The GSEs allow servicers to rely on the results of a behavioral modeling tool to evaluate a borrower's risk profile. *Id.*

[147] *See* Small Business Review Panel Report at 12.

[148] *See* Small Business Review Panel Report at 25 and at appendix A.

[149] *See* Small Business Review Panel Report at 12.

[150] *See* Small Business Review Panel Report at 25.

believe that borrowers who are consistently delinquent would benefit from receiving the same written notice every month. The Bureau expects borrowers would be able to retain the disclosure because, as discussed above, proposed § 1024.32 would require that the disclosure be provided in a form the borrower may keep. However, the Bureau does not believe servicers should only be permitted to provide the written notice once because the content in the written notice may be updated over time. The Bureau notes that providing the written disclosure once during any six-month period is generally consistent with HUD's requirements for servicers of FHA-insured loans. HUD's regulations provide that if an account is brought current and then again becomes delinquent, the ''Avoiding Foreclosure'' pamphlet must be sent again unless the beginning of the new delinquency occurs less than six months after the pamphlet was last mailed.[151] The Bureau solicits comment on whether providing the written disclosure once during any 180-day period is sufficient to provide borrowers with meaningful information.

Legal authority. As discussed above, the Bureau has authority to implement requirements for servicers to provide information about borrower options pursuant to section 6(k)(1)(E) of RESPA. As set forth above, the Bureau has determined that providing borrowers with timely information about loss mitigation options and the foreclosure process, and encouraging servicers to work with borrowers to identify any appropriate loss mitigation options, are necessary to provide borrowers a meaningful opportunity to avoid foreclosure. Proposed § 1024.39(b)(1) sets forth the general requirement that servicers provide borrowers with a written notice about their options by requiring servicers to provide them with a written notice about loss mitigation options and the foreclosure process. Proposed § 1024.39(b)(1) also sets forth timing requirements for the written notice. Accordingly, the Bureau proposes to implement proposed paragraph 39(b)(1) pursuant to its authority under section 6(k)(1)(E) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority pursuant to section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the consumer protection purposes of RESPA.

39(b)(2) Content of the Written Notice

Proposed § 1024.39(b)(2) sets forth information that servicers would be required to include in the written notice. Under paragraphs (b)(2)(i) and (b)(2)(ii) of proposed § 1024.39, the servicer would be required to include a statement encouraging the borrower to contact the servicer, along with the servicer's mailing address and telephone number. Under paragraphs (b)(2)(iii) and (b)(2)(iv) of proposed § 1024.39, the servicer would be required, if applicable, to include a statement providing a brief description of examples of loss mitigation options that may be available, as well as a statement explaining how the borrower can obtain additional information about those options. Proposed § 1024.39(b)(2)(v) would require the servicer to include a statement explaining that foreclosure is a process to end the borrower's ownership of the property. Proposed § 1024.39(b)(2)(v) would also require servicers to provide an estimate for when the servicer may start the foreclosure process. This estimate would be required to be expressed in a number of days from the date of a missed payment. Finally, proposed § 1024.39(b)(iv) would require servicers to include contact information for any State housing finance authorities, as defined in FIRREA section 1301, for the State in which the property is located, and either the Bureau or HUD list of homeownership counselors or counseling organizations.

The Bureau recognizes that some of the proposed content may not appear on forms currently used by servicers. For example, the estimated foreclosure timeline in proposed § 1024.39(b)(3)(v), does not appear on the HUD ''Avoiding Foreclosure'' brochure that servicers of FHA loans are required to send by end of the second month of a borrower's delinquency.[152] Additionally, during the Small Business Panel Review outreach, SERs expressed concern that the information contained in the written notice may differ from written information they currently provide to delinquent borrowers.[153] Small servicers representatives were generally concerned that overly-prescriptive early intervention requirements would interfere with ''high-touch'' engagement with delinquent borrowers, which they explained was frequently tailored to borrowers' particular circumstances; thus, the Small Business Review Panel recommended that the Bureau consider flexible early intervention requirements for small servicers in light of their existing practices.[154]

To accommodate existing servicer requirements and practices, proposed comment 39(b)(2)–1 explains that a servicer may provide additional information beyond the proposed content requirements that the servicer determines would be beneficial to the borrower. In addition, proposed comment 39(b)(2)–2 explains that any color, number of pages, size and quality of paper, type of print, and method of reproduction may be used so long as the disclosure is clearly legible. The Bureau has attempted to propose a minimum amount of content in the proposed notice that will provide delinquent borrowers with helpful information. The Bureau solicits comments on whether the content requirements in proposed § 1024.39(b)(2) would pose a substantial conflict with existing disclosure standards established by Federal agencies, the GSEs, or other existing servicer practices. To the extent the proposed the written notice would provide information not currently being provided by the Federal agencies or the GSEs, the Bureau solicits comment on whether such information would be beneficial to delinquent borrowers. The Bureau solicits comment on the proposed content requirements, described below, and whether alternative or additional content would be beneficial to borrowers.

Content requirements. Proposed § 1024.39(b)(2)(i) would require the written notice to include a statement encouraging the borrower to contact the servicer. The Bureau believes that a statement informing borrowers that the servicer can provide assistance with respect to their delinquency is necessary in order to facilitate a discussion between the borrower and the servicer at the early stages of delinquency. As noted above, many borrowers do not know that their servicer can help them avoid foreclosure if they are having trouble make their monthly payments. The Bureau believes a statement encouraging the borrower to call would remove this barrier to borrower-servicer communication. The Bureau recognizes that not every loss mitigation option may be available or appropriate for every borrower. Therefore, the Bureau is not proposing to require servicers to emphasize any particular loss mitigation option over another. Accordingly,

[151] *See* 24 CFR 203.602; HUD Handbook 4330.1 rev–5, 7–7(G).

[152] *See* 24 CFR 203.602; HUD Handbook 4330.1 rev–5, 7–7(G).

[153] *See* Small Business Review Panel Report at 31.

[154] *Id.*

proposed comment 39(b)(2)(i)–1 explains that the servicer would not be required, for example, to specifically request the borrower to contact the servicer regarding any particular loss mitigation option.

Contact information for the servicer. To facilitate a dialogue between the servicer and the borrower, proposed § 1024.39(b)(2)(ii) would require the written notice to include the servicer's mailing address and telephone number. Pursuant to proposed § 1024.40(a), a servicer would be required to make available direct access to servicer personnel for assistance with curing a delinquency or avoiding a delinquency, default, or foreclosure for any borrower whom a servicer is required to notify that loss mitigation options may be available under proposed § 1024.39(a). Thus, proposed comment 39(b)(2)(ii)–1 explains that, if applicable, a servicer should provide contact information that would put a borrower in touch with servicer personnel under proposed § 1024.40.

Brief description of loss mitigation options. Proposed § 1024.39(b)(2)(iii) would require that the written notice include a statement, if applicable, providing a brief description of examples of loss mitigation options that may be available from the servicer. Proposed comment 39(b)(2)(iii)–1 explains that proposed § 1024.39(b)(2)(iii) does not mandate that a specific number of examples be disclosed, but explains that borrowers are likely to benefit from examples that permit them to remain in their homes and examples of options that would require that borrowers end their ownership of the property in order to avoid foreclosure. The Bureau is not proposing a minimum number of examples because of the difficulty in identifying a minimum number given the variety of loss mitigation options offered by servicers.

At the time the Bureau proposed its early intervention requirements for the Small Business Panel, the Bureau considered requiring servicers to provide a brief description of any loss mitigation programs available to the borrower.[155] However, the Bureau is not proposing that servicers list all of the loss mitigation options they offer because the Bureau is concerned that servicers may have difficulty providing an accurate disclosure if the number of loss mitigation options they offer changes over time. In addition, the Bureau is concerned that a lengthy written notice would undermine the intended effect of encouraging borrowers to contact their servicer to discuss their options. To address the limitation of providing borrowers with information about every option, the Bureau is proposing that the written notice contain contact information for housing counselors and the borrower's State housing finance authority. Housing counselors and State housing finance authorities may be able to provide the borrowers with information about other loss mitigation options that may not be listed on the written notice.

Proposed comment 39(b)(2)(iii)–1 explains that a servicer may include a generic list of loss mitigation options that it offers to borrowers, and that it may include a statement that not all borrowers will qualify for the listed options. Different loss mitigation options may be available to borrowers depending on the borrower's qualifications or other factors. To avoid confusing borrowers, the Bureau believes servicers should be able to clarify that not all of the enumerated loss mitigation options will necessarily be available.

Proposed comment 39(b)(2)(iii)–2 explains that an example of loss mitigation option may be described in one or more sentences. Proposed comment 39(b)(2)(iii)–2 also explains that if a servicer offers several loss mitigation programs, the servicer may provide a generic description of each option instead of providing detailed descriptions of each program. For example, if a servicer provides several loan modification programs, it may simply provide a generic description of a loan modification. The Bureau recognizes that loss mitigation options are complex and providing comprehensive explanations to borrowers about each option may overwhelm a delinquent borrower with information. Thus, the Bureau does not believe that borrowers would benefit from a disclosure with voluminous detail at the early stage of exploring the options. Instead, the Bureau believes that servicers should provide borrowers with a brief explanation and encourage the borrower to contact the servicer to discuss whether any options may be appropriate. The Bureau solicits comment on whether the level of detail that would be required to describe loss mitigation options would be helpful to delinquent borrowers, and if more detail would be valuable, what specific information should be required.

Explanation of how the borrower may apply for loss mitigation options. Proposed § 1024.39(b)(2)(iv) would require the written notice to include an explanation of how the borrower may obtain more information about loss mitigation options, if applicable. Proposed comment 39(b)(2)(iv)–1 explains that, at a minimum, a servicer could comply with this requirement by directing the borrower to contact the servicer for more information, such as through a statement like, ''contact us for instructions on how to apply.''

Proposed comment 39(b)(2)(iv)–1 explains that, to expedite the borrower's timely application for any loss mitigation options, servicers may wish to provide more detailed instructions on how a borrower could apply, such as by listing representative documents the borrower should make available to the servicer, such as tax filings or income statements, and by providing estimates for when the servicer expects to make a decision on a loss mitigation option. Proposed comment 39(b)(2)(iv)–1 also provides that servicers may supplement the written notice with a loss mitigation application form. At the time the Bureau proposed its early intervention requirements for the Small Business Panel, the Bureau considered requiring servicers to provide a brief outline of the requirements for qualifying for any available loss mitigation programs, including documents and other information the borrower must provide, and any timelines that apply.[156] However, the Bureau is not proposing to require servicers to provide this level of detail in order to comply with proposed § 1024.39(b)(2)(iv). Each loss mitigation option may have its own specific documentation requirements and deadlines, and servicers may be unable to provide comprehensive application instructions generally applicable to all options. Additionally, because the Bureau is proposing that servicers only provide examples of loss mitigation options in the written notice, detailed instructions for only the listed options may not be useful for all borrowers.

Foreclosure statement. Proposed § 1024.39(b)(2)(v) would require that the written notice include a statement explaining that foreclosure is a legal process to end the borrower's ownership of the property. Proposed § 1024.39(b)(2)(v) would also require that the notice include an estimate of how many days after a missed payment the servicer makes the referral to foreclosure. Proposed comment 39(b)(2)(v)–1 clarifies that the servicer may explain that the foreclosure process may vary depending on the circumstances, such as the location of the borrower's property that secures the loan, whether the borrower is covered

[155] *See* appendix C of the Small Business Review Panel Report.

[156] *See* appendix C of the Small Business Review Panel Report.

by the Servicemembers Civil Relief Act (50 U.S.C. App. 501 *et seq.*), and the requirements of the owner or assignee of the borrower's loan. Proposed comment 39(b)(2)(v)–2 clarifies that the servicer may qualify its estimates with a statement that different timelines may vary depending on the circumstances, such as those listed in comment 39(b)(2)(v)–1. Proposed comment 39(b)(2)(v)–2 also explains that the servicer may provide its estimate as a range of days.

During the Small Business Review Panel outreach, some small servicer representatives explained that information about foreclosure is typically not provided until after loss mitigation options have been explored.[157] The Bureau believes borrowers would benefit from receiving information about the foreclosure process at the same time the borrower receives information about loss mitigation options. In order for borrowers to understand the choices they face at the early stages of delinquency, the Bureau believes they would benefit from understanding what foreclosure is and approximately when it may begin at the same time that they receive information about loss mitigation options. The Bureau invites comment on this expectation and whether borrowers would benefit from receiving information about foreclosure after servicers provide information about loss mitigation options.

In addition, the Bureau is not proposing that servicers provide detailed information about foreclosure because the Bureau recognizes that foreclosure processes are complex and vary by jurisdiction. The Bureau questions whether borrowers are likely to benefit from detailed information, particularly if they are experiencing financial distress. Nonetheless, the Bureau believes that borrowers should be informed about foreclosure to some degree. The Bureau invites comment on whether borrowers would benefit from knowing when the servicer may begin the foreclosure process and whether servicers anticipate difficulty complying with this requirement.

Contact information for housing counselors and State housing finance authorities. Proposed § 1024.39(b)(vi) would require the written notice to include contact information for any State housing finance authority for the State in which the borrower's property is located, and contact information for either the Bureau list or the HUD list of homeownership counselors or counseling organizations.[158] The Bureau is proposing to include information about housing counselors to provide delinquent borrowers with additional resources to understand their loss mitigation options. The Bureau is proposing to require similar information pertaining to housing counseling resources that would be required on the ARM interest rate adjustment notice and the periodic statement, as provided in the Bureau's 2012 TILA Mortgage Servicing Proposal.[159]

The Bureau is proposing to require that servicers include housing counselor contact information because borrowers may be more willing to contact a housing counselor than their servicer to discuss their options.[160] In addition, a housing counselor could also provide a borrower with additional information about loss mitigation options that a servicer may not have listed on the written notice. However, distressed borrowers may be unaware that they can talk to a housing counselor.[161] The Bureau believes that including housing counseling contact information on the written notice will assist borrowers in learning more about their options and, in turn, help them engage in a constructive dialogue with their servicer.

On July 9, 2012, the Bureau released proposed rules to implement Dodd-Frank Act requirements expanding protections for ''high-cost'' mortgage loans under HOEPA, including a requirement that borrowers receive housing counseling (2012 HOEPA Proposal).[162] The 2012 HOEPA Proposal also proposed to implement other homeownership-counseling-related requirements that are not amendments to HOEPA, including a proposed amendment to Regulation X that lenders provide a list of five homeownership counselors or counseling organizations to applicants for a federally related mortgage loan.[163]

In connection with the written notice for delinquent borrowers, however, the Bureau is not proposing to require that servicers include a list of specific housing counseling programs or agencies (other than the State housing finance authority, discussed below), but instead that servicers provide contact information for either the Bureau list or the HUD list of homeownership counselors or counseling organizations. During informal outreach, some commenters observed that delinquent borrowers may be confused by being directed to contact several different parties in the proposed § 1024.39(b) written notice—the servicer, housing counselors, and the State housing finance authority. As previously noted, the Bureau believes that delinquent borrowers would benefit from knowing how to access housing counselors because they may be more comfortable discussing their options with a third-party. However, the Bureau also understands that there is a benefit to providing distressed borrowers with a clear and concise notice. Providing contact information to access a list of counselors and counseling organizations would reduce the likelihood of information overload while still providing borrowers with access to assistance.

In addition to information about accessing housing counselors, the Bureau is proposing to require that the proposed § 1024.39(b) written notice include contact information for the State housing finance authority located in the State in which the property is located. The Bureau is proposing this because the Bureau believes borrowers are likely to benefit from knowing how to contact their State housing finance authority in the context of receiving information from their servicer about loss mitigation options. The Bureau is proposing that the § 1024.39(b) written notice include contact information for the State

[157] *See* Small Business Review Panel Report at 31.

[158] At the time of publishing, the Bureau list was not yet available and the HUD list was available at *http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm* (HUD Approved Housing Counseling Agencies).

[159] *See* proposed Regulation Z §§ 1026.20(d) and 1026.41(d)(7) in the Bureau's 2012 TILA Mortgage Servicing Proposal.

[160] Some servicers have found that borrowers may trust independent counseling agencies more than they trust servicers. *See* OCC, *Foreclosure Prevention: Improving Contact with Borrowers,* at 6 (June 2007).

[161] *See* Freddie Mac, *Foreclosure Avoidance Research* (2005).

[162] *See* 2012 HOEPA Proposal, available at *http://files.consumerfinance.gov/f/201207_cfpb_proposed-rule_high-cost-mortgage-protections.pdf,* at 29–35.

[163] The list provided by the lender pursuant to proposed requirement in the 2012 HOEPA Proposal would include only homeownership counselors or counseling organizations from either the most current list of homeownership counselors or counseling organizations made available by the Bureau, or the most current list maintained by HUD of homeownership counselors or counseling organizations certified by HUD, or otherwise approved by HUD. The 2012 HOEPA Proposal proposed that the list include five homeownership counselors or counseling organizations located in the zip code of the loan applicant's current address, or, if there are not the requisite five counselors or counseling organizations in that zip code, then counselors or organizations within the zip code or zip codes closest to the loan applicant's current address. To facilitate compliance with the proposed list requirement, the Bureau is expecting to develop a Web site portal that would allow lenders to type in the loan applicant's zip code to generate the requisite list, which could then be printed for distribution to the loan applicant. *See* 2012 HOEPA Proposal at 31–32 (discussing proposed Regulation X § 1024.20(a)).

housing finance authority for the State in which the borrower's property is located. The proposed § 1024.39(b) written notice would be required for delinquent borrowers of federally related mortgages, which are not limited to loans secured by the borrower's principal dwelling. Thus, it is possible that the property securing the federally related mortgage may be located in a different state than the state in which the borrower resides. Accordingly, borrowers who are delinquent with respect to a federally related mortgage secured by a non-residential property may benefit from knowing how to access the State housing finance authority for the State in which the property is located, rather than the State in which the borrower resides.

The Bureau notes that the ARM initial interest rate adjustment notification in the 2012 TILA Mortgage Servicing Proposal would require the contact information for the state housing finance authority for the state *in which the consumer resides* (as opposed to the State in which the property is located).[164] While the Bureau expects the State in which the property is located will most often be the State where the consumer resides, there may be circumstances in which that is not the case. Additionally, the Bureau understands that a difference in requirements for different disclosures may increase compliance costs for servicers. The Bureau invites comment on how the Bureau can best mitigate any compliance difficulties.

More generally, the Bureau solicits comment on the costs and benefits of the provision of information about housing counselors and State housing finance authorities to delinquent borrowers in the proposed notice at § 1024.39(b). The Bureau also solicits comment on the potential effect of the Bureau's proposal on access to homeownership counseling generally by borrowers, and the effect of increased borrower demand for counseling on existing counseling resources, including demand on State housing finance authorities. In particular, the Bureau solicits comment on whether the proposed notice at § 1024.39(b) should include a generic list to access counselors or counseling organizations, as proposed here, or a list of specific counselors or counseling organizations, as was proposed in the 2012 HOEPA Proposal. The Bureau also invites comment on whether including the State housing finance authority would be a helpful additional resource.

Legal authority. As discussed above, the Bureau has authority to implement requirements for servicers to provide information about borrower options pursuant to section 6(k)(1)(E) of RESPA. As set forth above, the Bureau has determined that providing borrowers with timely information about housing counselors and State housing finance authorities, information about loss mitigation options and the foreclosure process, and disclosures encouraging servicers to work with borrowers to identify any appropriate loss mitigation options, are necessary to provide borrowers a meaningful opportunity to avoid foreclosure. Proposed § 1024.39(b)(2) would provide borrowers with information about their options by setting forth the content requirements of the written notice about loss mitigation options and the foreclosure process that would be required under proposed § 1024.39(b)(1). Accordingly, the Bureau proposes to implement proposed paragraph 39(b)(2) pursuant to its authority under section 6(k)(1)(E) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority pursuant to section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the consumer protection purposes of RESPA.

39(b)(3) Model Clauses

Proposed § 1024.39(b)(3) contains a reference to proposed model clauses that servicers may use to comply with the proposed written notice requirement. The proposed model clauses are contained in appendix MS–4. For more detailed discussion of the proposed model clauses, see the section-by-section analysis of appendix MS below.

Legal authority. As discussed above, the Bureau has authority to implement requirements for servicers to provide information about borrower options pursuant to section 6(k)(1)(E) of RESPA. As set forth above, the Bureau has determined that providing borrowers with timely information about housing counselors and State housing finance authorities, information about loss mitigation options and the foreclosure process, and disclosures encouraging servicers to work with borrowers to identify any appropriate loss mitigation options, are necessary to provide borrowers a meaningful opportunity to avoid foreclosure. Proposed § 1024.39(b)(3) contains a reference to model clauses that provide borrowers with information about their options as required under paragraphs (b)(1) and (b)(2) of proposed § 1024.39. Accordingly, the Bureau proposes to implement proposed paragraph 39(b)(3) pursuant to its authority under section 6(k)(1)(E) of RESPA. The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA and has authority pursuant to section 19(a) of RESPA to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the consumer protection purposes of RESPA.

Small Servicers

As discussed above, through outreach with servicers and servicing industry representatives, small servicers expressed concern that compliance with the information request provisions for oral information requests would require small servicers to invest in systems and processes at substantial costs. However, many small servicers generally explained that they did not expect the Bureau's proposed early intervention requirements would impose significant burden because they were already providing early intervention for delinquent borrowers. Accordingly, the Bureau is not proposing to provide small servicers with an exemption from the proposed notice requirements under proposed § 1024.39. However, in light of the feedback provided by SERs during the Small Business Panel Review outreach, as reflected in the Panel Report of the Small Business Panel, the Bureau solicits comment on whether the Bureau should consider alternative means of compliance with proposed § 1024.39 that would provide small servicers with additional flexibility, such as by permitting small servicers to develop a more streamlined written notice under proposed § 1024.39(b).[165]

Relationship With Other Applicable Laws

The Bureau understands that servicers may be subject to State and Federal laws related to debt collection practices, such

[164] *See* proposed Regulation Z § 1026.20(d) in the Bureau's 2012 TILA Mortgage Servicing Proposal. As noted in the section-by-section analysis of the periodic statement proposed in the Bureau's 2012 TILA Mortgage Servicing Proposal, the periodic statement would require servicers to include contact information for the State housing finance authority for State in which the property is located. *Id.* at proposed § 1026.41(d)(7).

[165] *See* Small Business Review Panel Report at 31 (recommending that the Bureau consider flexible early intervention requirements for small servicers).

as the Fair Debt Collection Practices Act, 15 U.S.C. 1692. In addition, the Bankruptcy Code's automatic stay provisions generally prohibit, among other things, actions to collect, assess, or recover a claim against a debtor that arose before the debtor filed for bankruptcy. The Bureau invites comment on whether servicers may reasonably question how they could comply with Bureau's proposal in light of these laws.

Section 1024.40 Continuity of Contact

Background. As discussed in part II, above, the onset of the mortgage crisis revealed that many servicers did not have the infrastructure needed to handle the high volumes of delinquent mortgages, loan modification requests, and foreclosures they faced. Reports of servicers confusing delinquent borrowers with conflicting or misleading information, losing or mishandling borrower-provided documents supporting loan modifications requests, failing to respond to borrowers' inquiries about loss mitigation in a timely manner, and transferring borrowers seeking assistance with loss mitigation from department to department made it apparent that many servicers did not provide appropriately-trained staff to assist delinquent borrowers.[166]

Regulators, both Federal and State, and the GSEs have responded by establishing staffing standards for servicers to meet when they assist delinquent borrowers. For example, in May of 2011, Treasury issued Supplemental Directive 11–04 to require qualifying servicers participating in the Making Home Affordable Program to assign potentially eligible borrowers with a member of the servicer's staff to assist such borrowers throughout their delinquency once a servicer has made a successful effort to communicate with such borrowers about resolution of their delinquency. The staff member assigned to the borrower would have primary responsibility for coordinating the servicer's actions to resolve the borrower's delinquency or default and must perform certain functions with respect to the borrower, such as providing information to the borrower about loss mitigation programs available to the borrower, explaining the requirements of the various programs, notifying a borrower of the need for additional or missing information, being knowledgeable about the borrower's mortgage loan account, and communicating the servicer's decision regarding a borrower's loan modification application.[167] The National Mortgage Settlement, discussed in part II.C, above, establishes similar staffing requirements for servicers to follow [168] As part of the GSE Servicing Alignment Initiative, Fannie Mae and Freddie Mac also established guidelines for servicer to follow when responding to delinquent borrowers to promote consistent borrower communications throughout delinquency.[169] In July 2012, the State of California amended its laws to require servicers to designate personnel on their staff to assist borrowers who are potentially eligible for a federal or proprietary loan modification application.[170]

Similar to the early intervention servicing standards discussed previously, however, there are currently no minimum uniform national standards that apply across the mortgage servicing industry. Proposed § 1024.40, discussed in detail below, would establish minimum staffing requirements that would apply to all mortgage servicers. The proposal is built around three obligations. First, servicers would be required to assign personnel to delinquent borrowers. Second, the servicers would be required to provide delinquent borrowers with live, telephonic responses to inquiries and, as applicable, assist the borrower with loss mitigation options. Third, servicers must establish policies and procedures reasonably designed to ensure that servicer personnel available to the borrower can perform an enumerated list of functions where applicable.

40(a)(1) In General

Proposed § 1024.40(a)(1) provides that no later than five days after a servicer has notified or made a good faith effort to notify a borrower to the extent required by § 1024.39(a), the servicer must assign personnel to respond to the borrower's inquiries, and as applicable, assist the borrower with loss mitigation options. If a borrower has been assigned personnel as required by § 1024.40(a)(1) and the assignment has not ended when servicing for the borrower's mortgage loan has transferred to a transferee servicer, subject to § 1024.40(c)(1)–(4), the transferee servicer must assign personnel to respond to the borrower's inquiries, and as applicable, assist the borrower with loss mitigation options, within reasonable time of the transfer of servicing for the borrower's mortgage loan.

Proposed comment 40(a)–1 explains that for purposes of responding to borrower inquiries and assisting the borrower with loss mitigation options as required pursuant to § 1024.40, the term ''borrower'' includes a person the borrower has authorized to act on behalf of the borrower (a borrower's agent), which may include, for example, a housing counselor or attorney. Servicers may undertake reasonable procedures to determine if such person has authority from the borrower to act on the borrower's behalf. Proposed comment 40(a)–2 clarifies that for purposes of § 1024.40(a)(1), a reasonable time for a transferee servicer to assign personnel to a borrower is by the end of the 30-day period of the transfer of servicing for the borrower's mortgage loan.

Proposed comment 40(a)–3.i. explains that a servicer has discretion to determine the manner by which continuity of contact is implemented. For purposes of § 1024.40(a)(1), a servicer may assign a single person or a team of personnel to respond to a borrower. Proposed comment 40(a)–3.ii. explains that § 1024.40(a)(1) requires servicers to assign personnel to borrowers whom servicers are required to notify pursuant to § 1024.39(a). If a borrower whom a servicer is not required to notify pursuant to § 1024.39(a) contacts the servicer to explain that he or she expects to make be late in making a particular payment,

[166] *See, e.g., Are There Government Barriers to the Housing Market Recover?: Hearings Before the Subcomm. on Insurance, Housing, and Community Opportunity of the House Comm. on Financial Services,* No. 112–7, 112th Cong. 51 (February 16, 2011) (statement of Phyllis Caldwell, Chief, Homeownership Preservation Office, U.S. Department of the Treasury), available at *http://financialservices.house.gov/media/pdf/021611caldwell.pdf; see also* Maryland Foreclosure Task Force, Report, at 22 (January 11, 2012) (describing that consumers continue to face problems of lost documentation, expired authorizations and confusing responses to requests for loss mitigation from multiple representatives within a given servicer) (Maryland Foreclosure Task Force Report), available at: *http://www.mdhousing.org/Website/commTaskForce/documents/Foreclosure_Task_Force_Report_2012.pdf; see also,* Peter S. Goodman, *A Plan to Stem Foreclosures, Buried in a Paper Avalanche,* New York Times (June 29, 2009) (reporting on a number of borrower frustrations with the loan modification process, such as getting transferred from call center to call center and, having to repeatedly resubmit loan modification applications because the servicer could not locate them in its system).

[167] Making Home Affordable, Supplemental Directive 11–04 (May 18, 2011), available at: *https://hmpadmin.com/portal/programs/docs/hamp_servicer/sd1104.pdf.*

[168] National Mortgage Settlement, at A–21–23.

[169] *See* Freddie Mac, Servicing Alignment Initiative: Borrower Contact and Delinquency Management Practices (May 16, 2011), available at: *http://www.freddiemac.com/singlefamily/news/2011/0516_servicing.html; see also* Fannie Mae, Servicing Alignment Initiative—Overview for Fannie Mae Servicers (April 28, 2011), available at: *https://www.efanniemae.com/sf/servicing/pdf/saioverview.pdf.*

[170] *See* Cal SB–900, available at: *http://www.leginfo.ca.gov/pub/11–12/bill/sen/sb_0851–0900/sb_900_bill_20120711_chaptered.html.*

the servicer, at its election, may assign personnel to the borrower. Proposed comment 40(a)–4 explains that § 1024.40(a)(1) does not permit or require a servicer to take any action inconsistent with applicable bankruptcy law or a court order in a bankruptcy case.

The Bureau intends § 1024.40 to work with proposed § 1024.39 (Early Intervention for Requirement for Certain Borrowers) and, as discussed below, with proposed § 1024.41 (Loss Mitigation Procedures). Proposed § 1024.40(a)(1) builds on proposed § 1024.39(a). As discussed previously, the Bureau believes that the borrowers that servicers are required to provide oral notice pursuant to § 1024.39(a) are at high risk of becoming delinquent. As discussed above, common reported frustrations of delinquent borrowers include having to deal with servicers who would transfer them from department to department, getting confusing responses to loss mitigation requests from multiple representatives within a given servicer, and having to resubmit documents that they have previously submitted. By requiring servicers to assign the responsibility to assist delinquent borrowers to specific individuals, the Bureau believes that proposed § 1024.40(a)(1) would bring a more streamlined approach to how servicers communicate with delinquent borrowers. The streamlined approach would be responsive to the most common problems delinquent borrowers have reportedly faced in recent years.

Proposed § 1024.40(a)(1) allows for five days to pass before a servicer makes the assignment. A servicer may find itself faced with a high number of borrowers who are late with respect to making their mortgage payments. The Bureau believes it is appropriate to provide a servicer with some time to make the personnel assignment. Additionally, there could be situations where the servicer complies with the oral notification requirement with respect to a borrower, even though the servicer is not required to do so. For example, a borrower could miss his or her payment due on February 1. On February 29, the end of the month, payment has not been received. The servicer may choose to orally notify the borrower pursuant to proposed § 1024.39(a) on February 29. But so long as the borrower makes his payment by March 1, then pursuant to § 1024.39(a), the borrower would not be a borrower that the servicer is required to notify or make good faith efforts to notify pursuant to proposed § 1024.39(a). Hence the Bureau believes it is appropriate to provide servicers five days to make the personnel assignment. The Bureau invites comment on whether a longer time frame is appropriate.

Proposed comment 40(a)–1, discussed above, reflects that some delinquent borrowers may authorize third parties to assist them as they pursue alternatives to foreclosure. Accordingly, the Bureau seeks to clarify that a servicer's obligation in proposed § 1024.40 extends to persons authorized to act on behalf of the borrower.

Proposed comment 40(a)–2, discussed above, reflects the Bureau's belief that a transferee servicer may require some time after the transfer of servicing to identify delinquent borrowers who had personnel assigned to them by the transferor servicer. The Bureau believes that 30 days is a reasonable amount of time for a transferee servicer to assign personnel to a borrower whose mortgage loan has been transferred to the servicer through a servicing transfer. The Bureau invites comments on whether a longer time frame is appropriate.

Proposed comment 40(a)–3.i. discussed above, is consistent with the Bureau's recognition that a one-size-fits-all approach to regulating the mortgage servicing industry may not be optimal,[171] and thus servicers should be given flexibility to implement proposed § 1024.40. It also reflects the recommendation of the Small Business Review Panel that the Bureau should provide sufficient discretion such that current, successful practices with respect to assisting delinquent borrowers could continue to exist.[172] Proposed comment 40(a)–3.ii explains that if a borrower whom a servicer is not required to notify pursuant to § 1024.39(a) contacts the servicer to explain that he or she expects to be late in making a particular payment, the servicer, at its election, may assign personnel to the borrower. As discussed above in the Bureau's discussion of proposed comment 39(a)–5, many borrowers are delinquent for short periods of time and may be able to self-cure. The Bureau believes that servicers would incur significant cost if they were required to assign personnel to every borrower who contacts the servicer about a possible late payment. The Bureau further believes that the cost of assigning personnel to all such borrowers would be unduly burdensome to the servicer, while yielding little benefit to some of these borrowers. If the borrower who contacts the servicer about a possible late payment still has not made the payment within 30 days of the payment due date, then § 1024.39(a) would require the servicer to make oral contact with the borrower. As discussed previously, no later than five days after a servicer has notified or made a good faith effort to notify a borrower to the extent required by § 1024.39(a), the servicer must assign personnel to respond to the borrower. For these reasons, the Bureau believes it is appropriate to give servicers discretion when deciding whether or not to assign personnel to a borrower whom a servicer is not required to notify pursuant to § 1024.39(a).

Proposed comment 40(a)(1)–4 explains that § 1024.40(a) does not permit or require a servicer to take any action inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. During outreach, the Bureau learned that once a borrower files for bankruptcy, servicers typically transfer the borrower's file to a separate unit of personnel (*i.e.,* personnel who are not part of the servicer's loss mitigation unit), or to outside bankruptcy counsel to comply with bankruptcy law. The Bureau believes a clarification should be provided with respect to the relationship between proposed § 1024.40 and bankruptcy law. The Bureau, however, invites comment on whether servicers should be required to continue providing borrowers with access to personnel assigned to the borrowers to address borrower inquiries and loss mitigation options after borrowers have filed for bankruptcy.

Legal authority. The Bureau proposes to exercise its authority under section 6(k)(1)(E) of RESPA to add new § 1024.40(a)(1) to Regulation X. For reasons previously discussed, the Bureau believes that proposed § 1024.40(a)(1) would bring a more streamlined approach to how servicers communicate with delinquent borrowers. The streamlined approach would be responsive to the most common problems delinquent borrowers have reportedly faced in recent years. Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purpose of RESPA. Accordingly, the Bureau proposes to exercise its authority under section 6(k)(1)(E) of RESPA to add new § 1024.40(a)(1) to Regulation X. The Bureau further has authority under to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, and to make such interpretations as may be necessary to

[171] *See* part II, above.

[172] Small Business Review Panel Report, at 31.

achieve the consumer protection purposes of RESPA.

40(a)(2) Access to Assigned Personnel

Proposed § 1024.40(a)(2) would require a servicer to make access to the assigned personnel available via telephone. If a borrower contacts the servicer and does not receive a live response from the assigned personnel, the borrower must be able to record his or her contact information. The servicer must respond to the borrower within a reasonable time. Proposed comment 40(a)(2)–1 provides that for purposes of § 1024.40(a)(2), three days (excluding legal public holidays, Saturdays, and Sundays) is a reasonable time to respond.

The Bureau previously discussed the importance of interactive conversations with delinquent borrowers in the discussion of proposed § 1024.39(a). For similar reasons, the Bureau is requiring servicers to provide telephone access where the borrower can receive live responses. The Bureau understands that some servicers may have the capacity to engage with borrowers in person. But the Bureau believes that in-person interactions are not practicable for the majority of mortgage servicers. Accordingly, the Bureau is proposing to require live, telephonic access instead. The Bureau, however, recognizes that it is possible that when a borrower calls the servicer, the borrower may not always reach a live person. Additionally, the Bureau does not believe it is necessary to require servicers to make access to a live person available 24 hours a day, seven days a week. Accordingly, the Bureau is proposing to provide servicers with a reasonable time to respond to a borrower if the borrower does not receive a live response. As discussed above, proposed comment 40(a)(2)–1 provides that for purposes of § 1024.40(a)(2), three days (excluding legal public holidays, Saturdays, and Sundays) is a reasonable time to respond. The Bureau invites comments on whether the Bureau should provide for a longer response time.

Legal authority. The Bureau proposes to exercise its authority under section 6(k)(1)(E) of RESPA to add new § 1024.40(a)(2) to Regulation X. The Bureau has previously discussed its belief in the importance of interactive conversations with delinquent borrowers. At the same time, the Bureau recognizes that it is not always possible that when a borrower calls the servicer, the borrower reaches a live person. Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purpose of RESPA. Accordingly, the Bureau proposes to exercise its authority under section 6(k)(1)(E) of RESPA to add new § 1024.40(a)(2) to Regulation X. The Bureau further has authority under section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

40(b) Functions of Servicer Personnel

40(b)(1) In General

Proposed § 1024.40(b)(1) would require servicers to establish policies and procedures reasonably designed to ensure that the servicer personnel it makes available to the borrower pursuant to § 1024.40(a) perform an enumerated list of functions where applicable. The functions include: (1) Providing a borrower with accurate information about loss mitigation options offered by the servicer and available to the borrower based on information in the servicer's possession, actions a borrower must take to be evaluated for loss mitigation options, including what the borrower must do to submit a complete loss mitigation application, as defined in § 1024.41, and if applicable, what the borrower must do to appeal the servicer's denial of the borrower's application, the status of the borrower's already-submitted loss mitigation option, the circumstances under which a servicer must make a foreclosure referral, and loss mitigation deadlines the servicer has established; (2) accessing complete record of the borrower's payment history in the servicer's possession, all documents the borrower has submitted to the servicer in connection with the borrower's application for a loss mitigation option offered by the servicer, and if applicable, documents the borrower has submitted to prior servicers in connection with the borrower's application for loss mitigation options offered by those servicers, to the extent that those documents are in the servicer's possession; (3) providing the documents in § 1024.40(b)(2)(ii)(B)–(C) to persons authorized to evaluate a borrower for loss mitigation options offered by the servicer if the servicer personnel assigned to the borrower is not authorized to evaluate a borrower for loss mitigation options; and (4) within a reasonable time after a borrower request, provide the information to the borrower or inform the borrower of the telephone number and address the servicer has established for borrowers to assert an error pursuant to § 1024.35 or make an information request pursuant to § 1024.36.

Proposed comment 40(b)(1)(iv) clarifies that for purposes of § 1024.40(b)(1)(iv), three days (excluding legal public holidays, Saturdays, and Sundays) is a reasonable time to provide the information the borrower has requested or inform the borrower of the telephone number and address the servicer has established for borrowers to assert an error pursuant to § 1024.35 or make an information request pursuant to § 1024.36. The Bureau invites comment on whether the Bureau should permit servicer a longer time frame to respond.

Proposed § 1024.40(b)(1) reflects the Bureau's belief that having staff available to help delinquent borrowers is necessary, but not sufficient, to ensure that when a borrower at a high risk of default reaches out to a servicer for assistance, the borrower is connected to personnel who can address the borrower's inquiries or loss mitigation requests adequately. The Bureau believes proposed § 1024.40(b)(1) would require servicers to provide appropriately-trained staff to assist delinquent borrowers. Further, as discussed previously, § 1024.40 is intended to work together with proposed § 1024.41 as well as proposed § 1024.39. For example, under proposed § 1024.41, a servicer is required to notify a borrower if the borrower has submitted an incomplete loss mitigation application. Section § 1024.40(b)(1) addresses this duty by requiring the personnel assigned to the borrower to inform a borrower about the steps the borrower must take to complete his or her loss mitigation application.

Another example of how proposed § 1024.40(b)(1) would work with proposed § 1024.41 is that the assigned personnel must provide a borrower with accurate information about any loss mitigation deadlines established by the servicer in accordance with § 1024.41. Proposed § 1024.41 also requires servicers to evaluate borrowers for loss mitigation options if loss mitigation options is offered in the ordinary course of a servicer's business. Section 1024.40(b)(1)(iii), discussed above, would require assigned personnel to provide borrower-submitted documents in support of loss mitigation to other persons authorized to make loss mitigation evaluations. As discussed above, the Bureau believes it is appropriate to provide servicers with discretion on how they assist delinquent borrowers. The Bureau understands that for some servicers, especially servicers

that have a small mortgage servicing portfolio of mortgage loans they originated, the personnel such servicers assign to work with delinquent borrowers typically have authority to evaluate borrowers' loss mitigation applications. But other servicers, especially large servicers or those whose servicing portfolios are made of loans owed by mortgage investors, the process of evaluating borrowers for loss mitigation involves multiple parties. For these servicers, the personnel they assign to a delinquent borrower to provide live, telephonic responses to the borrower's inquiries may not have the authority to evaluate the borrower's loss mitigation application. Pursuant to proposed § 1024.40(b)(1)(iii), the servicer would nonetheless have to ensure that the assigned personnel can provide borrower-submitted documentation to other persons with such authority.

As previously discussed, the Bureau recognizes that mortgage investors and other regulators have responded with requiring servicers to adopt staffing standards. The Bureau proposes the list of functions with an eye to harmonize the various staffing standards that exist. The Bureau believes proposed § 1024.40(b)(1) would complement existing standards. The Bureau also invites comments on whether the Bureau should add additional functions to its proposed list of functions.

Proposed § 1024.40(b)(1)(iv) reflects the Bureau's belief that even if servicers implement policies and procedures that would address staffing failures in mortgage servicing practices, borrowers may seek information that is temporarily unavailable to the servicer. For example, a borrower's most current payment information may not be immediately available because it takes time for the payment to post to the borrower's account. Another example is that documents a borrower has submitted to the servicer in connection with the borrower's loss mitigation application may not be immediately available because it takes the servicer time to process them. Additionally, proposed § 1024.40(b)(1)(iv) indicates the Bureau's belief that the assigned personnel may receive borrower requests that are more appropriately addressed through proposed §§ 1024.35 (Error Resolution Procedures) or 1024.36 (Requests for Information). The Bureau proposes to provide servicers with the discretion to make that determination. But the Bureau notes that even when a borrower request is addressed through proposed §§ 1024.35 or 1024.36, the personnel the servicer assigned to the borrower pursuant to proposed § 1024.40(a) would remain available to the borrower until an event described in § 1024.40(c), discussed below, occurs.

Legal authority. The Bureau proposes to exercise its authority under section (k)(1)(E) of RESPA to add new § 1024.40(b)(1) to Regulation X. As discussed above, proposed § 1024.40(b)(1) reflects the Bureau's belief that having staff available to help delinquent borrowers is necessary, but not sufficient, to ensure that when a borrower at a high risk of default reaches out to a servicer for assistance, the borrower is connected to personnel who can address the borrower's inquiries or loss mitigation requests adequately. The Bureau believes proposed § 1024.40(b)(1) would require servicers to provide appropriately-trained staff to assist delinquent borrowers. The Bureau further has authority under section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

40(b)(2) Safe Harbor

Proposed § 1024.40(b)(2) provides that a servicer's policies and procedures satisfy the requirements in § 1024.40(b)(1) if servicer personnel do not engage in a pattern or practice of failing to perform the functions set forth in § 1024.40(b)(1) where applicable. Proposed comment 40(b)(2)–1.i. provides that for purposes of § 1024.40(b)(2), a servicer exhibits a pattern or practice of failing to perform such functions, with respect to a single borrower, if servicer personnel assigned to the borrower fail to perform any of the functions listed in § 1024.40(b)(1) where applicable on multiple occasions, such as, for example, repeatedly providing the borrower with inaccurate information about the status of the loss mitigation application the borrower has submitted. Proposed comment 40(b)(2)–1.ii. explains that a servicer exhibits a pattern or practice of failing to perform such functions, with respect to a large number of borrowers, if servicer personnel assigned to the borrowers fail to perform any of the functions listed in § 1024.40(b)(1) where applicable in similar ways, such as, for example, providing a large number of borrowers with inaccurate information about the status of the loss mitigation applications the borrowers have submitted.

As discussed above, proposed § 1024.40(b)(1) would establish a new servicer obligation that requires servicers to establish policies and procedures reasonably designed to ensure that the servicer personnel it makes available to a borrower pursuant to § 1024.40(a) perform an enumerated list of functions where applicable. The Bureau recognizes that servicers, after complying with the servicer obligation (*i.e.,* established policies and procedures that are reasonably designed to ensure the personnel they make available borrowers perform the functions listed under proposed § 1024.40(b)(1)), the personnel may occasionally make a mistake and fail to perform an enumerated function. Proposed § 1024.40(b)(2) reflects the Bureau's belief that the occasional mistake is not necessarily indicative of servicers not complying with the servicing obligation in proposed § 1024.40(b)(1).

Legal authority. The Bureau relies on its authority under section 6(k)(1)(E) of RESPA to add new § 1024.40(b)(2) to Regulation X. Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA. As discussed above, the Bureau recognizes that even if a servicer has established policies and procedures that are reasonably designed to ensure that the servicer personnel it makes available to borrowers perform the functions listed under proposed § 1024.40(b)(1), such personnel may occasionally make a mistake. The Bureau believes that an occasional mistake is not necessarily indicative of a servicer's failure to comply with proposed § 1024.40(b)(1). The Bureau further has authority pursuant to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA, and under section 19(a) of RESPA to prescribe such rules and regulations, and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

40(c) Duration of Continuity of Contact

Proposed § 1024.40(c) provides that a servicer shall ensure that the personnel it assigns and makes available to a borrower pursuant to § 1024.40(a) remains assigned and available to the borrower until any of the following occurs: (1) The borrower refinances the mortgage loan; (2) the borrower pays off the mortgage loan; (3) a reasonable time has passed since (i) the borrower has brought the mortgage loan current by paying all amounts owed in arrears, or (ii) the borrower and the servicer have entered into a permanent loss mitigation agreement in which the borrower keeps the property securing the mortgage loan;

(4) 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; or (5) if applicable, a reasonable time has passed since servicing for the borrower's mortgage loan was transferred to a transferee servicer.

Proposed comment 40(c)(3)–1 provides that for purposes of § 1024.40(c)(3), a reasonable time has passed when the borrower has made on-time mortgage payments for three consecutive months. The Bureau notes the ability of a borrower to make on-time mortgage payments for three consecutive months has gained wide acceptance as an appropriate indicator of whether a previously-delinquent borrower could succeed in keeping his or her mortgage loan current. For example, under Treasury's HAMP program, a borrower is put in a trial modification period lasting three months. The borrower must have made all trial period payments to qualify for a permanent loan modification.[173] The Bureau seeks comment on whether criteria other than a borrower making on-time mortgage payments for three consecutive months should be used to determine what is a ''reasonable time'' for purposes of § 1024.40(c)(3). Proposed comment 40(c)(5)–1 provides that for purposes of § 1024.40(c)(5), a reasonable time has passed when servicing for the borrower's mortgage loan was transferred to a transferee servicer 30 days ago. As discussed above in the discussion of proposed comment 40(a)–2, the Bureau believes that the transferee servicer may require up to 30 days from the date of transfer of servicing to identify borrowers who had personnel assigned to them by the transferor servicer. Accordingly, the Bureau believes that it is appropriate to require the transferor servicer to continue providing such borrower with continuity of contact for 30 days following the transfer of servicing. The Bureau, however, seeks comment on whether a longer time period is reasonable.

Legal authority. As discussed above, the Bureau is proposing to establish minimum staffing requirements with respect to how servicers assist delinquent borrowers. The Bureau believes that servicers should be required to provide delinquent borrowers with access to assigned personnel until events occur that indicate assistance is no longer needed or practicable. The events listed in proposed § 1024.40(c)(1)–(4) reflects the Bureau's belief of when assistance is no longer needed. The events listed in proposed § 1024.40(c)(5) indicates when assistance is no longer practicable. As discussed above, section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA. The Bureau proposes to add new § 1024.40(c) to Regulation X pursuant to its authority under section 6(k)(1)(E) of RESPA. The Bureau further has authority under to section 6(j)(3) of RESPA to establish any requirements necessary to carry out section 6 of RESPA. The Bureau has additional authority under section 19(a) of RESPA to prescribe such rules and regulations, and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

40(d) Conditions Beyond a Servicer's Control

Proposed § 1024.40(d) provides that a servicer has not violated § 1024.40 if the servicer's failure to comply with this section is caused by conditions beyond a servicer's control. Proposed comment 40(d)–1 explains that ''conditions beyond a servicer's control'' include natural disasters, wars, riots or other major upheaval, delays or failures caused by third parties, such as a borrower's delay or failure to submit any requested information, disruptions in telephone service, computer system malfunctions, and labor disputes, such as strikes. Proposed § 1024.40(d) reflects the Bureau's belief that even if servicers implement processes that would address staffing failures that had a significant adverse impact on borrowers seeking alternatives to foreclosure, circumstances beyond a servicer's control may occasionally occur that could adversely affect a servicer's ability to provide adequate and appropriate staff to assist delinquent borrowers.

Legal authority. The Bureau proposes to use its authority under RESPA section 6(k)(1)(E) to add new § 1024.40(d) to Regulation X. Section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA. As discussed above, proposed § 1024.40(d) reflects the Bureau's belief that even if servicers implement processes that would address staffing failures that had a significant adverse impact on borrowers seeking alternatives to foreclosure, circumstances beyond a servicer's control may occasionally occur that could adversely affect a servicer's ability to provide adequate and appropriate staff to assist delinquent borrowers. The Bureau additionally relies on its authority under section 6(j)(3) of RESPA to establish any requirements necessary to carry out the purposes of REPSA, and under section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the purposes of RESPA.

Section 1024.41 Loss Mitigation

Background. As discussed above, there has been widespread concern among mortgage market participants, consumer advocates, and policymakers regarding servicers' performance of loss mitigation activity in connection with the mortgage market crisis. In response, servicers, investors, guarantors, and State and Federal regulators have undertaken efforts to adjust servicer loss mitigation and foreclosure practices to address problems relating to evaluation of loss mitigation options. For example:

- Treasury and HUD sponsored the Making Home Affordable program, which established guidelines for Federal government sponsored loss mitigation programs such as HAMP[174];
- The Federal Housing Finance Agency (FHFA) directed Fannie Mae and Freddie Mac to align their guidelines for servicing delinquent mortgages they own or guarantee to improve servicing practices[175];
- Prudential regulators, including the Board and the OCC undertook enforcement actions against major servicers, resulting in consent orders imposing requirements on servicing practices[176];
- The recent national mortgage settlement agreement imposes obligations on servicers, including on the conduct of loss mitigation evaluations[177];
- States have begun to adopt regulations relating to mortgage servicing and foreclosure processing,

[173] Making Home Affordable Program Handbook, v3.4, at 89 (December 15, 2011); *see also* Fannie Mae Single Family Servicing Guide, Ch. 6, § 602 (2012).

[174] *www.makinghomeaffordable.gov.*

[175] Federal Housing Finance Agency, Press Release: Fannie Mae and Freddie Mac to Align Guidelines for Servicing Delinquent Mortgages (April 28, 2011), available at *http://www.fhfa.gov/webfiles/21190/SAI42811.pdf.*

[176] OCC Press Release, *OCC Takes Enforcement Action Against Eight Servicers for Unsafe and Unsound Foreclosure Practices* (April 13, 2011), available at *http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47.html*; Federal Reserve Board of Governors Press Release (April 13, 2011), available at *http://federalreserve.gov/newsevents/press/enforcement/20110413a.htm.*

[177] *www.nationalmortgagesettlement.com.*

including requiring evaluation of loss mitigation options.[178]

Many of these requirements have coalesced around a common set of best practices for servicing. For example, the FHFA servicing alignment initiative, the National Mortgage Settlement, and HAMP all require servicers to review loss mitigation applications within 30 days.[179] While these various initiatives are starting to bring standardization to significant portions of the market, none of them to date have set a consistent national set of procedures and expectations regarding loss mitigation procedures. The Bureau believes that because so much loss mitigation activity is ongoing, and because that activity has such potentially significant impacts on both individual consumers and the health of the larger housing market and economy, consistent uniform minimum regulations would be appropriate and useful to set borrower and servicer expectations and provide necessary consumer protections.

The Bureau has considered a number of different options for addressing consumer harms relating to loss mitigation. In general, the Federal government has at least three approaches to addressing loss mitigation: (1) Establishing processes to facilitate compliance by market participants; (2) mandating outcomes of loss mitigation process (implicitly raising costs to market participants of pursuing actions in violation of the mandated outcomes); or (3) providing subsidies to incentivize the desired outcomes.[180] Only options (1) and (2) were considered by the Bureau in light of the authorities available to the Bureau. Options (1) and (2) present a stark choice: Whether to mandate processes that provide consumer protections without mandating specific outcomes or whether to mandate specific outcomes by establishing criteria. For example, a requirement that a servicer review a completed loss mitigation application establishes process requirements but does not impose requirements on the substance of the servicers review. In contrast, a requirement that a servicer provide a loan modification when an evaluation of a loss mitigation application indicates that a loan modification may be net present value positive would impose an outcome on the process.

At the outset, it is worth noting that the Bureau's goal is not to achieve any particular target with respect to the number or speed of foreclosures. The Bureau's goal rather is to ensure that borrowers are protected from harm in connection with the process of evaluating a borrower for a loss mitigation option and proceeding to foreclosure. For instance, a borrower should not be misled about the options available to the borrower or the steps necessary to seek evaluation for those options. Further, servicers should review complete loss mitigation applications and make appropriate decisions with respect to those submissions.

Evaluating the options available to the Bureau requires comparison across multiple dynamics, including, among others, whether the Bureau has properly identified consumer harm, whether the proposed solutions will effectively address the identified consumer harm, the risk of unintended market consequences and costs, and the appropriate scope of authorities available to the Bureau. By establishing appropriate loss mitigation procedures, the Bureau can ensure that borrowers receive information about loss mitigation options available to them and the process for applying for those options. Further, borrowers should be protected by ensuring that borrowers receive an evaluation for all options for which they may be eligible, have an opportunity to appeal decisions by the servicer regarding loan modification options, and are protected from foreclosure until the process of evaluating the borrower's complete loss mitigation application has ended.

At the same time, the Bureau is concerned that going beyond process rights to give borrowers the ability to file suit over the merits of individual loss mitigation options could have negative effects on the availability and structure of loss mitigation programs and, indeed, of mortgage credit generally. The Bureau is concerned that investors and guarantors could either eliminate loss mitigation efforts altogether or structure them as vague, formless discretionary activities rather than risk significant delays in foreclosure or incur potential liability over the structure and administration of the programs.[181] Alternatively, the prospect of delays and litigation risk might cause in a certain investors and guarantors to significantly reduce mortgage market activity, thus potentially curtailing general access to credit. The Bureau acknowledges the deep frustration and desperate circumstances that record numbers of borrowers face as they struggle to keep their loans current in this difficult economy, and believes that a solution that eliminates or severely restricts the recent increase in loss mitigation initiatives and current access to credit may not be in consumers' best interest or the best interest of the broader market and economy.

Accordingly, proposed § 1024.41 requires servicers that make loss mitigation options available to borrowers in the ordinary course of business to undertake certain duties in connection with the evaluation of borrower applications for loss mitigation options. Proposed § 1024.41 is designed to achieve three main goals: First, proposed § 1024.41 provides protections to borrowers to ensure that, to the extent a servicer offers loss mitigation options, borrowers will receive timely information about how to apply and that a complete application will be evaluated in a timely manner. Second, proposed § 1024.41 prohibits a servicer from proceeding with the end of the foreclosure process—that is, the scheduled foreclosure sale—until a borrower and a servicer have terminated discussions regarding loss mitigation options.[182] Third, proposed § 1024.41

[178] *See, e.g.,* N.Y. Comp. Codes R. & Regs. tit. 3, § 419.1 *et seq.;* 2012 Cal. Legis. Serv. Ch. 86 (A.B. 278) (WEST) amending Cal. Civ. Code § 2923.6.

[179] *See e.g.,* National Mortgage Settlement at Appendix A, at A–26, available at *http://nationalmortgagesettlement.com*; Freddie Mac Single Family Seller/Servicer Guide, Vol. 2 § 64.6(d)(5) (2012); Fannie Mae Single Family Servicing Guide § 205.08 (2012); HAMP Guidelines, Ch. 6 (2011).

[180] *See* Patricia A. McCoy, Barriers to Home Mortgage Modifications During the Financial Crisis, at 4 (May 31, 2012).

[181] Evidence exists that for certain investors and servicers loss mitigation activities may not actually mitigate losses from an investor's perspective when the impact across an entire portfolio is considered. Actions that impose additional costs on loss mitigation activities further incentives not to offer such programs. *See* Christopher Foote, *et al., Reducing Foreclosures: No Easy Answers* (Federal Reserve Bank of Atlanta Working Paper No. 2009–15 (May 2009), available at *http://www.frbatlanta.org/filelegacydocs/wp0915.pdf.*

[182] Although efforts to gather reliable data about the prevalence of problems resulting from proceeding with a foreclosure sale while loss mitigation discussion are ongoing, the Federal Reserve identified anecdotal evidence of these problems as far back as 2008. *See* Larry Cordell *et al., The Incentives of Mortgage Servicers: Myths and Realities,* at 9 (Federal Reserve Board, Working Paper No. 2008–46, Sept. 2008). Anecdotal evidence continues to accumulate. *See, e.g., Haskamp, et al.* v. *Federal National Mortgage Assoc., et al.,* No. 11–cv–2248, Plaintiff's Memorandum of Law In Support of Their Motion For Partial Summary Judgment (D. Minn. June 14, 2012); *Stovall* v. *Suntrust Mortgage, Inc.,* No. 10–2836, 2011 U.S. Dist. LEXIS 106137 (D. Md. September 20, 2011); Debra Gruszecki, *REAL ESTATE: Homeowner Protests ''Dual Tracking,''* Press-Enterprise (June 19, 2012), available at: *http://www.pe.com/local-news/local-news-headlines/20120619-real-estate-homeowner-protests-dual-tracking.ece.* The NCLC conducted a survey of consumer attorneys to identify instances of foreclosure sales occurring while loss mitigation discussions were on-going. Per that survey, 80% of surveyed consumer attorneys surveyed reported an

sets timelines that are designed to be completed without requiring a suspension of the foreclosure sale date to avoid strategic use of these procedures to extend foreclosure timelines and delay investor recovery through foreclosure.

Although the proposed rule would prohibit a servicer from proceeding with a foreclosure sale while a complete and timely application for loss mitigation is pending, the proposal would not prohibit a servicer from taking other steps in the foreclosure process. The Bureau believes that addressing the problems associated with concurrent loss mitigation application and evaluation and foreclosure proceedings requires a balanced approach that considers the needs of consumers, servicers, and mortgage loan investors. This balance considers the interest of consumers in having servicers provide good faith evaluations and implementation of loss mitigation options as well as the interests of investors in obtaining timely recovery on assets for which losses cannot be mitigated consistent with investor requirements.

The Bureau believes that the proposed rule will require servicers to invest in processes to accomplish the regulatory requirements.

The Bureau notes that the steps prior to the scheduled foreclosure sale can vary by servicer, by jurisdiction, by type of proceeding, including judicial and non-judicial foreclosure. Some steps may be internal to an individual servicer, such as referring a case to a foreclosure department. The timing for other steps may be controlled by State law or court rules, which vary among jurisdictions. In some instances, there may be filing deadlines established for a particular matter. The Bureau recognizes that concerns can arise when a servicer proceeds on loss mitigation and foreclosure proceeding tracks simultaneously. At the same time, the Bureau believes that by creating obligations on servicers to provide prompt notice of what is needed to complete a loss mitigation application and prompt decisions on completed applications—and by prohibiting servicers from proceeding to a foreclosure sale while a complete and timely loss mitigation application is pending the proposed rule will address the most problematic issues posed by concurrent evaluation of loss mitigation options and foreclosure proceedings.

The Bureau notes that the protections provided in proposed § 1024.41 will be further augmented by protections in other parts of the servicing proposals that address loss mitigation issues. In proposed § 1024.39, for instance, the Bureau proposes to implement obligations on servicers to contact borrowers early in the delinquency process and to provide information to borrowers regarding loss mitigation options. In proposed § 1024.40, the Bureau proposes to require servicers to provide borrowers with contact personnel to assist the borrower with the process of applying for a loss mitigation option. Such personnel must have access to, among other things, information regarding loss mitigation options available to the borrower, actions the borrower must take to be evaluated for such loss mitigation options, and the status of any loss mitigation application submitted by the borrower. Further, in proposed § 1024.38, the Bureau proposes to require that servicers implement policies and procedures that achieve the objective of reviewing borrowers for loss mitigation options. Finally, in proposed § 1024.35, the Bureau proposes to permit a borrower to assert an error as a result of a servicer's failure to postpone a scheduled foreclosure sale when a servicer has failed to comply with the requirements for proceeding with a foreclosure sale pursuant to proposed § 1024.41(g). All of these protections should be considered together and these protections, when implemented together, will have a substantial impact on reducing consumer harm.

In order to reduce burden to servicers and costs to borrowers, the Bureau has sought to maintain consistency among proposed § 1024.41, the national mortgage settlement, FHFA's servicing alignment initiative, Federal regulatory agency consent orders, and State law mortgage servicing statutory requirements. In certain instances, each of these other sources of servicing requirements may be more restrictive or prescriptive than proposed § 1024.41. That is intentional. Proposed § 1024.41 establishes a floor of minimum consumer protections and provides flexibility for Federal regulatory agency requirements, State law, or investor and guarantor requirements to impose obligations that may be more restrictive on servicers.

The Bureau requests comment on all aspects of the proposal, and, in particular, whether focusing on the provision of procedural rights would be sufficient to significantly improve the efficiency and fairness of loss mitigation processing. The Bureau seeks comment on whether there are additional appropriate measures within the authority of the Bureau, or the Federal agencies collectively, that could be taken to improve loss mitigation outcomes for all parties. The Bureau seeks comment on whether the proposed requirements strike the appropriate balance between ensuring that consumers' timely and complete applications receive fair and full consideration and ensuring predictability of outcomes for investors and guarantors. Finally, and as discussed further below, the Bureau seeks comment on whether the requirements of proposed § 1024.41 would require servicers to undertake practices that conflict with other Federal regulatory agency requirements or State law or may cause servicers to undertake practices that may reduce the value to investors or guarantors of offering loss mitigation options.[183]

41(a) Scope

Proposed § 1024.41(a) provides that the requirements in proposed § 1024.41 apply to any servicer that offers loss mitigation options in the ordinary course of business. The purpose of this provision is to clarify that the requirements in proposed § 1024.41 are applicable only to those servicers that are engaged in a practice in the ordinary course of business of evaluating loss mitigation options for their own portfolios or pursuant to duties owed to investors or guarantors of mortgage loans. These include servicers that participate in the HAMP program sponsored by HUD and Treasury, as well as servicers subject to investor or guarantor requirements, including requirements imposed by Fannie Mae, Freddie Mac, Ginnie Mae, private investors, or government or private guarantors of mortgage loans to evaluate loss mitigation options for non-performing mortgage loans.

Proposed comment 41(a)–1 clarifies that nothing in proposed § 1024.41 is intended to impose a duty on a servicer to offer loss mitigation options to borrowers generally or to offer or

instance of an attempted foreclosure sale while awaiting a loan modification. National Consumer Law Center & National Association of Consumer Bankruptcy Attorneys, *Servicers Continue to Wrongfully Initiate Foreclosures: All Types of Loans Affected* (Feb. 2012), available at *http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/wrongful-foreclosure-survey-results.pdf.*

[183] With respect to investor or guarantor requirements that do not constitute Federal or State law, such as requirements of Fannie Mae, Freddie Mac, or Ginnie Mae requirements, or requirements of federal or state agencies that serve as guarantors of mortgage loans, the Bureau observes that such entities may need to review and adjust their requirements in light of the consumer protections set forth in the proposed rules.

approve any particular borrower for a loss mitigation option. As set forth above, the Bureau does not intend to create a right for borrowers to enforce in private litigation requirements that are imposed by investors or guarantors on servicers to take steps to protect the investors or guarantors from losses that can be avoided. The Bureau believes it is appropriate to clarify in proposed comment 41(a)–1 that the rules do not impose a duty on a servicer to offer loss mitigation or to approve any particular borrower for a loss mitigation option and that the rules should not be construed to impose liability on a servicer, or any other party, for any failure to offer a loss mitigation option, so long as the servicer complies with the procedural requirements of proposed § 1024.41.

Certain servicers that do not evaluate borrowers for loss mitigation options in the ordinary course of business would not be subject to proposed § 1024.41. In proposed comment 41(a)–2, the Bureau sets forth examples of practices that should not be considered, by themselves, considered indicia that a servicer had opted to offer loss mitigation options in the ordinary course of business. For example, it is not the Bureau's intention to impose the requirements in proposed § 1024.41 on servicers that agree to limit adverse consequences to borrowers for making late payments, including by waiving late fees or declining to furnish negative information to a consumer reporting agency or on servicers that have decided to engage in a temporary or pilot program to explore the feasibility of offering certain loss mitigation options. Proposed comment 41(a)–2 clarifies that such practices, which may be the economic equivalent of a loss mitigation option, such as a forbearance plan, should not indicate by themselves that a servicer offers loss mitigation options to borrowers in the ordinary course of business.

41(b) Loss Mitigation Application

Proposed § 1024.41(b)(1) provides that a complete loss mitigation application includes all the information the servicer regularly obtains and considers in evaluating loss mitigation applications. This provision provides each servicer with flexibility to establish requirements regarding the type of information that the servicer deems necessary to determine whether a borrower is eligible for a loss mitigation option based on differing investor or guarantor guidelines.

Upon receipt of an incomplete loss mitigation application, proposed § 1024.41(b)(2) requires servicers to exercise reasonable diligence to obtain the additional information required to make a loss mitigation application complete. To that end, a servicer that receives an incomplete loss mitigation application earlier than 5 days before the timeline established for proposed § 1024.41(f) shall within a reasonable time, but in no event later than 5 days (excluding legal public holidays, Saturdays, or Sundays) provide a notice to a borrower. The notice must state that the application is incomplete, identify the additional information or documents necessary to make the application complete, and provide a deadline by which the borrower must submit the additional information or documents.

The Bureau believes it is appropriate to require that servicers provide the notice within a reasonable time, but in no event later than 5 days (excluding legal public holidays, Saturdays, or Sundays) after receiving the incomplete application. Fannie Mae and Freddie Mac guidelines, as well as the national mortgage settlement, require servicers to provide a substantially similar but, in some cases more prescriptive, notice within 5 business days of receipt of an incomplete application.[184] When a servicer receives an application more than 5 days before the deadline the servicer has established for submitting a complete application, the servicer has sufficient opportunity to review the loss mitigation application, determine the information or documents that have not been provided and provide that information to the borrower. Further, even when a loss mitigation application is submitted less than 5 days (excluding legal public holidays, Saturdays, or Sundays) before the applicable deadline, a servicer must undertake reasonable diligence to obtain the information even if the servicer is not required to provide the notice contemplated by proposed § 1024.41(b)(2).

Proposed § 1024.41(b) does not require a servicer to stop foreclosure proceedings when a borrower submits an incomplete loss mitigation application. Further, unless an incomplete loss mitigation application is made complete by the deadline established by the servicer pursuant to proposed § 1024.41(f), a servicer is not required to comply with the loss mitigation procedures for an incomplete loss mitigation application. The Bureau requests comment regarding whether servicers should be required to undertake any further obligations in connection with an incomplete or substantially complete loss mitigation application and what any further obligations should be.

41(c) Review of Loss Mitigation Applications

Proposed § 1024.41(c) states that, within 30 days of receiving a complete loss mitigation application, a servicer must evaluate the borrower for all loss mitigation options available from the servicer for which the borrower may qualify and provide the borrower with a written notice stating the servicer's determination of whether it will offer the borrower a loss mitigation option. The Bureau believes that it is appropriate to require servicers to evaluate complete loss mitigation applications within 30 days, which is an industry standard, as discussed above.

The Bureau further believes it is appropriate to require a servicer to evaluate a borrower for all loss mitigation options available from the servicer for which the borrower may qualify rather than to require borrowers to select options for which the borrower may be evaluated. A servicer is in a better position than a borrower to determine the loss mitigation programs for which a borrower may qualify. Currently, many investors and guarantors have established set priority orders for evaluating and offering loss mitigation options rather than requiring borrowers to select loss mitigation programs. While borrowers should not be required to select loss mitigation programs themselves for an evaluation, a consequence of ordering loss mitigation programs based on least cost to an investor is that a borrower that may qualify for a program farther down on the priority list may believe that the first option offered is the only option available to the borrower. This may lead to less effective programs, disparate outcomes for similarly situated borrowers, and longer timelines for effectuating loss mitigation options.

The Bureau has proposed that a servicer evaluate a borrower for all loss mitigation programs offered by the servicer for which the borrower may be eligible. The Bureau believes that this will ensure that all borrowers receive fair evaluations for all options available to them and will be able to identify options. Further, servicers will not be required to evaluate borrowers for any programs for which a borrower does not qualify based on eligibility criteria established by investors or guarantors. In sum, investors, guarantors, and

[184] *See United States of America et al.* v. *Bank of America Corp. et al.,* at Appendix A, at A–26, available at *http://nationalmortgagesettlement.com;* Freddie Mac Single Family Seller/Servicer Guide, Vol. 2 § 64.6(d)(4) (2012); Fannie Mae Single Family Servicing Guide § 205.07 (2012).

servicers retain the ability to manage loss mitigation programs to ensure that borrower eligibility and program administration is consistent with investor and guarantor requirements, while borrowers will be able to understand all potential options that may be available.

The Bureau has received feedback that a requirement that servicers evaluate borrowers for all loss mitigation programs offered by the servicer will impact servicers' ability to manage programs through priority ordering of loss mitigation options. The Bureau agrees that the proposed rules would impact the ability to manage programs through the use of a loss mitigation option priority order, as a servicer will be required to evaluate a borrower for all programs and provide a notice of the results of the evaluation for all programs. However, the Bureau believes that servicers will be able to achieve the similar controls through the use of more detailed and comprehensive evaluation criteria and that the requirement will not ultimately impair a servicer's, investor's, or guarantor's ability to manage loss mitigation programs. The requirement that a servicer consider a borrower's application for all loss mitigation programs for which a borrower may qualify is consistent with the national mortgage settlement, which states that ''[u]pon timely receipt of a complete loan modification application, Servicer shall evaluate borrowers for all available loan modification options for which they are eligible * * *.'' [185] Further, the Bureau's proposed requirement eliminates the need for borrowers to submit multiple applications for different loss mitigation options and, thus, provides for more efficient compliance by servicers with the requirements of the rules.

Proposed comment 41(c)(1)–1 clarifies that the servicer's evaluation of a borrower for a loss mitigation option is subject to the eligibility criteria for each loss mitigation option. For example, if a loss mitigation option is only available for military servicemembers, a servicer has conducted a proper evaluation if it determines that the borrower is not a servicemember and, therefore, as a threshold matter is ineligible for the program. Similarly, to the extent eligibility criteria for pilot programs, temporary programs, or programs that are limited by the number of participating borrowers, would exclude a borrower from eligibility, a servicer is not obligated to evaluate the borrower for any such loss mitigation option just as if the eligibility criteria did not exist. Because the requirements of proposed § 1024.41 are not intended to require that a borrower have a right to a loss mitigation option, nothing in proposed § 1024.41 should be construed to prohibit a servicer from imposing any eligibility criteria the servicer (or the investor or guarantor of a mortgage loan) determines is appropriate for a loss mitigation option.

Proposed § 1024.41(c) requires servicers to notify borrowers of the outcome of the servicer's evaluation of the borrower for a loss mitigation option. Notice from the servicer provides certainty to the borrower regarding the outcome and serves as a basis for a borrower to accept, reject, or, where permitted, appeal, the servicer's determination.

The Bureau requests comment regarding whether a servicer should be required to review a borrower for all loss mitigation options for which the borrower may be eligible. The Bureau further requests comment regarding what a servicer's obligation to review a borrower's complete application for a loss mitigation option should be if the obligation is not to review for all loss mitigation options for which the borrower may be eligible.

41(d) Denial of Loan Modification Options

Proposed § 1024.41(d) imposes additional obligations on servicers that deny borrower loss mitigation applications with respect to trial or permanent loan modifications. When a servicer determines that a borrower is not eligible for a loan modification as a loss mitigation option, the written notice provided by the servicer to the borrower must state the specific reasons for the determination and inform the borrower of the right to appeal the servicer's determination pursuant to proposed § 1024.41(h). The notice must include the deadline for filing the appeal and any requirements, such as, for example, forms or documents the borrower must file in connection with the appeal process.

Because the determination that a borrower does not qualify for a loan modification option has significant consequences, the Bureau believes that borrowers should receive accurate information regarding the basis for the servicer's determination. In that regard, proposed comments 41(d)(1)–1 and 41(d)(1)–2 provide examples regarding the information that should be included in the specific reasons provided to the borrower in the notice when a borrower is denied a loan modification on the basis of an investor requirement or a net present value calculation. The Bureau believes this information can assist borrowers in providing appropriate and relevant information to servicers in connection with the appeal process. Further, these requirements are consistent with the national mortgage settlement.[186]

The Bureau requests comment regarding whether servicers should provide the basis for the servicer's determination that a borrower does not qualify for each loan modification program. The Bureau further requests comment on whether servicers should be required to provide the information set forth in proposed comments 41(d)(1)–1 and 41(d)(1)–2 regarding investor requirements and net present value tests. In addition, the Bureau requests comment regarding whether servicers should be required to provide the basis for the servicer's determination that a borrower does not qualify for each loss mitigation program, including non-loan modification programs.

41(e) Borrower Response and Performance

Proposed § 1024.41(e) sets forth standards for when a borrower is considered to have accepted or rejected a loss mitigation option offered by a servicer. Proposed § 1024.41(e) provides that a servicer may impose requirements on the manner in which a borrower must accept or reject a loss mitigation option, subject to standards for acceptance and rejection set forth in the rule. The proposed rule provides that if a borrower does not satisfy the servicer's requirements for accepting a loss mitigation option, but submits the first payment that would be owed pursuant to any such loss mitigation option within the deadline established by the servicer, the borrower shall be deemed to have accepted the offer of a loss mitigation option. This presumption is consistent with the terms of the National Mortgage Settlement. The Bureau recognizes that this proposed standard would set forth a presumption with respect to the parties' intent to enter into an agreement on a loss mitigation option and requests comment regarding whether the Bureau should implement a presumption to establish when parties should be considered to have entered into an agreement on a loss mitigation option.

The Bureau further believes it is appropriate to allow a servicer that has

[185] *See* National Mortgage Settlement at Appendix A, at A–16, available at *http://nationalmortgagesettlement.com.*

[186] *See United States of America et al.* v. *Bank of America Corp. et al.,* at Appendix A, at A–27, available at *http://nationalmortgagesettlement.com.*

not received a response from a borrower to an offer of loss mitigation after 14 days to deem the borrower's lack of a response as a rejection of the loss mitigation option. A 14-day timeframe for a borrower to respond to an offer of a loss mitigation option is consistent with GSE requirements, the National Mortgage Settlement, State law, and Federal regulatory agency requirements.[187]

The Bureau requests comment on whether servicers should be required to allow borrowers to accept or reject offers of loss mitigation options orally, including any compliance burdens imposed as a result of any such requirement.

41(f) Deadline for Loss Mitigation Applications

Proposed § 1024.41(f) states that a servicer may set a deadline by which a borrower must submit a complete loss mitigation application, so long as any such deadline is no earlier than 90 days before a scheduled foreclosure sale. A 90-day threshold appears to set an appropriate balance. A servicer that sets a deadline for complete loss mitigation applications of 90 days before a scheduled foreclosure sale will have 30 days to review a borrower's application for a loss mitigation option, will be able to provide the borrower with 14 days to respond to the servicer's offer of a loss mitigation option and/or to file an appeal, will be able to consider any timely appeal during a subsequent 30 day period, and will be able to provide the borrower with an additional 14 days to respond to any offer of a loss mitigation option after an appeal. A servicer's decision on an appeal is not itself subject to appeal and a servicer is not required to consider any further appeals after the initial appeal. Thus, with the timeline set forth, a servicer must complete the entire process within 88 days. Because a servicer has the flexibility to establish a deadline that is no earlier than 90 days before foreclosure sale, the process can be completed without rescheduling the foreclosure sale.

Comment 41(f)–1 clarifies that where a foreclosure sale has not been scheduled, or where a foreclosure sale may occur less than 90 days after the sale is scheduled pursuant to State law, a servicer should establish a deadline that is no earlier than 90 days before the day that a servicer reasonably anticipates that a foreclosure sale will be scheduled.

41(g) Prohibition on Foreclosure Sale

Proposed § 1024.41(g) provides that if a servicer receives a complete loss mitigation application by the deadline established pursuant to proposed § 1024.41(f), the servicer may not proceed to foreclosure sale unless: (1) The servicer denies the borrower's application for a loss mitigation option and the appeal process is inapplicable, the borrower has not requested an appeal, or the time for requesting an appeal has expired; (2) the servicer denies the borrower's appeal; (3) the borrower rejects a servicer's offer of a loss mitigation option; or (4) a borrower fails to perform pursuant to the terms of a loss mitigation option.

The Bureau believes it is appropriate to require that if a servicer offers loss mitigation options to borrowers in the ordinary course of business, and the borrower submits a complete application for a loss mitigation application by the deadline established by the servicer, a servicer should not proceed with a scheduled foreclosure sale until the servicer and borrower have terminated discussions regarding the loss mitigation option. The Bureau believes this point occurs when a borrower is denied for a loss mitigation option (and any appeal process has ended) or where a borrower rejects a servicer's offer of a loss mitigation option.

Further, the Bureau believes it is appropriate to suspend a scheduled foreclosure sale when a borrower is performing under an agreement on a loss mitigation option. A servicer's basis for servicing a mortgage loan, and undertaking actions to collect on an unpaid obligation, emanates from the contractual relationship between the owner or assignee of the mortgage loan and the borrower. A servicer's determination to hold a scheduled foreclosure sale when a borrower is performing under an agreement that forestalls foreclosure violates the agreement entered into with the borrower. Additionally, it is already standard industry practice for a servicer to suspend a scheduled foreclosure sale during any period where a borrower is making payments pursuant to the terms of the trial loan modification.

In terms of workflow, when a servicer receives a complete loss mitigation application, it will either offer the borrower a loss mitigation option or deny the borrower's request for a loss mitigation option. If the borrower's request is denied, the borrower may file an appeal if the denial concerns a trial or permanent loan modification. Upon reviewing the appeal, a servicer will determine to either offer the borrower a loss mitigation option or, again, to deny the borrower's request for a loss mitigation option. If the request is denied, then the servicer may proceed to a foreclosure sale. If a loss mitigation option is offered, either after the initial evaluation or after appeal, a borrower may either accept or reject the offer of the loss mitigation option. If the borrower rejects the loss mitigation option, the servicer may proceed to a foreclosure sale. If the borrower accepts the loss mitigation option, the borrower will either perform or fail to perform pursuant to the terms of the agreement on the loss mitigation option. If a borrower fails to perform pursuant to the terms of the agreement on the loss mitigation option, the servicer may proceed with the foreclosure sale.

Proposed comments 41(g)–1 and 41(g)–2 clarify the application of the borrower performance definitions with respect to short sales. Typically, a short sale will include a listing or marketing period during which a servicer will agree to postpone a foreclosure sale in order to allow a borrower to market a property for a short sale transaction. The proposed comments clarify that a borrower is performing under the terms of a short sale agreement or other similar loss mitigation agreement during the term of any such marketing or listing period, and any terms subsequent to such periods, if a short sale transaction is approved by all relevant parties, and the servicer has received proof of funds or financing.

Further, a servicer's failure to suspend a scheduled foreclosure sale when a servicer has failed to comply with the requirements of proposed § 1024.41(g) is defined as a covered error in proposed § 1024.35(b)(9). A borrower will be able to assert this error and require a servicer to engage in the error resolution procedures to address this error. In order to avoid the use of this requirements, and the error resolution procedures, as a strategic tool to delay foreclosure, the Bureau has proposed § 1024.35(f)(2), which provides that if an error relating to a servicer's failure to suspend a foreclosure sale is asserted seven days or less before a scheduled

[187] *See, e.g.,* National Mortgage Settlement, at Appendix A, at A–17, available at *http://nationalmortgagesettlement.com*; Freddie Mac Single Family Seller/Servicer Guide § 64.6(d)(5) (2012); Fannie Mae Single Family Servicing Guide § 103.04 (2012); 2012 Cal. Legis. Serv. Ch. 86 (A.B. 278) (WEST) amending Cal. Civ. Code § 2923. Moreover, Fannie Mae servicing guidelines provide a servicer's review of a borrower's application for a loss mitigation option must not exceed 30 days and that if a servicer receives a borrower response package before 37 days prior to the foreclosure sale date, no delay in legal action is required, unless an offer is made and the foreclosure sale is within the borrower's 14-day response period. *See* Fannie Mae Single Family Servicing Guide §§ 103.04, 107.01.02 (2012).

foreclosure sale, the servicer is not required to comply with the full error resolution procedures and may, alternatively, respond to the borrower orally or in writing in response to the notice of error. Because the requirements of proposed § 1024.41 are procedural in nature, the Bureau believes that servicers will be able to resolve and respond to any assertions of error on a very expedited basis by confirming that the appropriate procedure was followed.

By prohibiting a servicer from proceeding with a scheduled foreclosure sale until termination of loss mitigation discussion, the Bureau proposes to eliminate the clearest harms on borrowers resulting from servicers pursuing loss mitigation and foreclosure proceedings concurrently.

41(h) Appeal Process

Proposed § 1024.41(h) would require servicers to establish an appeals process to review denials of complete loss mitigation applications for loan modifications. Limiting the appeals process only to denials of loan modifications reduces burdens on servicers and maintains consistency with existing appeals and escalation processes established under State law or Federal regulatory agency requirements. For example, the appeal process established by the national mortgage settlement relates to denials of first lien loan modification denials.[188] Further, the recent California Homeowner Bill of Rights provides for an appeal process for denials of first lien loan modification.[189] Moreover, loan modifications are some of the most complex loss mitigation programs with respect to the evaluation of borrowers, and the Bureau believes that loan modification provides an appropriate scope for an appeal process.

Pursuant to proposed § 1024.41(h), if a servicer reviews an appeal and determines to offer a loss mitigation option, the servicer shall not foreclose on a borrower unless the borrower rejects the offer of the loss mitigation option or fails to comply with terms of the loss mitigation option. If a servicer denies a borrower's appeal of a loss mitigation option, the servicer may proceed with a foreclosure sale.

Proposed § 1024.41(h) would provide that an appeal must be reviewed by servicer personnel that were not directly involved in the initial evaluation. The Bureau believes that this basic safeguard would help to reduce the risk of bias in the appeals process, since the person who made the initial decision may have a particularly strong interest in upholding that decision. Proposed comment 41(h)(3)–1 clarifies that supervisory personnel that supervised the personnel that conducted the initial evaluation may conduct the appeal evaluation if they were not directly involved in the initial evaluation. Proposed § 1024.41(h)(4) provides for the servicer to provide a written notice to the borrower stating the servicer's determination.

The Bureau requests comment on whether to require servicers to engage in an appeals process. Further, the Bureau requests comment on whether the appeals process should be limited to denials of loan modifications and other similar loss mitigation options. Further, the Bureau requests comment regarding the impact on small servicers (as that term is defined in the 2012 TILA Servicing Proposal) of the requirement that the appeal must be evaluated by servicer personnel that were not directly involved in the initial loss mitigation application evaluation, and where such requirement should be modified or eliminated for small servicers.

41(i) Duplicative Requests

Proposed § 1024.41(i) provides that a servicer is only required to comply with the requirements of proposed § 1024.41 if a borrower has not previously been evaluated for loss mitigation options for the borrower's mortgage loan account by that servicer. Thus, a servicer is not required to apply the requirements of § 1024.41 to a subsequent complete application for a loss mitigation option. In situations where servicing has transferred after the borrower received an evaluation on a complete loss mitigation application from the transferor servicer, the transferee servicer may be required to comply with the requirements of proposed § 1024.41. The Bureau believes that when an investor is transferring servicing to a new servicer, which may have been driven by owner or assignee's determination that the new servicer can better achieve loss mitigation options with borrowers, borrowers should be able to renew an application for a loss mitigation option with the transferee servicer, subject to the applicable deadlines and requirements in proposed § 1024.41.

The Bureau requests comment regarding whether a borrower should be entitled to renewed evaluation for a loss mitigation option if an appropriate time period has passed since the initial evaluation or if there is a material change in the borrower's circumstances. If so, the Bureau requests comment on what should constitute appropriate time periods and requirements applicable to such reviews.

41(j) Other Liens

Proposed § 1024.41(j) provides that any servicer that receives a complete loss mitigation application shall (1) within 5 days, determine if any other servicers service mortgage loans that have senior or subordinate liens encumbering the property that is the subjection of the loss mitigation application, and (2) provide the loss mitigation application received from the borrower to the other servicer.

Loss mitigation applications for properties encumbered by multiple liens present some of the most difficult loss mitigation situations for investors and borrowers. The Bureau believes it is appropriate to impose on servicers the obligation (1) to identify other servicers that may be impacted by loss mitigation evaluation for a property and (2) to provide the loss mitigation application from the borrower to the other servicers. When the other servicer receives the loss mitigation application, that servicer shall be required to comply with the requirements of proposed § 1024.41 if the servicer offers loss mitigation options to borrowers in the ordinary course as required by proposed § 1024.41(a). Further, the servicer that receives the loss mitigation application from another servicer shall be required to comply as if the servicer received the application from the borrower. For example, if the initial servicer passes an application to the other servicer that is incomplete under the other servicer's guidelines, the other servicer would be required pursuant to proposed § 1024.41(b)(2)(ii) to provide the borrower with the incomplete loss mitigation application notice.

The Bureau notes that the Gramm-Leach-Bliley Act as implemented by Regulation P does not require provision of an initial notice and opt-out in connection with providing the loss mitigation application submitted by a borrow to another servicer under the exception set forth in 12 CFR 1016.15(a)(7).

Small servicers. The Bureau is conscious of the potential impacts of the loss mitigation requirements on small servicers. In order to gain feedback on small servicer impacts, the Bureau participated in a Small Business Review Panel and conducted outreach with SERs. At the time the Small Business Review Panel outreach was conducted, the Bureau had not decided to include a separate provision concerning loss

[188] *See* National Mortgage Settlement, at Appendix A, at A–27, available at *http://nationalmortgagesettlement.com.*

[189] *See* 2012 Cal. Legis. Serv. Ch. 86 (A.B. 278) (WEST) amending Cal. Civ. Code § 2923.6.

mitigation procedures. Rather, the Bureau solicited feedback from the SERs on many elements of the loss mitigation process in conjunction with other elements of the servicing proposals, including impacts on loss mitigation processes of small servicers from proposed rules relating to error resolution, reasonable information management policies and procedures, early intervention for troubled or delinquent borrowers, and continuity of contact. In particular, the Bureau requested feedback from small servicers on the following: (1) A duty to suspend a foreclosure sale while a borrower is performing as agreed under a loss mitigation option or other alternative to foreclosure; (2) the ability to adopt policies and procedures to facilitate review of borrowers for loss mitigation options; (3) the ability to provide information regarding loss mitigation early in the foreclosure process to borrowers; and (4) the ability to provide borrowers with the opportunity to discuss evaluations for loss mitigation options with designated servicer contact personnel.[190]

The SERs generally informed the Small Business Review Panel that they engaged in individualized contact with borrowers early in the foreclosure process, that some servicers completed discussions of loss mitigation options with borrowers prior to a point in time when borrowers should receiving significant foreclosure related information, and generally worked closely with foreclosure counsel such that foreclosure processes and loss mitigation could be easily conducted simultaneously without prejudice to the loss mitigation process. Further, the SERs explained that they were willing to communicate with borrowers about loss mitigation contemporaneously with the foreclosure process, and one small entity representative indicated that it would be willing to bring a mortgage file back to the servicer for consideration of a modification and halt the foreclosure process, if appropriate.[191]

Based in part on the outreach with the SERs on April 24, 2012, as well as other feedback obtained by the Bureau after that outreach meeting, the Bureau considered proposing clearer and more detailed requirements relating to loss mitigation practices. The Bureau determined, for the sake of clarity and consistency, to include loss mitigation obligations as a separate section, rather than embedding the requirements within the provisions relating to error resolution, reasonable information management policies and procedures, early intervention for troubled or delinquent borrowers, and continuity of contact.

The Bureau believes that adding a separate section to address loss mitigation builds upon the feedback received by the Bureau as set forth in the Small Business Review Panel Report, although that report and the outreach meeting with SERs were not structured around the discussion of regulations relating to loss mitigation obligations as a separate section and did not focus in significant detail on some of the specific measures proposed here such as, for example, appeals of loss mitigation determinations. The Bureau also believes that adding a separate section to address loss mitigation provides greater regulatory clarity to servicers, including small servicers. Therefore, the Bureau specifically requests comment from small servicers (as that term is defined in the 2012 TILA Servicing Proposal) regarding the potential impacts of the loss mitigation requirements in proposed § 1024.41 on small servicers. Specifically, as set forth above, the Bureau requests comment of the requirement that an appeal must be evaluated by servicer personnel that were not directly involved in the initial loss mitigation application evaluation.

Legal authority. In proposing § 1024.41, the Bureau relies on its authority in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA and section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA. Further, proposed § 1024.41 implements, in part, a servicer's obligation to take timely action to correct errors relating to avoiding foreclosure in section 6(k)(1)(C) of RESPA by establishing servicer duties to avoid foreclosure that are the subject of the error resolution provisions in proposed § 1024.35.

The Bureau further relies on its authority in section 19(a) of RESPA to make such rules and regulations and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA.

Appendix MS

Appendix MS to part 1024 sets forth model forms, model clauses that servicers may use to comply with the mortgage servicing requirements of Regulation X. As discussed in detail below, the Bureau proposes to modify the model form applicable to servicing transfer disclosure requirements, to add a new model for force-placed insurance disclosure requirements, and to add new model clauses for early intervention notice requirements. The Bureau is proposing official commentary that would apply to existing model forms MS–1 and MS–2, as well as a proposed model form MS–3 for the proposed force-placed insurance disclosure and proposed model clauses at MS–4 for the proposed early intervention written notice. The Bureau is proposing these comments to provide guidance that would be generally applicable for the mortgage servicing model forms and clauses. The Bureau solicits comment on the appropriateness of this guidance for the mortgage servicing disclosures.

Proposed comment MS–1 explains that appendix MS contains model forms and clauses for mortgage servicing disclosures. Each of the model forms is designated for use 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 properly will be deemed to be in compliance with the regulations with regard to those disclosures. To use the forms appropriately, information required by regulation must be set forth in the disclosures.

Proposed comment MS–2 explains that 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: (1) Use of ''borrower'' and ''servicer'' instead of pronouns; (2) substitution of the words ''lender'' and ''servicer''; and (3) addition of graphics or icons, such as the servicer's corporate logo.

Appendix MS–2—Model Form for Mortgage Servicing Transfer Disclosure

Appendix MS–2 to part 1024 sets forth the format for the servicing transfer disclosure required pursuant to section 6(a)(3) of RESPA and proposed § 1024.33(b)(5). The Bureau proposes to revise the model form in appendix MS–2 to significantly reduce the length of the require disclosure to borrowers in connection with mortgage servicing transfers.

As a preliminary matter, the Bureau observes that unless a transferor and transferee servicer coordinate to provide a consolidated disclosure, a borrower

[190] *See* Small Business Review Panel Report, appendix C at 19, 22, 24–26.

[191] *See* Small Business Review Panel Report at 26.

will receive substantially similar disclosures in the form of appendix MS–2 from both a transferor servicer and a transferee servicer. The Bureau is concerned that the volume of the disclosure may overwhelm borrowers, who will not focus on the information set forth in the form, while also imposing a burden on servicers to provide lengthy and unnecessary disclosures.

The Bureau proposes to streamline the language of the model form to focus on only the elements of information that a borrower needs in connection with a mortgage servicing transfer, specifically (1) the date of the transfer, (2) contact information for the transferor servicer, (3) contact information for the transferee servicer, (4) applicable dates for when each of the servicers will begin or cease to accept payments, (5) the impact of the transfer on any insurance products and (6) a statement that the transfer does not otherwise affect the terms or conditions of the mortgage loan.

The Bureau proposes to remove significant discussion in the model form regarding the availability of the qualified written request process and the borrower's rights pursuant to RESPA. Information regarding the qualified written request process is likely to confuse borrowers in light of the proposed error resolution and information requirements set forth in this proposal. Further, the Bureau believes that error resolution and information request requirements are more effective by requiring servicers to respond to the notices of error and inquiries they receive as a result of having provided the appropriate contact information on the form. Further, the Bureau observes that this additional content is not required by section 6(a)(3) of RESPA. In light of these obligations, the Bureau does not believe the added discussion of the qualified written request process and RESPA provided additional practical value to consumers and detract from other important content of the form.

The Bureau relies on its authority in sections 6(a)(3), 6(j)(3), and 19(a) of RESPA to set forth requirements on servicers with respect to providing the mortgage servicing transfer notices required by section 6(a)(3) of RESPA.

Appendix MS–3—Model Force-Placed Insurance Notice Forms

Appendix MS–3 to part 1024 sets forth model forms that mortgage servicers may use to comply with the Bureau's force-placed insurance disclosure requirements. As discussed previously in the Bureau's discussion of proposed appendix MS, servicers are not required to use model forms to comply with the mortgage servicing disclosures of Regulation X, including the disclosures set forth in proposed § 1024.37. Using the model forms properly, however, will be deemed to be in compliance with regulation with regard to those disclosures.

Proposed comment MS–3–1 provides that the model form MS–3(A) illustrates how a servicer may comply with § 1024.37(c)(2). Proposed comment MS–3–2 provides that the model form MS–3(B) illustrates how a servicer may comply with § 1024.37(d)(2)(i). Proposed comment MS–3 provides that the model form MS–3(C) illustrates how a servicer may comply with § 1024.37(d)(2)(ii). Proposed comment MS–3–4 provides that model MS–3(D) illustrates how a servicer may comply with § 1024.37(e)(2). Proposed comment MS–3–5 provides that 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, as applicable, ''homeowner's insurance'' or ''property insurance.'' The Bureau, however, notes that proposed MS–3–5 does not permit the servicer to use the term ''homeowner's insurance'' to describe force-placed insurance.

As discussed previously, the Bureau believes that it is necessary and appropriate to carry out and achieve the purposes of RESPA section 6, and the consumer protections of RESPA, to facilitate compliance with the new Dodd-Frank Act requirements about advance notification before servicers charge borrowers for force-placed insurance. The Bureau's proposed force-placed insurance notice requirements are set forth in the model forms in proposed appendix MS–3. The Bureau proposes to exercise its authority under RESPA sections 6(j)(3), 6(k)(1)(E), and 19(a) to add new appendix MS–3 to Regulation X. Also as discussed previously, the Bureau has additional authority pursuant to Dodd-Frank Act section 1032 to provide model forms by adding new appendix MS–3.

Appendix MS–4—Model Clauses for the Written Early Intervention Notice

Model clauses in proposed appendix MS–4 illustrate the disclosures that would be required under proposed § 1024.39(b)(1). They encourage the borrower to contact the servicer and provide information about loss mitigation options, foreclosure, and housing counselors. Clauses in Model MS–4(A) illustrate how a servicer may provide its contact information and how a servicer may request that the borrower contact the servicer, as would be required under proposed § 1024.39(b)(2)(i) and (ii).

Clauses in Model MS–4(B) illustrate how the servicer may inform the borrower of loss mitigation options that may be available, as would be required under proposed § 1024.39(b)(2)(iii). Model MS–4(B) does not contain sample clauses for all loss mitigation options that may be available; they illustrate only four commonly offered examples: (1) Forbearance, (2) mortgage modification, (3) short-sale, and (4) deed-in-lieu of foreclosure. These examples of loss mitigation options may not necessarily accurately reflect the servicer's loss mitigation programs. Thus, proposed comment MS–4–2 explains that the language in proposed Model MS–4(B) is optional, and that a servicer may add or substitute any examples of loss mitigation options the servicer offers, as long as the information required to be disclosed is accurate and clear and conspicuous. Clauses in Model MS–4(C) illustrate how the servicer may inform the borrower how to obtain additional information about loss mitigation options, as would be required under proposed § 1024.39(b)(2)(iv). If the servicer offers no loss mitigation options, a servicer may not include Models MS–4(B) and MS–4(C) because including those statements would be misleading. The Bureau solicits comment on the examples of loss mitigation options and the descriptions of those examples in Model MS–4(B). The Bureau also solicits comment on whether alternate or additional model clauses would be helpful to borrowers and servicers.

Clauses in Model MS–4(D) illustrate how a servicer may explain foreclosure and provide the estimated number of days in which the servicer may begin the foreclosure process, as would be required under proposed § 1024.39(b)(2)(v). Clauses in Model MS–4(E) illustrate how the servicer may provide contact information for the State housing finance authority and housing counselors, as would be required under proposed § 1024.39(b)(2)(vi).

As discussed above, proposed comment MS–2 is intended to affirm that the servicer has flexibility in complying with the proposed disclosure requirement in proposed paragraphs (b)(1) and (b)(2) of § 1024.39. The servicer may comply by using language substantially similar to the language in the model clauses or by substituting applicable loss mitigation options not represented in the model clauses, as long as the information required to be disclosed is clear and conspicuous, as

would be required by proposed § 1024.32, discussed above.

The Bureau developed the clauses in proposed MS–4(C), MS–4(D), and MS–4(E) based on its analysis and review of existing notices for delinquent borrowers, such as the HUD ''Avoiding Foreclosure'' pamphlet.[192] The Bureau has not yet tested the clauses in proposed Models MS–4(A), MS–4(B), MS–4(C), MS–4(D), and MS–4(E) with borrowers. The Bureau requests comment on whether consumer testing of these clauses is necessary and whether the Bureau should consider modifying, deleting, or adding any proposed clauses for these models. The Bureau is also considering integrating these model clauses into a model form, and the Bureau requests comment on what format would most effectively convey the proposed content in proposed § 1024.39(b)(2).

Legal authority. The Bureau proposes to exercise its authority under RESPA sections 6(j)(3), 6(k)(1)(E), and 19(a) to add new appendix MS–4 to Regulation X.

VII. Section 1022(b)(2) Analysis

In developing the proposed rule, the Bureau has considered potential benefits, costs, and impacts, and has consulted or offered to consult with the prudential regulators, HUD, the Federal Emergency Management Agency, FHFA, and the Federal Trade Commission, with respect to consistency with any prudential, market, or systemic objectives administered by such agencies.[193] The Bureau also held discussions with or solicited feedback from the United States Department of Agriculture Rural Housing Service, the Farm Credit Administration, the Federal Housing Administration, Ginnie Mae, and the Department of Veterans Affairs regarding the potential impacts of the proposed rule on those entities' loan or securitization programs.

As discussed in greater detail elsewhere throughout this **SUPPLEMENTARY INFORMATION**, in this rulemaking, the Bureau proposes to amend Regulation X, which implements RESPA, as part of the Bureau's implementation of the Dodd-Frank Act amendments to RESPA regarding mortgage loan servicing. The proposed amendments to Regulation X implement section 1463 of the Dodd-Frank Act, which imposes obligations on servicers with respect to resolving errors and responding to requests for information from mortgage loan borrowers, and to ensure that a reasonable basis exists to obtain force-placed insurance.

In addition, the proposal includes additional amendments to Regulation X to impose servicer obligations the Bureau has found, pursuant to authority under RESPA section 6, as amended by the Dodd-Frank Act, to be appropriate to carry out the consumer protection purposes of RESPA. These additional amendments are not specifically required by the Dodd-Frank Act and consist of obligations to: Establish reasonable information management policies and procedures; undertake early intervention with delinquent borrowers; provide delinquent borrowers with continuity of contact with staff equipped to assist them; and follow certain procedures when evaluating loss mitigation applications.

The proposal would also reorganize and amend the mortgage servicing related provisions of Regulation X, currently published in 12 CFR 1024.21. Such amendments relate to, for example, disclosures of mortgage servicing transfers and servicer obligations to borrowers, and a servicer's obligation to manage escrow accounts, including the obligation to advance funds to an escrow account to maintain a borrower's hazard insurance coverage and to return escrow balances when a mortgage loan is paid off in full. Further, the Bureau also proposes to set forth a commentary that includes official Bureau interpretations of Regulation X.

Elsewhere in today's **Federal Register**, the Bureau is also publishing a proposed rule under TILA to amend Regulation Z (12 CFR part 1026). The proposed amendments to Regulation Z implement the following sections of the Dodd-Frank Act: Section 1418 (initial rate-adjustment notice for adjustable-rate mortgages (ARMs)), section 1420 (periodic statement), and section1464 (prompt crediting of mortgage payments and response to requests for payoff amounts). The proposed rule would also revise certain existing regulatory requirements in Regulation Z for disclosing rate and payment changes to ARMs in current § 1026.20(c).

As discussed in greater detail elsewhere in this **SUPPLEMENTARY INFORMATION**, the recent financial crisis exposed pervasive consumer protection problems across major segments of the mortgage servicing industry. As a result of these problems, Congress included in the Dodd-Frank Act the provisions that specifically address mortgage servicing. The new protections in the rules proposed under RESPA and TILA would significantly improve the transparency of mortgage loans after origination, provide substantive protections to consumers, enhance the ability of consumers to obtain information from and dispute errors with servicers, and provide consumers, particularly delinquent consumers, with better customer service when dealing with servicers.

A. Provisions To Be Analyzed

The analysis below considers the potential benefits, costs, and impacts of the following major proposed provisions:

1. Requirements regarding obtaining force-placed insurance policies, including disclosures to borrowers.
2. Procedures regarding error resolution and requests for information.
3. Requirements to establish reasonable information management policies and procedures.
4. Procedures for early intervention with delinquent borrowers.
5. Procedures for continuity of contact with delinquent borrowers.
6. Requirements regarding loss mitigation procedures.

With respect to each major proposed provision, the analysis considers the benefits and costs to consumers and covered persons. The analysis also addresses certain alternative provisions that were considered by the Bureau in the development of the rule. The Bureau requests comment on the analysis of the potential benefits, costs, and impacts of the proposal.

B. Baseline for Analysis

The amendments to RESPA in section 1463 of the Dodd-Frank Act take effect automatically on January 21, 2013, unless final rules are issued on or before that date. However, no additional obligations are imposed under section 6(k)(1)(E) of RESPA, as amended by the Dodd-Frank Act, unless the Bureau adopts implementing regulations. Specifically, the provisions of the proposed rule that impose obligations on servicers to correct errors asserted by mortgage loan borrowers, to provide information requested by such borrowers, and to ensure that a reasonable basis exists to obtain force-placed insurance implement statutory amendments to RESPA that take effect automatically. Thus, many costs and benefits of the provisions of the proposed rule with respect to these self-executing provisions would arise largely

[192] *See* 24 CFR 203.602; HUD Handbook 4330.1 rev–5, 7–7(G).

[193] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

or entirely from the statute, and not from the Bureau's proposed provisions. These provisions of the proposed rule would provide substantial benefits compared to allowing the RESPA amendments to take effect automatically by clarifying parts of the statute that are ambiguous. Greater clarity on these issues should reduce the compliance burdens on covered persons by, for example, reducing costs for attorneys and compliance officers as well as potential costs of over-compliance and unnecessary litigation. Moreover, the costs that these provisions would impose beyond those imposed by the statute itself are likely to be minimal.

Section 1022 of the Dodd-Frank Act permits the Bureau to consider the benefits, costs and impacts of the proposed rule solely compared to the state of the world in which the statute takes effect without implementing regulations. To provide the public better information about the benefits and costs of the statute, however, the Bureau has chosen to consider the benefits, costs, and impacts of the major provisions of the proposed rule (*i.e.,* the benefits, costs, and impacts of the relevant provisions of the Dodd-Frank Act and the regulation combined) against a pre-statutory baseline.

As discussed above, the Dodd-Frank Act also gives the Bureau discretionary authority to develop additional mortgage servicing rules in Regulation X, which the Bureau is relying on to propose to require servicers to: Establish reasonable information management policies and procedures; undertake early intervention with delinquent borrowers; provide delinquent borrowers with continuity of contact with staff equipped to assist them; and follow certain procedures when evaluating loss mitigation applications. Since section 1463 of the Dodd-Frank Act does not specifically impose these obligations on servicers, the pre-statute and post-statute baseline are the same. The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

C. Coverage of the Proposal

Each proposed provision covers certain closed-end mortgages, as described further in each section below.

D. Data Limitations and Quantification of Benefits, Costs and Impacts

The analysis relies on data that the Bureau has obtained from industry, other regulatory agencies, and publicly available sources. However, as discussed further below, the data are generally limited with which to quantify the potential costs, benefits, and impacts of the proposed rule.

Regarding the costs to covered persons, the proposed rule generally establishes certain standards for servicer operations. In order to quantify the costs to covered persons, the Bureau would need representative data on the extent to which servicer operations currently do not comply with the proposed rule. The Bureau has little data on this issue, and does not believe that it is feasible to initiate a substantial collection of representative data in the time available for this rulemaking. However, the Bureau continues to seek data regarding the extent to which servicer operations currently do not comply with the proposed rule. Furthermore, even with this data, the Bureau would need information on the cost of changing current servicer practices in order to quantify the cost of closing any gaps between current practices and those mandated by the proposed rule. The Bureau has obtained some information about the cost of improving servicer operations, and the discussion below uses this information to quantify certain costs of the proposed rule, but these calculations do not fully quantify the costs to covered persons of the proposed rule. The Bureau continues to seek data from available sources regarding the costs of improving servicer operations, as specified by the proposed rule, in order to quantify the costs to covered persons of the proposed rule.

The lack of data on the extent to which servicer operations currently do not comply with the proposed rule also makes it difficult to quantify the benefits of the proposed rule to consumers. However, quantifying benefits presents additional challenges. As discussed further below, certain proposed provisions may directly save consumers time and money but others may benefit consumers in a more indirect way, by, for example, facilitating household budgeting, supporting the consumer's ability to obtain credit, and reducing default and avoidable foreclosure. Quantifying these benefits and monetizing them would require a wide range of data that cannot be collected in the time frame for this rulemaking. The Bureau continues to seek data from available sources regarding the benefits to consumers of the proposed rule.

Similar issues to those just described arise in quantifying the benefits to covered persons of the proposed rule and in quantifying the costs to consumers. Certain benefits to covered persons are difficult to quantify. For example, as discussed in greater detail below in the discussion about force-placed insurance, it is difficult to quantify the benefit servicers receive from reduced interest expenses when they advance their own funds to pay for force-placed insurance. Certain costs to consumers are difficult to quantify, such as the extent to which costs imposed on servicers may be passed through to consumers.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the proposed rule. General economic principles, together with the limited data that are available, provide insight into these benefits, costs, and impacts. Where possible, the Bureau has made quantitative estimates based on these principles and the data that are available.

E. Potential Benefits and Costs to Consumers and Covered Persons

1. Requirements Regarding Obtaining Force-Placed Insurance Policies

Dodd-Frank Act section 1463 amends RESPA to prohibit a servicer of a federally related mortgage from obtaining force-placed insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance. In addition, the statute sets forth a mandatory process servicers must follow when they force-place insurance. The process includes sending the borrower two written notices before imposing any charge on a borrower for force-placed insurance. The statute also provides process requirements for terminating force-placed insurance and refunding force-placed insurance premium charges and related fees paid during any period during which the borrower's hazard insurance coverage and the force-placed insurance coverage were each in effect.

The Bureau is proposing model forms for the force-placed insurance notices to be sent to borrowers. The Bureau is also proposing requirements concerning: Charges related to force-placed insurance, payment of the borrower's hazard insurance premiums from escrow, and notice requirements when servicers renew existing force-placed insurance policies.

Benefits and costs to consumers. Borrowers pay for force-placed insurance but do not select the insurance provider. Thus, the market for force-placed insurance may not fully reflect the interests of borrowers in minimizing force-placement and the amount of time force-placed insurance is in effect. In particular, the proposed force-placed insurance disclosures and procedures may reduce borrowers

paying for unnecessary force-placed insurance or the length of time during which borrowers pay for such insurance.

The Bureau does not have representative data with which to quantify the extent to which industry currently complies with the proposed force-placed insurance provisions or the extent to which additional compliance would reduce the need for force placement or the duration of force placement; however, as discussed in greater detail below, the Bureau understands that many servicers already comply with the proposed procedures with respect to sending borrowers notices before charging borrowers for force-placed insurance and canceling force-placed insurance after verifying that borrower has obtained hazard insurance coverage. Moreover, even a small reduction in force placement may provide consumers with substantial benefits. In 2009, the average premium for homeowner's insurance was $880 while force-placed insurance cost about twice this amount.[194] Thus, a homeowner who pays force-placed insurance for one to six months pays an additional $73 to $440 dollars.[195] If the provisions of the proposed rule reduced force-placement by just 10%, approximately 171,000 homeowners would save between $7.6 million and $45.8 million in unnecessary premiums each year.[196]

The following discussion provides a qualitative analysis of the benefits to borrowers of the proposed force-placed insurance disclosures and procedures. In each case, as discussed previously, the Bureau understands that certain servicers may already comply with some of the proposed procedures. The Bureau believes that for a borrower in the specified situation and with a servicer that does not comply with some of the proposed procedures, full compliance would provide important additional consumer benefits.

For purposes of qualitative analysis, it is useful to first divide borrowers into those with insurance that has been force-placed by a servicer and those with hazard insurance coverage obtained by the borrower. Of those with borrower-obtained hazard insurance, it is useful to sub-divide this group into three additional groups: those with hazard insurance that is not about to lapse; those with hazard insurance that is about to lapse and who have the funds to renew (whether the funds are kept in an escrow account or elsewhere); and those with hazard insurance that is about to lapse and who do not have the funds to renew. The proposed force-placed insurance disclosures and procedures may provide different benefits to borrowers depending on the group to which they belong.

Borrowers with force-placed insurance would likely benefit from the proposed requirements regarding renewal of force-placed insurance, evidence of hazard insurance, cancellation of force-placed insurance, and limitations on charges related to force-placed insurance. The proposed rule would require servicers to send a renewal notice once every 12 months, accept insurance information provided by the borrower to verify whether or not the borrower has hazard insurance in place, cancel force-placed insurance and refund the borrower for any period of overlapping coverage within 15 days of receiving verification that the borrower has obtained hazard insurance. For a borrower in the situation described and with a servicer that does not currently comply with some of the proposed procedures, full compliance may reduce both the amount of time the borrower has force-placed insurance and the cost to the borrower of paying for force-placed insurance.

Consider next a borrower who has hazard insurance that is not about to lapse, but the servicer for some reason believes it is about to lapse and begins the process of force-placing insurance. The proposed rule would require the servicer to send the borrower two notices before charging the borrower for force-placed insurance. The proposed disclosures may prompt the borrower to contact the servicer with their insurance information. By possibly prompting the borrower to communicate with the servicer and provide the servicer with information to verify that the borrower has hazard insurance in place, the proposed rule may reduce the chance that a borrower in the situation described would pay for force-placed insurance.

Consider next a borrower who has a hazard insurance policy that is about to lapse and has the funds to renew the insurance. If the funds are not in an escrow account, then the borrower may fail to properly renew the insurance. The proposed force-placed insurance procedures would not require the servicer to renew the hazard insurance of a borrower who does not have an escrow account established to pay the borrower's hazard insurance; however, the servicer would have to provide the two proposed notices before charging such borrower for force-placed insurance. The Bureau undertook three rounds of qualitative testing of the proposed notices, and participants said that if they received force-placed insurance notices like the ones the Bureau is proposing, they would immediately contact their insurance provider to find out whether or not their hazard insurance was still in force. For a borrower in this situation and for whom the mortgage loan is serviced by a servicer that does not currently provide notices that meet the proposed content and form requirements, full compliance with the proposed requirements may reduce the chance that the borrower would pay for unnecessary force-placed insurance. If the borrower's insurance does lapse, full compliance with the proposed requirements regarding renewal of force-placed insurance, evidence of hazard insurance and cancellation of force-placed insurance may reduce both the amount of time the borrower has force-placed insurance and the cost to the borrower of paying for force-placed insurance.

Finally, consider a borrower who has hazard insurance that is about to lapse and does not have the funds to renew the insurance. If this borrower has an escrow account with insufficient funds to pay his or her hazard insurance premium charges, the servicer is currently required under Regulation X to advance funds for the timely payment of escrowed items as long as the borrower's payment is not more than 30 days overdue. For a borrower in the situation described and with a servicer that is not complying with the proposed procedure, full compliance would greatly reduce the possibility that the borrower's hazard insurance was canceled for nonpayment and accordingly, the chance that the borrower would pay for force-placed insurance. If the borrower does not have an escrow account and the servicer obtains force-placed insurance, but the borrower later acquires the funds to obtain hazard insurance, full

[194] For the average homeowner's insurance premium, *see* data provided by Insurance Institute of America, available at: *http://www.iii.org/facts_statistics/homeowners-and-renters-insurance.html*. For information on the cost of force-placed insurance, see *http://newsroom.assurant.com/releasedetail.cfm?ReleaseID=645046&ReleaseType=Featured%20News* (reporting force-placed insurance costs 1.5 to 2 times hazard insurance).

[195] That is to say, the homeowner pays one-twelfth to one-half of the additional $880.

[196] Discussions with industry suggest that 2% of mortgages incur force-placement each year and there are approximately 52 million first liens, so about 1.04 million homeowners incur force-placement each year. Ten percent of this figure multiplied by $73 (or $440) gives $7.6 million (or $45.8 million).

compliance with the proposed requirement to cancel force-placed insurance within 15 days of receiving verification that the borrower has obtained hazard insurance may reduce the amount of time force-placed insurance is in effect.

The proposed rule also provides requirements on the renewal or replacement of force-placed insurance, including a disclosure to consumers. Specifically, a servicer may not charge a borrower for renewing or replacing pre-existing force-placed insurance unless: (1) The servicer delivers or places in the mail a written notice to the borrower with specified disclosures at least 45 days before the premium charge or any fee is assessed; and (2) during the 45-day notice period, the servicer has not received evidence that the borrower has obtained hazard insurance. The proposed disclosure includes the cost of the insurance (or a good faith estimate) and statements to the effect that the servicer has previously obtained the insurance, charged the borrower for the insurance, and has the right to maintain the insurance. The proposed rule also provides certain formatting requirements on the disclosure.

The Bureau's proposal may help borrowers avoid the cost associated with the renewal or replacement of pre-existing force-placed insurance by both alerting borrowers to the impending charge and conditioning the ability of servicers to charge borrowers for renewal or replacement of pre-existing force-placed insurance on properly providing the specified disclosures. The disclosures may benefit certain borrowers by providing them with the information they need to purchase hazard insurance before being charged for renewal or replacement of force-placed insurance. Conditioning the ability of servicers to charge borrowers for renewal or replacement on the provision of the disclosures facilitates compliance with the disclosure requirement. As discussed previously, incentives like commissions paid to servicers or their insurance affiliates may cause servicers to prefer renewing or replacing pre-existing force-placed insurance coverage over providing borrowers with an opportunity to obtain hazard insurance.

The Bureau does not believe that the requirements with respect to force-placed insurance will impose any significant costs to borrowers for the following reasons: (1) As discussed above, the Bureau understands that only approximately two percent of mortgages incur force-placed insurance annually; and (2) as discussed below, many servicers already comply with the proposed disclosures with respect to sending borrowers notices before charging borrowers for force-placed insurance and the proposed requirement that the they cancel force-placed insurance after verifying that the borrower has obtained hazard insurance coverage.

Benefits and costs to covered persons. The Bureau believes that the proposed force-placed insurance disclosures and procedures may provide certain benefits to servicers. For example, the model forms the Bureau is providing servicers may reduce servicers' compliance cost. Servicers may also benefit from any reduction in the need to obtain force-placed insurance. Servicers advance their own funds to pay for force-placed insurance. While servicers have priority in recovering these funds either from the homeowner or when the property is sold in foreclosure, they do not recover interest on these advances, like the advances for the force-placed insurance premium charge.[197]

The Bureau notes that the owners or assignees of mortgage loans may also benefit from the proposed force-placed insurance disclosures and procedures. As discussed in part VI, above, force-placed insurance is often significantly more expensive than hazard insurance obtained by the borrower. If the property ultimately goes to foreclosure and the loan is liquidated, servicers get compensated for advancing charges related to force-placed insurance before owner or assignee of the mortgage loan is paid.[198] Thus, the additional cost of force-placed insurance produces an additional expense to such persons, who benefit when this additional expense is minimized. To the extent the proposed rule reduces the frequency and duration of lapses in hazard insurance obtained by the borrower, owners or assignees of mortgage loans benefit along with borrowers.

Based on discussions with industry, the Bureau understands that servicers generally provide borrowers with multiple notices before charging a borrower for force-placed insurance. Thus, the additional cost of the proposed force-placed insurance disclosures notice would most likely be the one-time cost of developing the form to conform with the Bureau's proposed regulations. The force-placed insurance disclosure would require minimal customization to each loan, but there may be some additional cost associated with providing the borrower with the cost or a good faith estimate of the cost of force-placed insurance, stated as an annual premium. The Bureau requests additional information about the force-placed insurance disclosures that servicers currently provide and the incremental cost of complying with the proposed force-placed insurance disclosure requirement.

The Bureau understands that many servicers generally terminate force-placed insurance coverage and refund to borrowers any premiums charged during any period when the borrower had borrower-obtained insurance coverage in place. The Bureau does not believe that complying with the remaining proposed procedures—including the provision of the force-placed insurance renewal notice—would impose substantial incremental costs on servicers. However, the Bureau continues to examine this issue and to collect data and other relevant information.[199]

Finally, the Bureau recognizes that the proposed force-placed insurance provisions may produce a number of changes in how force-placed insurance is provided and paid for. The Bureau understands that currently some servicers incur all of the costs associated with providing force-placed insurance notices, tracking borrower coverage, and placing and terminating the insurance. For other servicers, the Bureau understands that the force-placed insurance provider handles these activities and absorbs the costs or passes them on to the borrower. The proposed force-placed insurance provisions may reduce the frequency with which servicers obtain force-placed insurance. This would most likely reduce total payments by borrowers to servicers and force-placed insurers, even if the cost to insure the remaining borrowers increased, since there would be fewer transactions and fees. On the other hand, a reduction in the frequency with which force-placed insurance is provided may also reduce commission income that in some cases is paid by insurers to servicers or their insurance affiliates, and a reduction in payments to force-placed insurance providers may

[197] *See e.g.,* Levitin and Twomey, 28 Yale J. on Reg. 48 (2011) (explaining that servicing advances, which include advances for taxes and insurance, are costly to servicers because they are do not recover interest on the advances) .

[198] *See* Diane Thompson, *Foreclosure Modifications: How Servicer Incentives Discourage Loan Modifications,* 86 Wash. L. Rev. 755, 816–20 (2011).

[199] Furthermore, as discussed in greater detail in part VI, above, servicers already are subject to a disclosure regime with some similar characteristics when obtaining force-placed flood insurance as required by the FDPA. The presence of these systems may make it less costly for servicers to comply with the Bureau's proposed procedures for force-placed insurance, since systems are in place that could be adapted outside the force-placed flood insurance context.

reduce providers' willingness to perform the tracking and other activities stated above as part of the service. The Bureau continues to examine how the proposed force-placed insurance provisions may affect covered persons. The Bureau asks interested parties to provide general information, data, and research results that are relevant to this issue.

2. Procedures Regarding Error Resolution and Requests for Information

Section 1463 of the Dodd-Frank Act amends section 6 of RESPA by adopting a number of servicer prohibitions with respect to handling asserted errors and inquiries. These include (1) servicer obligations to respond to certain types of errors, (2) amendments to the timeframe for responding to qualified written requests and associated penalties for failure to comply, and (3) a prohibition on servicers charging fees in connection with valid qualified written requests.

The Bureau is using its authority in RESPA to propose a comprehensive set of requirements for investigating and correcting errors and for responding to borrower inquiries that incorporates the amendments to RESPA in the Dodd-Frank Act. In addition to the current requirements to address errors relating to servicing through Qualified Written Requests, servicers would be required to correct errors relating to, among other things, allocating payments, providing an accurate payoff balance, failure to suspend a scheduled foreclosure sale while, for example, the borrower is performing under an agreement on a loss mitigation options. Servicers also would be required to respond to inquiries about a borrower's mortgage loan account, whether or not a borrower has complied with the requirements for submitting a Qualified Written Request.

Servicers would have to provide borrowers with a written acknowledgement of receiving a notice of error within five days (excluding legal public holidays, Saturdays and Sundays) of receipt of the notice of error, unless the servicer corrects the error within such time and the borrower is notified of the correction in writing. Servicers would have to correct the error and notify the borrower of such correction, or conduct a reasonable investigation and provide the borrower with written notification regarding the investigation and the documents relied upon by the servicer. Generally, with the exception of certain types of errors, the investigation would have to be completed and a response provided within 30 days (excluding legal public holidays, Saturdays and Sundays) after receipt of the notice of error.

The Bureau is proposing substantially similar requirements to apply to inquiries. For example, servicers would have to provide borrowers with written acknowledgement of receiving an information request, unless the servicer provides the borrower with the information requested and with contact information for further assistance within five days (excluding legal public holidays, Saturdays and Sundays). Servicers would have to provide the borrower with the requested information or conduct a reasonable search for the information and provide the borrower with a written notification regarding the search. Generally, with the exception of certain types of information requests, the information or a notification stating that the servicer has determined the requested information is not available to the servicer would have to be provided within 30 days after receipt of the information request.

Benefits and costs to consumers-error resolution. As explained in part VI, above, each of the nine proposed enumerated errors would results from a failure by the servicer to perform a typical servicer duty. The proposed error resolution procedures would require that servicers, in a timely manner, correct these errors or investigate and explain to the borrower why no error has occurred.

The Bureau has conducted outreach with servicers regarding alleged errors. One servicer estimates that it receives 1,850 allegations of error per month on a portfolio of about 300,000 loans; another estimates about the same number on a portfolio of about 1 million loans. However, the Bureau currently does not have data on the nature of the alleged errors, the extent to which servicers already comply with the proposed error resolution procedures, or the benefit to borrowers from full compliance. Thus, the Bureau does not have the data necessary to quantify the benefits to borrowers of the proposed error resolution procedures.[200]

Although the Bureau does not have the data necessary to quantify the benefits to borrowers of the proposed error resolution procedures, the Bureau believes that the benefits may be substantial. Some of the enumerated errors concern basic duties that servicers should generally perform every month for every borrower (*e.g.,* accept conforming payments, properly apply payments as required under the terms of the mortgage loan, pay taxes and insurance, *etc.*). The Bureau understands that servicers currently perform them. Other enumerated errors, however, concern duties regarding delinquent borrowers and the transfer of mortgage loan account information to other servicers. Under the proposed rule, it would be an error for a servicer to fail to provide accurate information to a borrower with respect to loss mitigation options and foreclosure or to fail to suspend a scheduled foreclosure sale when, for example, the borrower is performing under a loss mitigation agreement. It also would be an error for a servicer to fail to transfer information to a transferee servicer relating to the servicing of a borrower's mortgage loan account in an accurate and timely manner. Servicers may not have uniformly investigated and corrected these errors, as the proposal would require them to. These errors have the potential to impose substantial financial and other costs on consumers. Thus, the proposed requirements to investigate allegations that servicers have committed these errors and to correct these errors (when found) may provide substantial benefits to certain consumers.

More generally, the Bureau notes that borrowers do not choose their servicer, except indirectly by choosing their lender. Even if borrowers choose their servicer at origination, perhaps by seeking a lender that services the loans it originates, the borrower cannot subsequently choose a different servicer if the quality of servicing is unsatisfactory. Thus, the market for servicing may not fully reflect the interests of borrowers in having robust error resolution procedures. While certain servicers may nonetheless reliably perform their duties, the recent financial crisis suggests that for some, the incentives to do so were lacking.

Benefits and costs to consumers—requests for information. The Bureau has conducted outreach with servicers regarding requests for information. One servicer estimates that it receives 70,000 phone calls a month on portfolio of 300,000 loans; another estimates 160,000 phone calls per month on a portfolio of about 1 million loans. The vast majority of these calls are inquiries and the most common inquiry is whether the servicer has received the borrower's payment. The Bureau currently does not have data on the nature of the other inquiries, the extent to which servicers already comply with the proposed procedures regarding inquiries, or the benefit to borrowers

[200] See, however, the general discussion of servicing operations and avoidable foreclosure in the analysis of the proposed provisions on reasonable information management, *infra.*

from full compliance. Thus, the Bureau does not have the data necessary to quantify the benefits to borrowers of the proposed procedures regarding inquiries.[201] The Bureau requests interested parties to provide data, research, and other information that may inform the further consideration of this issue.

The Bureau understands that the servicer is a convenient source of certain information (*e.g.,* details about the terms of the loan, the annual amount of interest paid, the remaining mortgage balance) and may be the only source of other information (*e.g.,* the date a payment was received or a disbursement from escrow was made, the new payment on an adjustable rate mortgage). This information provides many benefits to borrowers, both by facilitating household budgeting in the near term and over time and by allowing borrowers to forestall or correct problems (*e.g.,* by verifying that payments were received or taxes and insurance were paid from escrow). The fact that borrowers go to the trouble of requesting information from servicers indicates that they recognize some benefit from having the information.

More generally, as discussed above, the Bureau notes that borrowers do not choose their servicer, except indirectly, by choosing their lender. Even if borrowers choose their servicer at origination, perhaps by seeking a lender that services the loans it originates, the borrower cannot subsequently choose a different servicer if the quality of servicing is unsatisfactory. Thus, the market for servicing may not fully reflect the interests of borrowers in having robust procedures for responding to inquiries. While certain servicers may nonetheless reliably perform their duties, the recent crisis suggests that for some, the incentives to do so were lacking.

Benefits and costs to covered persons. The Bureau understands that certain servicers may already comply with many of the proposed procedures regarding error resolution and response to inquiries.[202] Further, certain proposed provisions are intended to mitigate the costs of complying with the proposed procedures. The Bureau proposes that errors and information requests that are resolved within five days do not require written acknowledgement of receipt of a notice of error or information request. The Bureau believes that the proposed provisions, including the proposed finite list of errors, provide clarity regarding servicer duties. Clarity mitigates one-time compliance costs for servicers that would otherwise pay for additional legal advice regarding compliance with the rule or would perform activities that were not in fact required by the rule.

As discussed in part VI, above, the Bureau considered the impact of the proposed error resolution requirements if the types of errors were not limited. The Bureau believes that the added costs and burden created by having an open-ended definition of an error could substantially increase the costs to servicers with limited additional benefit to consumers. The Bureau further believes that requiring servicers to respond to potentially any assertion of an error could, as a practical matter, lead to servicers using disproportionate resources to respond to every asserted error. That practice may cause servicers to expend fewer resources to address errors that may be far more significant to borrowers.

The Bureau further considered whether to define as a covered error a servicer's failure to accurately and timely provide a disclosure to a borrower as required by applicable law. The Bureau determined that such a failure was not appropriate as a covered error because the information request provisions provide the borrower the ability to obtain the underlying information. Further, the Bureau believes that a servicer's action to attempt to correct the failure, such as by sending the disclosure after the deadline, would not actually correct the error and would not be helpful or useful to borrowers. In that circumstance, the error resolution request would create burden and impose costs on servicers without offering concomitant benefit for borrowers.

Although certain servicers may already comply with many of the proposed procedures, the Bureau understands that some of these proposed procedures may impose one-time and ongoing compliance costs on servicers. The Bureau asks interested parties to provide specific information about the proposed requirements for error resolution and requests for information with which servicers are not already in compliance and the costs of coming into compliance.

3. Reasonable Information Management Policies and Procedures

The Bureau is using its authority in RESPA to propose requirements on the information management practices of servicers. The proposed rule specifies that a servicer's information management practices need to address objectives broadly categorized as: Accessing and providing accurate information relating to a borrower's account; evaluating borrowers for loss mitigation options; facilitating oversight of, and compliance by, service providers; and facilitating servicing transfers. The reasonableness of a servicer's policies and procedures would be determined in part by the nature and scope of the servicer's operations, characteristics of the servicing portfolio, and the servicer's history of consumer complaints.

Benefits and cost to consumers. The Bureau recognizes that borrowers who make timely and conforming payments every period and whose payments are correctly and timely posted by the servicer and disbursed to third parties as appropriate may rarely need any new information from the servicer. The servicer of these loans generally requires only enough information about the loan to properly credit the payment to principal, interest, taxes and insurance; or in the case of adjustable rate mortgages, to change the amount due and change the crediting to principal and interest. However, a substantial number of borrowers do not make timely and conforming payments. One large database of first-lien residential mortgages shows that in each of the five quarters ending with the last quarter of 2011, between 10% and 15% of mortgages failed to be current and performing.[203] This represents between 3.1 million and 4.7 million loans.[204] The borrowers with these mortgages likely face difficult decisions about budgeting limited household resources and may require detailed and accurate information about what they owe, their loss mitigation options, and the consequences of different choices.

For reasons discussed above, the Bureau does not have representative

[201] See, however, the general discussion of servicing operations and avoidable foreclosure in the analysis of the proposed provisions on reasonable information management.

[202] For example, erroneous information furnished by servicers to a consumer reporting agency are a type of covered error specifically included in the proposed rule. *See* proposed § 1024.35(b)(iii). Servicers who furnish erroneous information to a consumer reporting agency are already required to handle disputes about this information under the Fair Credit Reporting Act. These preexisting obligations under the Fair Credit Reporting Act will make it less costly for servicers to implement the changes in this rule since they should already have systems in place that can be adapted outside the context of errors about information furnished to consumer reporting agencies.

[203] *See* Office of the Comptroller of Currency, *OCC Mortgage Metrics Report, Fourth Quarter 2011,* at 12 (Table 1) (2012).

[204] There are 31.4 million loans in the database, which is 60% of all first-lien residential mortgages outstanding. *Id.,* at 8.

data with which to quantify the extent to which industry currently complies with the proposed reasonable information management procedures, the extent to which additional compliance would provide additional benefits to consumers, or the monetary value of those additional benefits to consumers. However, it is possible to provide a rough estimate of a key consumer benefit—a reduction in avoidable default (*i.e.,* 90 day delinquency)—that may be attributed collectively to the proposed provisions regarding error resolution and requests for information, reasonable information management, early intervention, and continuity of contact.

These benefits are discussed as part of reasonable information management for two reasons. First, the proposed provisions on reasonable information management include a requirement that a borrower must be able to receive an accurate and timely evaluation for a loss mitigation option. Thus, reasonable information management may reduce avoidable or unnecessary foreclosures. Second, reasonable information management facilitates compliance with the other proposed provisions listed above, all of which could help delinquent borrowers. A servicer that could not access accurate and timely information relating to a borrower's account would likely have difficulty providing accurate information with respect to loss mitigation options and foreclosure (consistent with the proposed provisions on error resolution), notifying a borrower that he or she is late with a payment (as would be required by the proposed provisions on early intervention), and accessing a complete record of the borrower's payment history (as required by the proposed provisions on continuity of contact).

The estimate of avoidable default relies on a study of the performance of approximately 28,000 housing loans tracked from September 1998 to December 2004 (and originated prior to December 2003).[205] Most of the loans were serviced by eight servicers. After restricting the sample to loans that at some point experience a 30-day delinquency, the authors use regression analysis to isolate the impact each servicer has on the probability a loan ever reaches 90-day delinquency (which they define as ''default''). The authors show that there are significant differences among the services in the probability a loan defaults, even after controlling for borrower credit score and income, certain characteristics of the property, and other factors.[206] The best servicing (servicing performed by servicers with the highest cure rates with respect to loans that have become 30 days delinquent) achieves approximately a 41% reduction in the probability that a loan that becomes 30 days delinquent will eventually default, relative to the worst servicing (servicing performed by servicers with the lowest cure rates with respect to loans that have become 30 days delinquent).[207]

To translate this figure into an estimate of avoidable default, suppose that over 1 million mortgages become 30–60 days late each year. If they all receive the worst servicing and about 20% default, then a switch to the best servicing would reduce the default rate to about 12% (a reduction of 41%).[208] Thus, 80,000 mortgages would no longer default if they had the best servicing. If 30% default, then about 120,000 would no longer default if they had the best servicing. These defaults are avoidable with better servicing. Furthermore, a substantial number of these defaults will ultimately go to foreclosure, perhaps 70%.[209]

The Bureau does not currently have data that would allow it to further monetize the cost of default and foreclosure on borrowers or other consumers. Some recent research that controls for economic conditions documents the persistent negative effects of foreclosure on borrower's credit scores.[210] Other work establishes substantial negative effects that foreclosed homes have on nearby homes.[211] The Bureau continues to examine how reasonable information management policies and procedures and other provisions of the proposed rule may affect default and foreclosure and the costs of these outcomes on borrowers and other consumers. The Bureau asks interested parties to provide general information, data, and research results that address these issues.

More generally, as noted above, servicers may not have sufficient incentives to provide reasonable information management policies and procedures absent the proposed rule. As discussed in the Background section, mortgage servicing is to a large extent a high-volume, low-margin business that encourages servicers to provide minimal levels of service to borrowers. While certain servicers may nonetheless have reasonable information management policies and procedures, the mortgage crisis demonstrated that for some servicers the incentives to have these practices were lacking.

Benefits and costs to covered persons. The Bureau understands that certain servicers already comply with many of the proposed procedures.[212] Servicers that service mortgage loans subject to investor or guarantor loss mitigation requirements, such as requirements imposed on Fannie Mae, Freddie Mac, and Ginnie Mae, or servicers subject to regulatory consent orders or the national mortgage settlement, must already comply with policies regarding evaluation for a loss mitigation option. Further, the Bureau is proposing to mitigate the cost of the proposed procedures by providing that the reasonableness of a servicer's policies and procedures would be determined in part by the nature and scope of the servicer's operations, characteristics of the servicing portfolio, and the

[205] *See* Michael A. Stegman *et al., Preventative Servicing is Good for Business* and *Affordable Homeownership Policy,* 18 Housing Policy Debate 243, 257 (2007).

[206] Other authors have also noted substantial differences in loss mitigation practices by servicers that are not accounted for by differences in borrowers, types of mortgages and other observable factors. *See e.g.,* Sumit Agarwal *et al., Market-Based Loss Mitigation Practices for Troubled Mortgages Following the Financial Crisis,* Federal Reserve Bank of Chicago, (2010) (Agarwal *et al.*).

[207] Specifically, the probability that a loan cures increases from .815 with the worst performing servicer (Servicer #2) to .8902 with a high-performing reference group of servicers. The figure .815 is the solution to $\ln[.8902/(1-.8902)]-.61=\ln[x/(1-x)]$, where $-.61$ is the regression coefficient on Servicer #2 given on page 265 and .8902 is discussed on page 263. Thus, the probability a loan that is 30 days late actually defaults decreases from .185 ($=1-.815$) to .1098 ($=1-.8902$), which is approximately a 41% reduction.

[208] The 20% default rate is consistent with the data in Stegman *et al.* but may underestimate the default rate in more recent data.

[209] In one study, only 30% of loans that were 90 days late and began a repayment plan were reinstated or paid in full during the period of the study. Presumably, loans that are 90 days late and never begin a repayment plan have an even lower success rate. *See* Amy Crews Cutts & William A. Merrill, *Interventions in Mortgage Default: Policies and Practices to Prevent Home Loss and Lower Costs* 11–12 and Table 2 (Freddie Mac, Working Paper No. 08–01, Mar. 2008).

[210] *See* Kenneth P. Brevoort &Cheryl R. Cooper, *Foreclosure's Wake: The Credit Experiences of Individuals Following Foreclosure* (2010), available at: *http://www.federalreserve.gov/pubs/feds/2010/201059/201059pap.pdf.*

[211] Foreclosure itself may lead to a 27% reduction in the value of a house (possibly due to losses associated with abandonment) and a 1% reduction in the value of every other house within 5 tenths of a mile. *See* John Y. Campbell, Stefano Giglio, & Parag Pathak, *Forced Sales and House Prices, American Economic Review* 101(5) (2011), abstract available at: *http://www.aeaweb.org/articles.php?doi=10.1257/aer.101.5.2108.*

[212] For example, servicers are already subject to record keeping requirements under current § 1024.17(l) of Regulation X. This will make it less costly for servicers to implement the changes in this rule since they should already have systems in place that can be adapted to the new requirements.

servicer's history of consumer complaints. The Bureau believes that the performance-based approach of the proposed information management provisions coupled with the flexible requirement for reasonableness will allow each servicer to comply with the proposed provisions in ways that best suit its particular circumstances.

4. Procedures for Early Intervention With Delinquent Borrowers

As discussed in greater detail elsewhere in this **SUPPLEMENTARY INFORMATION**, Dodd-Frank Act section 1463 amends RESPA to authorize the Bureau to impose on servicers obligations the Bureau finds appropriate to carry out the consumer protection purposes of RESPA. The Bureau is using this authority to propose early intervention provisions regarding delinquent borrowers. The Bureau proposes to require servicers to provide two notices (one oral and one written) to delinquent borrowers. Generally, the Bureau proposes to require servicers to make a good faith effort to contact delinquent borrowers no later than 30 days after the payment due date. Additionally, not later than 40 days after a missed payment, the proposed rule would require servicers to provide the delinquent borrower a written notice about loss mitigation and the foreclosure process.

Benefits and costs to consumers. The proposed provisions on early intervention with delinquent borrowers are intended to spur the engagement between servicers and borrowers that is necessary for avoiding foreclosure. In one study using data from September 2005 through August 2007, Freddie Mac servicers reported that for 53.3% of the total number of loans that went into foreclosure, the borrower never responded to the servicer.[213] Of course, this means that 47% of borrowers did respond to the servicer. The proposed provisions may benefit borrowers, possibly by reducing the number of borrowers who never respond to the servicer, but in any case ensuring that those who would respond have the opportunity to do so.

The Bureau also understands that borrowers may benefit from the proposed provisions by taking corrective action more quickly. In one study using data from 2000 through 2006, the re-default rate was about 27% (15 percentage points) lower on repayment plans established when a loan was 30 days late instead of 60 days late.[214] Early intervention may generally benefit borrowers by reducing avoidable interest costs, limiting the impact on borrowers' credit reports, and facilitating household budgeting and planning.

Finally, it is essential to note that the repayment plans, loan modifications and other alternatives to default or foreclosure that servicers offer change regularly, often to make additional borrowers eligible. For example, a number of TARP funded housing programs have been developed since the initial HAMP first-lien modification program was implemented in April 2009. Programs now exist that provide principal reduction for HAMP-eligible borrowers with high loan-to-value ratios, provide temporary principal forbearance for unemployed borrowers, and provide incentives for short-sales.[215] Furthermore, the eligibility criteria for these programs change regularly.[216] The changing set of alternatives to default and foreclosure and eligibility for these alternatives mean that delinquent borrowers who have not had recent contact with their servicer regarding the alternatives for which they qualify are probably uninformed or misinformed about the options available to them. The proposed provisions for early intervention benefit borrowers by providing them with information they probably do not have.

Benefits and costs to covered persons. Through industry outreach, the Bureau understands that many servicers already comply with the proposed early intervention procedures. As stated above, most servicers should be familiar with the early intervention standards for delinquent borrowers issued by private mortgage investors, the GSEs, Ginnie Mae, or government agencies offering guarantees or insurance for mortgage loans, such as FHA, the VA, or the Rural Housing Service. Servicers of FHA and VA loans are generally required to take action within the first 20 days of a delinquency, such as making telephone calls, and sending written delinquency notifications. Similarly, servicers of loans purchased by the GSEs are encouraged to contact borrowers within several days of a delinquency. Freddie Mac recommends that servicers begin initial call campaigns on the third day of delinquency, and Fannie Mae recommends that servicers take similar actions with respect to borrowers having a high risk of default. The Bureau understands, however, that some GSE servicers may not provide written notifications to certain lower-risk delinquent borrowers until the 65th day of delinquency. In addition, Federal agencies and the GSEs have established requirements and recommended practices with respect to written notifications that are similar to the Bureau's proposal under proposed § 1024.39(b).

Furthermore, the Bureau is proposing to mitigate the cost of the written notice provision by providing servicers with model clauses and by limiting the written notice to be sent once every 180 days. The model clauses provide servicers with examples of language explaining the foreclosure process and encouraging the borrower to contact the servicer. The Bureau intends for the model clauses to provide servicers with examples of the level of detail that the Bureau expects servicers to provide in their written notice.

5. Procedures for Continuity of Contact With Delinquent Borrowers

Dodd-Frank Act section 1463 requires servicers to comply with any obligation the Bureau finds appropriate to carry out the consumer protection purposes of RESPA. The Bureau is using this authority to propose continuity of contact provisions regarding delinquent borrowers.

The Bureau proposes to require servicers to assign personnel to delinquent borrowers for whom servicers are required to notify pursuant to the proposed oral notification requirement under its early intervention proposal, discussed above. Additionally, the servicers would be required to provide such borrowers with live, telephonic response to inquiries and, as applicable, assist the borrower with loss mitigation options. Servicers would be required to establish policies and procedures reasonably designed to ensure that the personnel they assign to delinquent borrowers perform an enumerated list of functions where applicable, including, for example, providing the borrower with accurate information about loss mitigation options available to the borrower and actions the borrower must take to be evaluated for such options.

[213] *See* Amy Crews Cutts & William A. Merrill, *Interventions in Mortgage Default: Policies and Practices to Prevent Home Loss and Lower Costs* 10 (Freddie Mac, Working Paper No. 08–01, Mar. 2008).

[214] *Id.,* Table 2. This statistic is merely suggestive of a benefit to early intervention, since borrowers who are willing to begin a repayment plan at 30 days may be more likely to become current even without a repayment plan.

[215] *See* General Accounting Office, Actions Needed by Treasury to Address Challenges in Implementing Making Home Affordable Programs, Table 1 (2011).

[216] For a discussion of recent changes, including the implementation of the new ''HAMP Tier 2'' alternative, see Making Home Affordable Supplemental Directive 12–02, March 9, 2012, available at *https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd1202.pdf.*

Benefits and costs to consumers. As discussed above in greater detail in part VI, above, the onset of the mortgage crisis revealed that many servicers did not have the infrastructure, trained staff, controls, and procedures needed to handle the high volumes of delinquent mortgages, loan modification requests, and foreclosures they were required to process. One study of complaints to the HOPE Hotline reported that over half were from borrowers who could not reach their servicers and obtain information about the status of their applications for HAMP modification.[217] Other complaints concerned lost documentation and that borrowers were not able to speak with representatives who were knowledgeable about the status of the borrowers' applications for loss mitigation. While certain servicers may nonetheless have provided delinquent borrowers with the services described in the proposed continuity of contact provisions, such as, for example, access to personnel who could provide the borrower with accurate information about the status of a loss mitigation application, the mortgage crisis demonstrated that a number of servicers did not.

As discussed in part VI, above, the Bureau believes that these problems may have had a significant adverse impact on borrowers seeking alternatives to foreclosure. While the Bureau does not have the data with which to quantify the effects, the inability of a borrower to speak with personnel knowledgeable about the status of a loss mitigation application creates delay in rectifying problems (including problems with lost documentation) that may lead to avoidable foreclosure. Similarly, the inability of borrowers to obtain a complete record of their payment histories with the servicer or of servicer personnel to access all documents the borrowers have submitted to the servicer in connection with an application for a loss mitigation option may impair the ability of borrowers to generally advocate for themselves regarding loss mitigation and possibly to slow or halt foreclosure. Conversely, the ability of borrowers to speak with personnel knowledgeable about loss mitigation options available to the borrower and the actions the borrower must take to be evaluated for such options makes it easier for borrowers to effectively pursue these options. These provisions therefore increase the chances that certain delinquent borrowers are able to obtain a loss mitigation plan and avoid foreclosure.[218]

Benefits and costs to covered persons. The Bureau understands that many servicers are already in compliance with the proposed requirements. As discussed in part VI, above, in response to reported problems with respect to how servicers to respond to delinquent borrowers, other regulators and the GSEs have responded by establishing staffing standards for servicers to meet when they assist delinquent borrowers. Accordingly, the Bureau believes that any additional costs of the proposed continuity of contact provisions would be minimal.

6. Loss Mitigation Procedures

Dodd-Frank Act section 1463 requires servicers to comply with any obligation the Bureau finds appropriate to carry out the consumer protection purposes of RESPA. The Bureau is using this authority to propose provisions regarding loss mitigation.

The proposed provisions on loss mitigation would require servicers that make loss mitigation options available to borrowers in the ordinary course of business to undertake certain duties in connection with the evaluation of borrower applications for loss mitigation options. These servicers would have a duty to evaluate borrowers that apply for loss mitigation within specific timeframes and to inform borrowers about the status of their applications and the servicer's decision. These servicers would also be prohibited from completing a foreclosure sale unless certain conditions held.[219]

Benefits and costs to consumers. The proposed procedures in 1024.41 provide a minimal structure to the process and decision-making around loss mitigation. Borrowers who submit complete applications may benefit from the proposed requirement on servicers to review and respond within a fixed period of time (30 days). Those who are denied loan modifications may benefit from the proposed requirement to disclose the reasons for the denial and the consumer's rights to appeal the decision, and from the appeal itself.

The Bureau is aware that a mandatory timeline may have unintended consequences for borrowers in certain circumstances. For example, one study of the loan-level data from the OCC–OTS Mortgage Metrics database studied 1.8 million mortgages that were current in the last quarter of 2007 and became ''troubled'' at some point between January 2008 and May 2009.[220] About 300,000 loans became troubled in each quarter of 2008. The researchers found that servicers made decisions very slowly and did not take any action, even after 6 months, in about half the cases.[221] The timeline in the proposed provisions would have been binding on a large number of loans during this period, and it is difficult to predict how the servicers would have responded.

One feature of the proposed provisions mitigates concerns about unintended consequences for borrowers. Servicers would be required to make a decision about whether to grant a loss mitigation option within 30 days. They would not, however, have to move to foreclosure just because they decline to provide a loss mitigation option. Servicers would be required to make a decision, but they would not be required to take any action that they would not have taken absent the proposed loss mitigation provisions, and through continuity of contact they could alert borrowers to the possibility of a different decision at a later date. Servicers would, however, be required to produce a record of decisions and, in the case of loss mitigation the reasons for denial, that record may provide greater accountability to both borrowers and investors. This argument also mitigates concerns that borrowers who may benefit from a long foreclosure timeline would necessarily need to leave their homes sooner than they otherwise would.

More generally, borrowers applying for a loss mitigation option are in a high-stakes and unfamiliar situation. They may have no clear understanding of what to expect and what is expected of them. Federal rules on loss mitigation may make key decision points more salient and credible to borrowers and motivate them, for example, to provide

[217] *See* General Accounting Office, *Troubled Asset Relief Program: Further Actions Needed to Fully and Equitably Implement Foreclosure Mitigation Programs,* at 15 (2010).

[218] See also the general discussion of servicing operations and avoidable foreclosure in the analysis of the proposed provisions on reasonable information management.

[219] Specifically, as specified in proposed § 1024.41(g), if a servicer received a timely and complete loss mitigation application, a servicer could not proceed to foreclosure sale unless: (1) The servicer denied the borrower's application for a loss mitigation option and the appeal process is inapplicable, the borrower has not requested an appeal, or the time for requesting an appeal has expired; (2) the servicer denied the borrower's appeal; (3) the borrower rejected a servicer's offer of a loss mitigation option; or (4) a borrower failed to perform pursuant to the terms of a loss mitigation option.

[220] Mortgages were troubled if they were ever 60+ days past due or the borrower contacted the lender asking to renegotiate the loan.

[221] *See* Sumit Agarwal, *et al., Market-Based Loss Mitigation Practices for Troubled Mortgages Following the Financial Crisis,* at 7–10, Table 2, Federal Reserve Bank of Chicago (2010).

complete applications to servicers in a timely manner. Borrowers may also be able to draw more directly on the experiences of other borrowers who were successful in loss mitigation since all would have been through a similar process.

Borrowers may also benefit from the proposed restrictions on the timing of foreclosure sales. As discussed above, there is substantial anecdotal evidence that borrowers have been foreclosed upon despite working in good faith for a loss mitigation option. The proposed restrictions would not prevent foreclosures that occur from the failure of servicers to comply with basic servicer duties, like maintaining proper records of payments and agreements. However, the proposed restrictions would define a clear set of circumstances under which discussions regarding loss mitigation options have ended. This certainty and clarity should make it less likely that borrowers will be foreclosed upon unexpectedly and makes clear to borrowers what is expected from them to avoid foreclosure.

Benefits and costs to covered persons. The proposed provisions on loss mitigation may impose some costs on servicers. For example, servicers who make loss mitigation options available in the ordinary course of business may need to employ additional staffing in order to meet the proposed 30-day timeline for evaluation when large numbers of borrowers submit applications. Servicers would also need to allow 90 days between the time a borrower submits a complete loss mitigation application and the servicer conducts a foreclosure sale. This builds in time for consideration of the application and an appeal, but it also may delay foreclosures that servicers, based on their experience, recognize as inevitable. Any lengthening of time until foreclosure sale will also increase the time during which servicers will have the expense of providing borrowers with continuity of contact. On the other hand, the amount of time required for a successful modification may be shorter, and the cost to servicers lower, if the timelines and other proposed provisions for loss mitigation encourage borrowers to work more effectively with servicers.

The costs to covered person of the proposed loss mitigation provisions depend on the extent to which servicers already comply with the proposed provisions and, for those not in compliance, the cost of making necessary changes. The Bureau asks interested parties to provide data and other information about current compliance with the proposed provisions, the challenges of coming into compliance, and the benefits and costs to covered persons from any interactions between these provisions and other provisions of this proposed rule.

E. Potential Specific Impacts of the Proposed Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets

Regarding the provisions for force-placed insurance, the Bureau understands within the group of depository institutions and credit unions with $10 billion or less in total assets, as described in section 1026 of the Dodd-Frank Act, the larger depositories and credit unions generally have contracts with force-placed insurance providers under which the providers would absorb the costs of the proposed provisions. Thus, the Bureau believes there would be little impact of the proposed provisions on these institutions. But for smaller depository institutions or credit unions, the Bureau understands that providers may pass along certain costs to such institutions. The impact of these provisions on small depository institutions and credit unions, including a discussion of input from SERs in the SBREFA process, is discussed in further detail in the Regulatory Flexibility Analysis in part VIII, below. Based on feedback received from the SERs, The Bureau understands that small mortgage servicers engage in relatively little force-placement. The Bureau asks interested parties to provide general information, data, and research results that are relevant to understanding the impact of the proposed provisions for force-placed insurance on depository institutions and credit unions considered in this section.

Regarding the other proposed provisions, the Bureau believes that the consideration of benefits and costs of covered persons presented above provides a largely accurate analysis of the impacts of the proposed rule on depository institutions and credit unions with $10 billion or less in total assets. About 90% of all servicers are depository institutions and the vast majority of these institutions adhere to the servicing guidelines established by the GSEs. There is substantial overlap between these guidelines and provisions of the proposed rule, especially in regards to early intervention with delinquent borrowers and loss mitigation. Thus, the Bureau believes that the consideration of benefits and costs to covered persons given above provides a general description of the impacts to depository institutions and credit unions considered in this section. However, the Bureau seeks comment on this conclusion and asks interested parties to provide general information, data, and research results that are relevant to understanding the impact of the proposed provisions on depository institutions and credit unions considered in this section.

2. Impact of the Proposed Provisions on Consumers in Rural Areas

Consumers in rural areas may experience benefits from the proposed rule that are different in certain respects from the benefits experienced by consumers in general. Consumers in rural areas may be more likely to obtain mortgages from small local banks and credit unions that either service the loans in portfolio or sell the loans and retain the servicing rights. These servicers may already provide most of the benefits to consumers that the proposed rule is designed to provide, including, for example, getting errors corrected promptly or getting access to personnel to assist them with their application for loss mitigation options. On the other hand, it is also possible that a lack of alternatives in some rural areas among lenders who also service may make it possible for the proposed rule to provide rural consumers with greater benefits.

The Bureau will further consider the impact of the proposed rule on consumers in rural areas. The Bureau therefore asks interested parties to provide data, research results and other factual information on the impact of the proposed rule on consumers in rural areas.

F. Additional Analysis Being Considered and Request for Information

The Bureau will further consider the benefits, costs, and impacts of the proposed provisions before finalizing the proposal. At various points in the analysis above, the Bureau asks interested parties to provide data, research results and other information relating to particular issues. The Bureau is generally interested in the impact of the proposed provisions on consumers, covered persons and markets in order to further understand and quantify the benefits and costs to consumers and covered persons. The Bureau generally requests interested parties to provide data, research, and other information that may inform the further consideration of benefits, costs and impacts of the proposed provisions.

To supplement the information discussed in this **SUPPLEMENTARY**

INFORMATION and any information that the Bureau may receive from commenters, the Bureau is currently working to gather additional data that may be relevant to this and other mortgage related rulemakings. These data may include additional data from the National Mortgage License System (NMLS) and the NMLS Mortgage Call Report, loan file extracts from various lenders, and data from the pilot phases of the National Mortgage Database. The Bureau expects that each of these datasets will be confidential. This section now describes each dataset in turn.

First, as the sole system supporting licensure/registration of mortgage companies for 53 regulatory agencies for states and territories and mortgage loan originators under the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), NMLS contains basic identifying information for non-depository mortgage loan origination companies. Firms that hold a State license or State registration through NMLS are required to complete either a standard or expanded Mortgage Call Report (MCR). The Standard MCR includes data on each firm's residential mortgage loan activity including applications, closed loans, individual mortgage loan originator (MLO) activity, line of credit, and other data repurchase information by State. It also includes financial information at the company level. The expanded report collects more detailed information in each of these areas for those firms that sell to Fannie Mae or Freddie Mac.[222] To date, the Bureau has received basic data on the firms in the NMLS and de-identified data and tabulations of data from the MCR. These data were used, along with HMDA data, to help estimate the number and characteristics of non-depository institutions active in various mortgage activities. In the near future, the Bureau may receive additional data on loan activity and financial information from the NMLS including loan activity and financial information for identified lenders. The Bureau anticipates that these data will provide additional information about the number, size, type, and level of activity for non-depository lenders engaging in various mortgage origination and servicing activities. As such, it supplements the Bureau's current data for non-depository institutions reported in HMDA and the data already received from NMLS. For example, these new data will include information about the number and size of closed-end first and second loans originated, fees earned from origination activity, levels of servicing, revenue estimates for each firm, and other information. The Bureau may compile some simple counts and tabulations and conduct some basic statistical modeling to better model the levels of various activities at various types of firms. In particular, the information from the NMLS and the MCR may help the Bureau refine its estimates of benefits, costs, and impacts for the proposed new servicing requirements in this proposed rule and the companion 2012 TILA Servicing Proposal, as well as other proposed rules to make revisions to the RESPA Good Faith Estimate and settlement statement forms, changes to the HOEPA thresholds, changes to requirements for appraisals, updates to loan originator compensation rules, and impose new ability-to-repay standards.

Second, the Bureau is working to obtain a random selection of loan-level data from several lenders. The Bureau intends to request loan file data from lenders of various sizes and geographic locations to construct a representative dataset. In particular, the Bureau will request a random sample of RESPA GFE and RESPA settlement statement forms from loan files for closed-end loans. These forms include data on some or all loan characteristics including settlement charges, origination charges, appraisal fees, flood certifications, mortgage insurance premiums, homeowner's insurance, title charges, balloon payments, prepayment penalties, origination charges, and credit charges or points. Through conversations with industry, the Bureau believes that such loan files exist in standard electronic formats allowing for the creation of a representative sample for analysis. The Bureau may use these data to further measure the impacts of certain proposed changes. Calculations of various categories of settlement and origination charges may help the Bureau calculate the various impacts of proposed changes in other proposals to the definition of finance charge, including proposed changes in the number and characteristics of loans that exceed the HOEPA thresholds, loans that would meet the high-rate or high-risk definitions mandating additional consumer protections, and loans that meet the points and fees thresholds contained in the ability-to-repay provisions of the Dodd-Frank Act.

Third, the Bureau may also use data from the pilot phases of the National Mortgage Database (NMDB) to refine its proposals and/or its assessments of the benefits, costs, and impacts of these proposals. The NMDB is a comprehensive database, currently under development, of loan-level information on first lien single-family mortgages. It is designed to be a nationally representative sample (1%) and contains data derived from credit reporting agency data and other administrative sources along with data from surveys of mortgage borrowers. The first two pilot phases, conducted over the past two years, vetted the data development process, successfully pre-tested the survey component and produced a prototype dataset. The initial pilot phases validated that sampled credit repository data are both accurate and comprehensive and that the survey component yields a representative sample and a sufficient response rate. A third pilot is currently being conducted with the survey being mailed to holders of 5,000 newly originated mortgages sampled from the prototype NMDB. Based on the 2011 pilot, a response rate of 50% or higher is expected. These survey data will be combined with the credit repository information of non-respondents, and then de-identified. Credit repository data will be used to minimize non-response bias, and attempts will be made to impute missing values. The data from the third pilot will not be made public. However, to the extent possible, the data may be analyzed to assist the Bureau in its regulatory activities and these analyses will be made publically available.

The survey data from the pilots may be used by the Bureau to analyze consumers' shopping behavior regarding mortgages. For instance, the Bureau may calculate the number of consumers who use brokers, the number of lenders contacted by borrowers, how often and with what patterns potential borrowers switch lenders, and other behaviors. Questions may also assess borrowers' understanding of their loan terms and the various charges involved with origination. Tabulations of the survey data for various populations and simple regression techniques may be used to help the Bureau with its analysis.

The Bureau requests commenters to submit data and to provide suggestions for additional data to assess the issues discussed above and other potential benefits, costs, and impacts of the proposed rule. The Bureau also requests comment on the use of the data described above.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by SBREFA and the Dodd-Frank Act, requires each agency to

[222] More information about the Mortgage Call Report can be found at: *http://mortgage.nationwidelicensingsystem.org/slr/common/mcr/Pages/default.aspx*.

consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. 5 U.S.C. 601 *et seq.* The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 604. The Bureau also is subject to certain additional procedures under the RFA involving the convening of the Small Business Review Panel to consult with SERs prior to proposing a rule for which an IRFA is required. 5 U.S.C. 609.

The Bureau has not certified that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Accordingly, the Bureau convened and chaired the Small Business Review Panel to consider the impact of the proposed rule on small entities that would be subject to that rule and to obtain feedback from representatives of such small entities. The Small Business Review Panel for this rulemaking is discussed below in part VIII.A.

The Bureau is publishing an IRFA. Among other things, the IRFA estimates the number of small entities that will be subject to the proposed rule and describe the impact of that rule on those entities. The IRFA for this rulemaking is set forth below in part VIII.A.

A. Small Business Review Panel

Under section 609(b) of the RFA, as amended by SBREFA and the Dodd-Frank Act, the Bureau seeks, prior to conducting the IRFA, information from representatives of small entities that may potentially be affected by its proposed rules to assess the potential impacts of that rule on such small entities. 5 U.S.C. 609(b). Section 609(b) sets forth a series of procedural steps with regard to obtaining this information. The Bureau first notifies the Chief Counsel for Advocacy of the SBA and provides the Chief Counsel for Advocacy of the SBA with information on the potential impacts of the proposed rule on small entities and the types of small entities that might be affected. 5 U.S.C. 609(b)(1). Not later than 15 days after receipt of the formal notification and other information described in section 609(b)(1) of the RFA, the Chief Counsel for Advocacy of the SBA then identifies individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule (referred to previously as SERs). 5 U.S.C. 609(b)(2). The Bureau convenes a review panel for such rule consisting wholly of fulltime Federal employees of the office within the Bureau responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within OMB, and the Chief Counsel for Advocacy of the SBA, which constitutes the Small Business Review Panel. 5 U.S.C. 609(b)(3). The Panel reviews any material the Bureau has prepared in connection with the SBREFA process and collects advice and recommendations of each individual SER identified by the Bureau after consultation with the Chief Counsel for Advocacy of the SBA on issues related to sections 603(b)(3) through (b)(5) and 603(c) of the RFA.[223] 5 U.S.C. 609(b)(4). Not later than 60 days after the date the Bureau convenes the Small Business Review Panel, the Panel reports on the comments of the SERs and its findings as to the issues on which the Panel consulted with the SERs, and the report is made public as part of the rulemaking record. 5 U.S.C. 609(b)(5). Where appropriate, the Bureau modifies the rule or the IRFA in light of the foregoing process. 5 U.S.C. 609(b)(6).

On April 9, 2012, the Bureau provided the Chief Counsel for Advocacy of the SBA with the formal notification and other information required under section 609(b)(1) of the RFA. To obtain feedback from SERs to inform the Panel pursuant to section 609(b)(2) and 609(b)(4) of the RFA, the Bureau, in consultation with the Chief Counsel for Advocacy of the SBA, identified five categories of small entities that may be subject to the proposed rule for purposes of the IRFA: commercial banks/savings institutions, credit unions, non-depositories engaged primarily in lending funds with real estate as collateral (included in NAICS 522292), non-depositories primarily engaged in loan servicing (included in NAICS 522390), and certain non-profit organizations. Section 3 of the IRFA, in Part VIII.B.3, below, describes in greater detail the Bureau's analysis of the number and types of entities that may be affected by the proposed rule. Having identified the categories of small entities that may be subject to the proposed rule for purposes of an IRFA, the Bureau, in consultation with the Chief Counsel for Advocacy of the SBA, selected 16 SERs to participate in the SBREFA process. As described in chapter 7 of the Small Business Review Panel Report (described below), the SERs selected by the Bureau in consultation with the Chief Counsel for Advocacy of the SBA included representatives from each of the categories identified by the Bureau and comprised a diverse group of individuals with regard to geography and type of locality (*i.e.,* rural, urban, suburban, or metropolitan areas).

On April 10, 2012, the Bureau convened the Small Business Review Panel pursuant to section 609(b)(3) of the RFA. To collect the advice and recommendations of the SERs under section 609(b)(4) of the RFA, the Panel held an outreach meeting/teleconference with the SERs on April 24, 2012 (''Panel Outreach Meeting''). To help the SERs prepare for the Panel Outreach Meeting, the Panel circulated briefing materials prepared in connection with section 609(b)(4) of the RFA that summarized the proposals under consideration at that time, posed discussion issues, and provided information about the SBREFA process generally.[224] All 16 SERs participated in the Panel Outreach Meeting either in person or by telephone. The Small Business Review Panel also provided the SERs with an opportunity to submit written feedback until May 1, 2012. In response, the Small Business Review Panel received written feedback from 5 of the representatives.[225]

On June 11, 2012, the Small Business Review Panel submitted to the Director of the Bureau, Richard Cordray, the written Small Business Review Panel Report, which includes the following: background information on the proposals under consideration at the time; information on the types of small entities that would be subject to those proposals and on the SERs who were

[223] As described in the IRFA in part VIII.B, below, sections 603(b)(3) through (b)(5) and section 603(c) of the RFA, respectively, require a description of and, where feasible, provision of an estimate of the number of small entities to which the proposed rule will apply; a description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. 5 U.S.C. 603(b)(3), 603(b)(4), 603(b)(5), 603(c).

[224] The Bureau posted these materials on its Web site and invited the public to email remarks on the materials, available at: *http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-outlines-borrower-friendly-approach-to-mortgage-servicing/.*

[225] This written feedback is attached as appendix A to the Small Business Review Panel Report.

selected to advise the Small Business Review Panel; a summary of the Panel's outreach to obtain the advice and recommendations of those SERs; a discussion of the comments and recommendations of the SERs; and a discussion of the Small Business Review Panel findings, focusing on the statutory elements required under section 603 of the RFA. 5 U.S.C. 609(b)(5).

In preparing this proposed rule and the IRFA, the Bureau has carefully considered the feedback from the SERs participating in the SBREFA process and the findings and recommendations in the Small Business Review Panel Report. The section-by-section analysis of the proposed rule in Part VI, above, and the IRFA discuss this feedback and the specific findings and recommendations of the Small Business Review Panel, as applicable. The SBREFA process provided the Small Business Review Panel and the Bureau with an opportunity to identify and explore opportunities to mitigate the burden of the rule on small entities while achieving the rule's purposes. It is important to note, however, that the Small Business Review Panel prepared the Small Business Review Panel Report at a preliminary stage of the proposal's development and that the report—in particular, the findings and recommendations—should be considered in that light. Also, any options identified in the Small Business Review Panel Report for reducing the proposed rule's regulatory impact on small entities were expressly subject to further consideration, analysis, and data collection by the Bureau to ensure that the options identified were practicable, enforceable, and consistent with RESPA, TILA, the Dodd-Frank Act, and their statutory purposes. The proposed rule and the IRFA reflect further consideration, analysis, and data collection by the Bureau.

B. Initial Regulatory Flexibility Analysis

Under section 603(a) of the RFA, an IRFA ''shall describe the impact of the proposed rule on small entities.'' 5 U.S.C. 603(a). Section 603(b) of the RFA sets forth the required elements of the IRFA. An IRFA shall contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and the legal basis for, the proposed rule; (3) a description of and, where feasible, provision of an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record; and (5) identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule. The Bureau, further, must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Finally, as amended by the Dodd-Frank Act, section 603(d) of the RFA requires that the IRFA include a description of any projected increase in the cost of credit for small entities, a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities (if such an increase in the cost of credit is projected), and a description of the advice and recommendations of representatives of small entities relating to the cost of credit issues. 5 U.S.C. 603(d)(1); Dodd-Frank Act section 1100G(d)(1).

1. Description of the Reasons Why Agency Action Is Being Considered

As discussed in the part I, above, mortgage servicing has been marked by pervasive and profound consumer protection problems. As a result of these problems, Congress included a number of provisions in the Dodd-Frank Act specifically to address mortgage servicing. One of these provisions is section 1463 of the Dodd-Frank Act, which amends RESPA. This provision puts new disclosure requirements and limitations on servicers obtaining force-placed insurance, and it establishes obligations for servicers to respond to requests from borrower to correct errors or provide certain information. Section 1463 of the Dodd-Frank Act also authorizes the Bureau, by regulation, to impose other obligations on servicers that it finds appropriate to carry out the purposes of the statute.

These new statutory requirements take effect automatically on January 21, 2013, as written in the statute, unless final rules are issued prior to that date. If the Bureau adopts implementing regulations no later than January 21, 2013, the Bureau may establish an effective date for the rules. The statutory requirements implemented by the rules then take effect on the same date. The Bureau intends to exercise its authority to adopt regulations to clarify new consumer protection obligations under the statute, to adopt additional consumer protections not required by the statute, and to give servicers sufficient time to come into compliance. The Bureau is also considering adjusting servicers' legal obligations, including the obligations of small servicers, in certain circumstances to ease burden without sacrificing adequate protection of consumers.

The Bureau is proposing additional standards to improve the way servicers treat borrowers, particularly delinquent borrowers. Some servicers have made it very difficult for delinquent borrowers to understand, and take advantage of, potential alternatives to foreclosure. For example, servicers have frequently neglected to reach out or respond to such borrowers to discuss alternatives to foreclosure, lost or misplaced the documents of borrowers who have sought loan modifications or other options offered by servicers, and forced borrowers who have invested substantial time communicating with an employee of the servicer to repeat the process with different employees that lack information about the substance of prior communications. The Bureau is proposing new servicing regulations to address these concerns.

When finalized, the Bureau's rules will constitute the first truly national mortgage servicing standards. Other Federal regulatory agencies have issued guidance on mortgage servicing and loan modifications and taken enforcement actions against mortgage servicers. The State attorneys general, joined by numerous Federal agencies including the Bureau, entered into the National Mortgage Settlement with the nation's five largest servicers in February 2012. The National Mortgage Settlement applies to portfolio loans serviced by the five largest servicers. Borrowers of mortgage loans owned by GSEs or private investors may not necessarily gain the benefit of the protections set forth in that settlement.

These varied regulatory responses are understandable when viewed as a response to an unprecedented mortgage crisis and significant problems in the servicing of mortgage loans. Ultimately, however, both borrowers and mortgage servicers will be better served by having uniform minimum national standards that govern mortgage servicing. When adopted in final form, the Bureau's rules will apply to all mortgage servicers, whether depository institutions or non-depository institutions, and to all segments of the mortgage market, regardless of the ownership of the loan—except to the extent the Bureau adopts exemptions for smaller servicers.

2. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

This rulemaking has multiple objectives. The proposed provisions on force-placed insurance should reduce the likelihood that servicers purchase force placed insurance without a reasonable basis. This will reduce instances of servicers charging borrowers for force-placed insurance they do not need or charge more than is bona fide and reasonable. The proposed provisions on error resolution and requests for information would require servicers to promptly investigate alleged errors and, as appropriate, correct them. Servicers would also be required to conduct reasonable and timely searches for certain types of information.

The proposed provisions on maintaining reasonable information management policies and procedures address wide-spread problems reported across the mortgage servicing industry with regard to management of borrower documents and information. Compliance with the rule will require providing accurate information to borrowers, correcting errors where they occur, evaluating borrowers for loss mitigation options, facilitating oversight of, and compliance by, service providers, and facilitating servicing transfers.

The proposed provisions on early intervention with delinquent borrowers are intended to spur the engagement between servicers and borrowers that is necessary for avoiding foreclosure. Early intervention may also generally benefit borrowers by reducing avoidable interest costs, limiting the impact on borrowers' credit reports, and facilitating household budgeting and planning.

The proposed provisions on continuity of contact ensure that servicer personnel have access to information about delinquent borrowers so that the servicer can appropriately assist the borrower in exploring loss mitigation options.

Finally, the proposed provisions on loss mitigation would require servicers that make loss mitigation options available to borrowers in the ordinary course of business to undertake certain duties in connection with the evaluation of borrower applications for loss mitigation options. These servicers would have a duty to evaluate borrowers that apply for loss mitigation within specific timeframes and to inform borrowers about the status of their application and the servicer's decision. These servicers would also be prohibited from completing a foreclosure sale unless certain conditions held.[226]

3. Description and, Where Feasible, Provision of an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

As discussed in the Small Business Review Panel Report, for purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards.[227] 5 U.S.C. 601(3). Under such standards, banks and other depository institutions are considered ''small'' if they have $175 million or less in assets, and for most other financial businesses, the threshold is average annual receipts (*i.e.,* annual revenues) that do not exceed $7 million.[228]

During the Small Business Review Panel outreach, the Bureau identified five categories of small entities that may be subject to the proposed rule for purposes of the RFA: Commercial banks/savings institutions [229] (NAICS 522110 and 522120), credit unions (NAICS 522130), firms providing real estate credit (NAICS 522292), firms engaged in other activities related to credit intermediation (NAICS 522390), and small non-profit organizations. Commercial banks, savings institutions and credit unions are small businesses if they have $175 million or less in assets. Firms providing real estate credit and firms engaged in other activities related to credit intermediation are small businesses if average annual receipts do not exceed $7 million.

A small non-profit organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Small non-profit organizations engaged in mortgage servicing typically perform a number of activities directed at increasing the supply of affordable housing in their communities. Some small non-profit organizations originate and service mortgage loans for low and moderate income individuals while others purchase loans or the servicing rights on loans originated by local community development lenders. Servicing income is a substantial source of revenue for some small non-profit organizations while others receive most of their income from grants or investments.[230]

The following table provides the Bureau's estimate of the number and types of entities that may be affected by the proposals under consideration:

ESTIMATED NUMBER OF AFFECTED ENTITIES AND SMALL ENTITIES BY NAICS CODE AND ENGAGEMENT IN CLOSED-END MORTGAGE LOAN SERVICING

Category	NAICS	Small entity threshold	Total entities	Small entities	Entities engaged in mortgage loan servicing	Small entities engaged in mortgage loan servicing
Commercial banks & savings institutions	522110, 522120	$175,000,000 assets	7,724	4,250	7,502	4,098
Credit unions	522130	$175,000,000 assets	7,491	6,568	5,190	4,270

[226] As specified in proposed § 1024.41(g), if a servicer receives a timely and complete loss mitigation application, a servicer may not proceed to foreclosure sale unless: (1) The servicer denies the borrower's application for a loss mitigation option and the appeal process is inapplicable, the borrower has not requested an appeal, or the time for requesting an appeal has expired; (2) the servicer denies the borrower's appeal; (3) the borrower rejects a servicer's offer of a loss mitigation option; or (4) a borrower fails to perform pursuant to the terms of a loss mitigation option.

[227] The current SBA size standards are found on SBA's Web site, available at: *http://www.sba.gov/content/table-small-business-size-standards.*

[228] *Id.*

[229] Savings institutions include thrifts, savings banks, mutual banks, and similar institutions.

[230] The Bureau is continuing to refine its description of small non-profit organizations engaged in mortgage loan servicing and working to estimate the number of these entities, but it is not possible to estimate the number of these entities at this time. Non-profits and small non-profits engaged in mortgage loan servicing would be included under real estate credit if their primary activity is originating loans and under other activities related to credit intermediation if their primary activity is servicing.

ESTIMATED NUMBER OF AFFECTED ENTITIES AND SMALL ENTITIES BY NAICS CODE AND ENGAGEMENT IN CLOSED-END MORTGAGE LOAN SERVICING—Continued

Category	NAICS	Small entity threshold	Total entities	Small entities	Entities engaged in mortgage loan servicing	Small entities engaged in mortgage loan servicing
Real estate credit	522292	$7,000,000 revenues	5,791	5,152		
Other activities related to credit intermediation (includes loan servicing).	522390	$7,000,000 revenues	5,494	5,319	1,388	800

For commercial banks, savings institutions and credit unions, the number of entities and asset sizes were obtained from December 2010 Call Report data as compiled by SNL Financial. Banks and savings institutions are counted as engaging in mortgage loan servicing if they hold closed-end loans secured by 1-to-4 family residential property or they are servicing mortgage loans for others. Credit unions are counted as engaging in mortgage loan servicing if they have closed-end 1-to-4 family mortgages on portfolio, or hold real estate loans that have been sold but remain serviced by the institution.

For firms providing real estate credit and firms engaged in other activities related to credit intermediation, the total number of entities and small entities comes from the 2007 Economic Census. The total number of these entities engaged in mortgage loan servicing is based on a special analysis of data from the Nationwide Mortgage Licensing System and Registry and is as of Q1 2011. The total equals the number of non-depositories that engage in mortgage loan servicing, including tax exempt entities, except for those mortgage loan servicers (if any) that do not engage in any mortgage-related activities that require a state license. The estimated number of small entities engaged in mortgage loan servicing is based on predicting the likelihood that an entity's revenue is less than the $7 million threshold based on the relationship between servicer portfolio size and servicer rank in data from Inside Mortgage Finance.[231]

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report

The proposed rule does not impose new reporting requirements.

The possible recordkeeping and compliance costs for small entities from each major component of the proposed rule are presented below. The Bureau presents these costs against a pre-statute baseline. This baseline includes the costs of complying with the Federal rules that overlap with the proposed rule, as described in section 5 of this part, below. The Bureau expects that the costs of complying with the proposed rule relative to the pre-statute baseline are lower than these costs would be if not for the costs of complying with the existing Federal rules. In particular, certain one-time and ongoing costs regarding error resolution, early intervention and loss mitigation will have generally been incurred and budgeted for by servicers. These expenses will facilitate and thereby reduce the cost of compliance with the proposed rule.

Benefits to consumers from the proposed rule have been previously discussed in the section 1022 analysis in part VII, above.

(a) Force-Placed Insurance

Dodd-Frank Act section 1463 amends RESPA to prohibit a servicer of a federally related mortgage from obtaining force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance. The statute sets forth a mandatory process servicers must follow, which includes sending two notices to the borrower, before imposing any charge on a borrower for force-placed insurance. The statute also provides process requirements about terminating force-placed insurance and refunding force-placed insurance premiums paid during any period during which the borrower's insurance coverage and the force-placed insurance coverage were each in effect.

The Bureau is proposing forms for the force-placed insurance notices to be sent to borrowers. The Bureau is also proposing requirements concerning: charges related to force-placed insurance, payment of insurance from escrow, and notice requirements when servicers renew existing insurance policies.

Based on discussions with industry and the SERs, the Bureau understands that the proposed force-placed insurance provision may not have the same impact on all small servicers. Some small servicers incur all of the costs associated with providing notices, tracking borrower coverage, and placing and terminating the insurance. For other small servicers, the force-placed insurance provider handles these activities and absorbs the costs or passes them on to the consumer indirectly through the insurance premium.

Based on discussions with the SERs, the Bureau currently understands that many small servicers already comply with most of the force-placed insurance provisions of the proposed rule. Two SERs stated that they already provide two or more notices of pending force-placed insurance and others stated that they already refund premiums back to borrowers for periods of overlapping coverage. Other SERs noted that they already provide refunds for overlapping coverage.

If small servicers in general already comply with the force-placed insurance provisions of the proposed rule, then the impact of the proposed rule will likely come from the one-time cost of developing disclosures that would meet the proposed disclosure requirements and the ongoing costs of providing information in the disclosures that they do not already provide. For example, one SER stated that their current notice does not include an estimate of force-placed insurance costs. In addition, some small servicers who very rarely

[231] The Bureau is continuing to refine its estimate of the number of firms providing real estate credit and engaging in other activities related to credit intermediation that are small and which engage in mortgage loan servicing.

need to force-place insurance and therefore use informal procedures may need to develop written procedures to ensure they comply with the proposed rule. The Bureau believes the one-time cost of developing these policies will be minimal.

When the Bureau convened its Small Business Review Panel on mortgage servicing, the Bureau learned that several of the small servicers that participated on the panel obtained force-placed insurance policies that must be renewed monthly. The Bureau proposes to mitigate the cost of these disclosures by providing that a servicer is not required to send more than one renewal notice during any 12-month period.

One SER raised a different concern regarding notice and process costs associated with borrowers who have chronic lapses in hazard insurance coverage. This SER said that there would be labor costs associated with managing a process in which notices must be delivered at required intervals, setting up escrows for the premium, refunding premiums, and repeating the process when insurance lapses again. The Bureau believes that most small servicers already incur most of these costs. However, the Bureau is interested in data and other factual information about the likely compliance costs associated with borrowers who have chronic lapses in hazard insurance coverage and requests comment on this issue.

Finally, most SERs did not raise specific concerns with the proposal to expand existing requirements, in regards to disbursements from a borrower's escrow account to pay the borrower's hazard insurance premium, to borrower's whose mortgage payments are more than 30 days past due. Two SERs that expressed concern about advancing funds to renew a borrower's hazard insurance because the borrower could cancel the insurance and keep the refund.[232] The Small Business Review Panel recommended that the Bureau reduce the incentives for borrowers to take such action by allowing servicers to advance premium payments in 30-day installments. Proposed comment 17(k)(5)–3 reflects the panel's recommendation, and the Bureau believes that small servicers would not be unduly burdened by the Bureau's proposal.

(b) Error Resolution and Response to Inquiries

Dodd-Frank Act section 1463 amends section 6 of RESPA by adopting a number of servicer prohibitions with respect to handling alleged errors and inquiries, including revising the timeframe to respond to qualified written requests, and prohibiting the charging of fees in connection with qualified written requests.

The Bureau is proposing a comprehensive set of requirements for investigating and correcting errors and for responding to borrower inquiries. Servicers would be required to correct errors relating to allocation of payments, provision of final balances for purposes of paying off the loan, avoiding foreclosures, or other standard servicer duties. Servicers also would be required to respond to inquiries about certain topics.

Servicers would have to provide borrowers with a written acknowledgement of receiving a notice of error, unless the servicer resolves the error within five days and the borrower is notified of the resolution in writing. Servicers would have to correct the error and provide the borrower with written notification of the correction or conduct a reasonable investigation and provide the borrower with written notification regarding the investigation and the documents relied upon by the servicer. Generally, the investigation would have to be completed and a response provided within 30 days after receipt of the notice of error.

Substantially similar requirements apply to inquiries. Servicers would have to provide borrowers with written acknowledgement of receiving an information request, unless the servicer provides the borrower with the information requested and with contact information for further assistance within five days, which can be provided orally or in writing. Servicers would have to provide the borrower with the requested information, either orally or in writing, or conduct a reasonable search for the information and provide the borrower with a written notification regarding the search. Generally, with the exception of requests for certain types of information, the information or the notice would have to be provided within 30 days after receipt of the information request.

Aside from the requirement to respond in writing to notices of error and inquiries, servicers not in compliance with the other provisions would need to develop compliance procedures and train staff and may need new or updated software and hardware in order to access the information required to address notices of error and inquiries. However, the Bureau understands that most small servicers already comply with these proposed provisions. SERs had no objection to the proposed response timeframes. SERs emphasized that their borrowers demanded immediate resolution of errors and response to inquiries and their high-touch customer service model was designed to meet the demands of these borrowers.

SERs did generally object to the proposed written response requirements. Several SERs stated that having to respond in writing to every notice of error would be burdensome. Further, SERs argued that there would be no consumer benefit, since errors are generally asserted orally and resolved quickly, if not immediately, and orally. The Bureau notes that the proposed provision regarding inquiries does not require a written response if the servicer provides the information requested to the borrower within five days. Nevertheless, the Bureau understands that small servicers, as defined above, have an incentive to provide protections to consumers that may not exist for other servicers.

(c) Reasonable Information Management Policies and Procedures

Section 1463 of the Dodd-Frank Act requires servicers to comply with any obligation the Bureau finds appropriate to carry out the consumer protection purposes of RESPA. The Bureau is using this authority to propose a requirement that servicers establish reasonable information management policies and procedures. This provision would impose a recordkeeping burden on small servicers.

The proposed provisions specify certain objectives for servicers' information management practices. These practices should facilitate: Accessing and providing accurate information; investigating and correcting errors and providing requested information; evaluating loss mitigation options; oversight of, and compliance by, service providers; facilitating servicing transfers; and providing access to information about actions taken by the servicer.

Servicers that maintain reasonable information management policies and procedures may incur a cost to review and document their policies and procedures, obtain legal advice, train their staff to follow the policies and procedures, and monitor staff adherence to the policies and procedures. The proposal mitigates all of these costs for small servicers through the provision that the ''reasonableness'' of a servicer's policies and procedures would depend upon the size of the servicer and the nature and scope of its activities. Further, depository institutions already are subject to interagency guidelines

[232] Small Business Review Panel Report, at 22.

relating to safeguarding the institution's safety and soundness that facilitate reasonable information management for purposes of mortgage servicing.

The SERs appreciated the flexibility of the proposal and thought it was good that ''reasonable'' depends on the size, nature, and scope of the entity. The SERs emphasized that small firms do not necessarily use automated or online systems to record and track all borrower communications. They urged the Bureau to avoid structuring the requirement in such a way as to require expensive system upgrades.

(d) Early Intervention for Delinquent Borrowers

Section 1463 of the Dodd-Frank Act requires servicers to comply with any obligation the Bureau finds appropriate to carry out the consumer protection purposes of RESPA. The Bureau is using this authority, among others, to propose early intervention and continuity of contact provisions regarding delinquent borrowers.

The Bureau is generally proposing to require servicers to make two contacts with delinquent borrowers. The Bureau proposes to require servicers to make a good faith effort to contact delinquent borrowers orally no later than 30 days after the payment due date. The Bureau also proposes to require servicers to provide delinquent borrowers with a written notice with information about loss mitigation options and foreclosure. This second contact must be provided no later than 40 days after the payment date that the borrower missed.

The Bureau is proposing to mitigate the cost of the written notice provision by providing servicers with model clauses and by limiting the written notice to be provided once every 180-day period. The Bureau's model clauses provide servicers with examples of language explaining the foreclosure process and encouraging the borrower to contact the servicer. The Bureau intends for the model clauses to provide servicers with examples of the level of detail that the Bureau expects servicers to provide in their written notice.

The SERs explained that they generally contact delinquent borrowers well before the 45th day of a borrower's delinquency. One SER mentioned that the GSEs require contact with delinquent borrowers at day 16. The SERs stated that they had relatively low numbers of delinquent borrowers; however, one SER expressed concern about borrowers who were frequently delinquent. This SER did not want to have to send information every month. The Bureau notes that under the proposal, a servicer is not required to provide the written notice to a borrower more than once during any 180-day period.

Some SERs did object to the proposed written notice requirement. The SERs generally stated that they tailor the information they provide to the specific situation of the borrower. One SER objected to a process that the SER regarded as unnecessary and which would require sending yet another notice to the borrower.

(e) Continuity of Contact

Section 1463 of the Dodd-Frank Act requires servicers to comply with any obligation the Bureau finds appropriate to carry out the consumer protection purposes of RESPA. The Bureau is using this authority, among others, to propose requiring servicers to assign personnel to respond to inquiries of certain delinquent borrowers and, as applicable, assist them with loss mitigation options.

The Bureau is proposing that borrowers who meet the requirements for the proposed oral notification under the Bureau's proposed early invention provision must be provided with live phone access to the assigned personnel. The proposal would require that servicers maintain reasonable policies and procedures designed to ensure that the assigned personnel perform an enumerated list of functions, such as having access to certain information about the borrowers (*e.g.,* a complete record of the borrower's payment history in the servicer's possession). The proposal provides conditions that define the duration of continuity of contact, and the proposal provides that certain delays and failures that disrupt continuity of contact do not violate the rule.

The Bureau believes that small servicers generally meet the proposed provisions for continuity of contact. SERs generally stated that with their small staffs, everyone had access to files and would be able to assist borrowers in delinquency. One SER noted that originating officials handle the collections for the loans they originated. This SER noted that borrowers have ready access to the originator and the originator has full access to all loan documents and payment history.

(f) Loss Mitigation

Section 1463 of the Dodd-Frank Act requires servicers to comply with any obligation the Bureau finds appropriate to carry out the consumer protection purposes of RESPA. The Bureau is using this authority, among others, to propose requirements on servicers that offer loss mitigation options to borrowers in the ordinary course of business.

As discussed above, the Bureau is aware of the potential impacts of the loss mitigation requirements on small servicers. As discussed above for proposed § 1024.41, while the Small Business Review Panel Report and the outreach meeting did not focus in significant detail on some of the specific measures proposed here such as, for example, appeals of loss mitigation determinations, the SERs provided feedback on many elements of the loss mitigation process. The Bureau requested feedback from small servicers on the following: (1) A duty to suspend a foreclosure sale while a borrower is performing as agreed under a loss mitigation option or other alternative to foreclosure; (2) the ability to adopt policies and procedures to facilitate review of borrowers for loss mitigation options; (3) the ability to provide information regarding loss mitigation early in the foreclosure process to borrowers; and (4) the ability to provide borrowers with the opportunity to discuss evaluations for loss mitigation options with designated servicer contact personnel.[233]

The SERs said that they generally engaged in individualized contact with borrowers early in the foreclosure process, completed discussions of loss mitigation options with borrowers prior to a point in time when borrowers should have significant foreclosure related information, and generally worked closely with foreclosure counsel so that foreclosure processes and loss mitigation could be easily conducted simultaneously without prejudice to the loss mitigation process. Further, the SERs explained that they were willing to communicate with borrowers about loss mitigation contemporaneously with the foreclosure process, and one SER indicated that it would be willing to bring a mortgage file back to consider a modification, if appropriate.[234]

Based in part on the outreach with the SERs on April 24, 2012, as well as other feedback obtained by the Bureau after that outreach meeting, the Bureau considered proposing clearer and more detailed requirements relating to loss mitigation practices. The Bureau determined, for the sake of clarity and consistency, to include loss mitigation obligations as a separate regulation, rather than embedding the requirements within the provisions relating to error

[233] *See* Small Business Review Panel for Mortgage Servicing Rulemaking, Outline of Proposals Under Consideration and Alternatives Considered, at 19, 22, 24–26.

[234] Small Business Review Panel Report at 26.

resolution, reasonable information management policies and procedures, early intervention for delinquent borrowers, and continuity of contact.

(g) Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Record

Section 603(b)(4) of the RFA requires an estimate of the classes of small entities which will be subject to the requirement. The classes of small entities which will be subject to the reporting, recordkeeping, and compliance requirements of the proposed rule are the same classes of small entities that are identified above in part VIII.B.3.

Section 603(b)(4) of the RFA also requires an estimate of the type of professional skills necessary for the preparation of the reports or records. The Bureau anticipates that the professional skills required for compliance with the proposed rule are the same or similar to those required in the ordinary course of business of the small entities affected by the proposed rule. Compliance by the small entities that will be affected by the proposed rule will require continued performance of the basic functions that they perform today: Generating disclosure forms, addressing errors and providing information to borrowers, managing information about borrowers, contacting delinquent borrowers, providing continuity of contact for delinquent borrowers, and (as applicable) reviewing applications by borrowers for loss mitigation.

5. Identification, to the Extent Practicable, All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

The Dodd-Frank Act codified certain requirements contained in existing regulations and in some cases imposed new requirements that expand or vary the scope of existing regulations. The Bureau is working to eliminate conflicts and to harmonize the earlier rules with the new statutory requirements.

RESPA section 6(e) contains procedures for qualified written requests that overlap with section 1463 of the Dodd-Frank Act to provide additional procedures for resolving errors and responding to inquiries. The Bureau is proposing broader, more consumer-friendly error resolution and information request procedures that cover wider topics than the current qualified written request procedures and will subsume the qualified written request procedures. The Bureau believes that a common minimum set of procedures applicable to all assertions of errors or information requests, whether in the form of a qualified written request or not, will benefit both borrowers and servicers. Further, as noted elsewhere in, this **SUPPLEMENTARY INFORMATION**, depending on the circumstances, the error resolution procedures in this rule may overlap with the direct dispute procedures under FCRA where the dispute involves erroneously furnishing negative information to a consumer reporting agency. *See* 15 U.S.C. 1681s–2(a)(8); 12 CFR 1022.43.

As noted, elsewhere in this **SUPPLEMENTARY INFORMATION**, the early intervention and loss mitigation procedures in this proposed rule may overlap with existing Federal law codifying requirements of FHA, VA, and the Rural Housing Service with respect to mortgages insured by those agencies. The Bureau also understands that section 106(c)(5) of the Housing and Urban Development Act of 1968, as amended, generally requires creditors to provide notice of homeownership counseling to eligible delinquent borrowers not later than 45 days after a borrower misses a payment due date. 12 U.S.C. 1701x(c)(5)(B). Similar to the information required under section 106(c)(5) of the Housing and Urban Development Act, the written notice in proposed § 1024.39(b)(2)(vi) would include contact information for housing counselors and the borrower's State housing finance authority, although servicers would be required to provide the written notice not later than 40 days after a borrower misses a payment due date. To the extent requirements proposed by Bureau overlap with existing Federal rules, the Bureau expects servicers would abide by the stricter standard in order to comply with all requirements.

Apart from this overlap, the Bureau is not aware of any other Federal regulations that currently duplicate, overlap, or conflict with the proposals under consideration.[235] The Bureau requests comment to identify any additional such Federal rules that impose duplicative, overlapping, or conflicting requirements on servicers and potential changes to the proposed rules in light of duplicative, overlapping, or conflicting requirements.

[235] The RFA requires identification of duplicative, overlapping, or conflicting Federal regulation. Consent orders, settlement agreements with Federal agencies, and investor requirements of Fannie Mae and Freddie Mac do not constitute Federal regulations for purposes of the IRFA.

6. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The SERs expressed general concern about the costs to small entities of regulation, but the SERs also stated that they were already in compliance with most of the provisions of the proposed rule. Where the SERs expressed concern about the costs of complying with a proposed provision, the Bureau considered alternatives that might impose lower costs on small servicers, but does not believe that these alternatives would accomplish the stated objectives of the applicable statute.

Regarding the proposed disclosures for force-placed insurance, the Bureau understands that small servicers may incur costs for providing these disclosures that large servicers do not. Providers may be more likely to charge small servicers for new or changed disclosures than they are to charge large servicers. Small servicers are also more likely to produce the disclosures in-house. The Bureau believes that the proposed force-placed insurance disclosures would be an effective and important component of a statutory regime intended to reduce or prevent unnecessary force-placement of hazard insurance. The Bureau does not believe that less costly alternatives to the proposed rule for small servicers would accomplish this objective. The Bureau notes that most SERs did not raise concerns with the proposal. The Bureau proposes to mitigate the cost of the disclosures to all servicers by providing that a servicer is not required to send more than one renewal notice during any 12-month period.

Regarding the proposed provisions for reasonable information management policies and procedures, the Bureau provides flexibility for small servicers by providing for servicers to design policies and procedures that are appropriate for their servicing businesses 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. As noted above, the SERs appreciated the flexibility of the proposal and thought it was good that reasonableness would depends on the size, nature, and scope of the entity.

The SERs did express concern in regards to the error resolution procedures. In particular, several SERs stated that having to respond in writing to every notice of error would be burdensome. The Bureau notes that the proposal includes a provision that minimize the burden on servicers from the error resolution requirements if a notice of error is overbroad or unduly burdensome.

The Bureau considered providing small servicers with an alternative method of compliance with two of the proposed provisions for error resolution. Under the alternative considered, small servicers would not have needed to comply with the proposed acknowledgement of receipt requirement or the proposed response to notice of error requirement if (a) the small servicer provided notification of the correction orally if the error was asserted orally by the borrower, and (b) the small servicer indicated in its records both the error asserted by the borrower and the action taken by the servicer to correct the error. The Bureau believes, however, that there is substantial consumer protection in the acknowledgement of receipt and response to notice of error requirements and that the alternative may diminish these protections for borrowers with mortgages that happen to be serviced by small servicers. The Bureau solicits comment on whether the Bureau should further consider alternative means of compliance with the proposed error resolutions procedures.

Small servicers generally explained that they did not expect the Bureau's proposed early intervention requirements would impose significant burden because they were already providing early intervention for delinquent borrowers. Based on this information, the Bureau has not proposed to provide small servicers an exemption from the proposed notification requirements under proposed § 1024.39(a) and (b). However, the Bureau solicits comment on whether the Bureau should consider alternative means of compliance with proposed § 1024.39(a) and (b), such as by permitting small servicers to develop a more streamlined written notice under proposed § 1024.39(b).

7. Discussion of Impact on Cost of Credit for Small Entities

Section 603(d) of the RFA requires the Bureau to consult with small entities regarding the potential impact of the proposed rule on the cost of credit for small entities and related matters. 5 U.S.C. 603(d). To satisfy these statutory requirements, the Bureau provided notification to the Chief Counsel for Advocacy of the SBA on April 9, 2012 that the Bureau would collect the advice and recommendations of the same SERs identified in consultation with the Chief Counsel for Advocacy of the SBA through the Small Business Review Panel outreach concerning any projected impact of the proposed rule on the cost of credit for small entities as well as any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities.[236] The Bureau sought to collect the advice and recommendations of the SERs during the Panel Outreach meeting regarding these issues because, as small financial service providers, the SERs could provide valuable input on any such impact related to the proposed rule.[237]

At the time the Bureau circulated the Small Business Review Panel outreach materials to the SERs in advance of the PanelOutreach Meeting, it had no evidence that the proposals under consideration would result in an increase in the cost of business credit for small entities. Instead, the summary of the proposals stated that the proposals would apply only to mortgage loans obtained by consumers primarily for personal, family, or household purposes and the proposals would not apply to loans obtained primarily for business purposes.[238]

At the Panel Outreach Meeting, the Bureau asked the SERs a series of questions regarding cost of business credit issues.[239] The questions were focused on two areas. First, the SERs from commercial banks/savings institutions, credit unions, and mortgage companies were asked whether, and how often, they extend to their customers closed-end mortgage loans to be used primarily for personal, family, or household purposes but that are used secondarily to finance a small business, and whether the proposals then under consideration would result in an increase in their customers' cost of credit. Second, the Bureau inquired as to whether, and how often, the SERs take out closed-end, home-secured loans to be used primarily for personal, family, or household purposes and use them secondarily to finance their small businesses, and whether the proposals under consideration would increase the SERs' cost of credit.

The SERs had few comments on the impact on the cost of business credit. While they took this time to express concerns that these regulations would increase their costs, they said these regulations would have little to no impact on the cost of business credit. When asked, one SER mentioned that at times people may use a home-secured loan to finance a business, which was corroborated by a different SER based on his personal experience with starting a business. The Bureau is generally interested in the use of personal credit to finance a business and invites interested parties to provide data and other factual information on this issue.

Based on the feedback obtained from SERs at the Panel Outreach Meeting, the Bureau currently does not anticipate that the proposed rule will result in an increase in the cost of credit for small business entities. To further evaluate this question, the Bureau solicits comment on whether the proposed rule will have any impact on the cost of credit for small entities.

IX. Paperwork Reduction Act

The collection of information contained in this proposal, and identified as such, has been submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (Paperwork Reduction Act or PRA). Under the Paperwork Reduction Act, the Bureau may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number.

This proposed rule would amend 12 CFR part 1024 (Regulation X). Regulation X currently contains collections of information approved by OMB, and the Bureau's OMB control number for Regulation X is 3170–0016. The collection title is: Real Estate Settlement Procedures Act (Regulation X) 12 CFR 1024. As described below, the proposal would amend the collections of information currently in Regulation X.

The title of this information collection is 2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing. The frequency of response is on-occasion. These information collection requirements would be required to provide benefits for consumers and would be mandatory. *See* 12 U.S.C. 2601 *et seq.* Because the Bureau does not collect any information, no issue of confidentiality

[236] *See* 5 U.S.C. 603(d)(2). The Bureau provided this notification as part of the notification and other information provided to the Chief Counsel for Advocacy of the SBA with respect to the Small Business Review Panel outreach pursuant to RFA section 609(b)(1).

[237] *See* 5 U.S.C. 603(d)(2)(B).

[238] *See* TILA § 104(1); RESPA § 7(a)(1).

[239] Small Business Review Panel Report, appendix D, at 154–155 (PowerPoint slides from the Panel Outreach Meeting, ''Topic 7: Impact on the Cost of Business Credit'').

arises. The likely respondents would be federally insured depository institutions (such as commercial banks, savings banks, and credit unions) and non-depository institutions (such as mortgage brokers, real estate investment trusts, private-equity funds, *etc.*) that service consumer mortgages.[240]

Under the proposal, the Bureau would account for the paperwork burden for respondents under Regulation X. Using the Bureau's burden estimation methodology, the Bureau believes the total estimated one-time industry burden for the approximately 12,813 respondents subject to the proposed rule would be approximately 570,000 hours for one time changes and 2.4 million hours annually.[241] The estimated burdens in this PRA analysis represent averages for all respondents. The Bureau expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size, complexity, and practices of the respondent.

For purposes of this PRA analysis, the Bureau estimates that there are 11,425 depository institutions and credit unions subject to the proposed rule, and an additional 1,388 non-depository institutions. Based on discussions with industry, the Bureau assumes that all depository respondents except for one large entity and 95% of non-depository respondents (and 100% of small non-depository respondents) use third-party software and information technology vendors. Under existing contracts, vendors would absorb the one-time software and information technology costs associated with complying with the proposal for large- and medium-sized respondents but not for small respondents.

A. Information Collection Requirements

The Bureau is proposing six changes to the information collection requirements in Regulation X:

1. Provisions regarding mortgage servicing transfer notices: The Bureau's proposal would substantially reduce the length and complexity of the mortgage servicing transfer notice but would expand coverage from closed-end first-lien mortgages to closed-end subordinate-lien mortgages as well.

2. Provisions regarding the placement and termination of force-placed insurance, including three notices: The Bureau's proposal for force-placed insurance would require servicers to provide two notices to a borrower at least 45 days and 15 days before charging the borrower for force-placed insurance. In addition to the two notices, the Bureau is proposing to require servicers to provide borrowers a written notice before charging a borrower for renewing or replacing existing force-placed insurance on an annual basis.

3. Provisions regarding error resolution and requests for information: The Bureau's proposals for error resolution would include a requirement on servicers generally to provide written acknowledgement of receipt of a notice of error and to provide a written response to the stated error. The Bureau's proposal for response to information requests would require servicers to provide a written response acknowledging receipt of an information request. Servicers would also be required to provide the borrower with the requested information either orally or in writing, or a written notification that the information requested is not available to the servicer.

4. Requirements for early intervention with delinquent borrowers: The Bureau's proposals would require servicers to provide oral and written notices upon a borrower's reaching certain stages of delinquency.

5. Requirements regarding loss mitigation: Under the Bureau's proposals, servicers that offer loss mitigation options in the ordinary course of business would be required to follow certain procedures when evaluating loss mitigation applications, including (1) providing a notice telling the borrower if the loss mitigation is incomplete, approved, or denied (and, for denials of loan modification requests, a more detailed notice of the specific reason for denial and appeal rights), (2) providing a notice of the appeal determination, and (3) providing servicers of senior or subordinate liens encumbering the property that is the subject of the loss mitigation application copies of the loss mitigation application.

B. Analysis of Proposed Information Collection Requirements[242]

1. Mortgage Servicing Transfers

The Bureau's proposal would substantially reduce the length and complexity of the mortgage servicing transfer notice but would expand coverage to closed-end second lien mortgages, in addition to closed-end first-lien mortgages.

Currently, lenders are required to notify closed-end first lien borrowers at origination whether their loan may be sold and the servicing transferred. Upon any mortgage transfer, the transferor servicer is required to provide written notice to the borrower notifying them of the transfer, while the transferee servicer is required to provide notification to the borrower that it will servicer the borrower's mortgage. The Bureau's proposed provision would substantially reduce the length and complexity of the existing mortgage servicing transfer disclosure. The Bureau is expanding coverage from closed-end first-lien mortgages to also include closed-end second lien mortgages.

All respondents would have a one-time burden under this requirement associated with reviewing the regulation. Certain respondents would have one-time burden in hours or vendor costs from creating software and information technology capability to produce the new disclosure. The Bureau estimates this one-time burden to be 30 minutes and $90, on average, for each respondent.[243]

Certain Bureau respondents would have ongoing burden in hours or vendor costs associated with the information technology used in producing the disclosure. All Bureau respondents would have ongoing vendor costs associated with distributing (*e.g.,* mailing) the disclosure. The Bureau estimates this ongoing burden to be 2 hours and $215, on average, for each respondent.

2. Force-Placed Insurance Disclosures

The Bureau's proposal for force-placed insurance would require servicers to provide two notices to a borrower at least 45 days and 15 days before charging the borrow for force-placed insurance. In addition to the two notices, the Bureau is proposing to

[240] For purposes of this PRA analysis, references to ''creditors'' or ''lenders'' shall be deemed to refer collectively to commercial banks, savings institutions, credit unions, and mortgage companies (*i.e.,* non-depository lenders), unless otherwise stated. Moreover, reference to ''respondents'' shall generally mean all categories of entities identified in the sentence to which this footnote is appended, except as otherwise stated or if the context indicates otherwise.

[241] For proposes of this PRA analysis, references to ''creditors'' or ''lenders'' shall be deemed to refer collectively commerical banks, savings institutions, credit unions, and mortgage companies (*i.e.,* non-depository lenders), unless otherwise stated. Moreover, reference to ''respondents'' shall generally mean all categories of entities identified in the sentence to which this footnote is appended, except as otherwise stated or if the context indicates otherwise.

[242] A detailed analysis of the burdens and costs described in this section can be found in the Paperwork Reduction Act Supporting Statement that corresponds with this proposal. The Supporting Statement is available at *www.reginfo.gov.*

[243] Dollar figures are vendor costs and do not include the dollar value of burden hours.

require servicers to provide borrowers a written notice before charging a borrower for renewing or replacing existing force-placed insurance on an annual basis.

The Bureau understands the proposed requirement that servicers provide borrowers with two written notices prior to charging borrowers for force-placed insurance reflects common practices (*i.e.,* ''usual and customary'' business practices) today for the majority of mortgage servicers. However, the Bureau understands that the proposed requirement that servicers provide a written notice prior to charging borrowers for the renewal or replacement of existing force-place insurance does not reflect common practices.

All respondents would have a one-time burden under this requirement associated with reviewing the regulation. Certain respondents would have one-time burden in hours or vendor costs from creating software and information technology capability to produce the new renewal disclosure. Furthermore, while the Bureau considers borrower notifications of force-placed insurance prior to placement as the normal course of business, institutions may still have to incur one-time costs associated with modifying their existing disclosures to comply with the Bureau's proposed disclosure provisions. As a result, the Bureau's one-time burden incorporates these costs. The Bureau estimates this one-time burden to be 45 minutes and $90, on average, for each respondent.[244]

Certain respondents would have ongoing burden in hours or vendor costs associated with the information technology used in producing the disclosure. All respondents would have ongoing vendor costs associated with distributing (*e.g.,* mailing) the renewal disclosure. The Bureau estimates this ongoing burden to be 15 minutes and $23, on average, for each respondent.

3. Error Resolution and Requests for Information

The Bureau's proposals for error resolution and requests for information would require written acknowledgement of receiving a notice of error or an information request, written notification of correction of error, and oral or written provision of the information requested by the borrower or a written notification that the information requested is not available to the servicer, and an internal record of engagement with the borrower, which are forms of information collection.

The Bureau estimates that one-time hourly burden to provide training for relevant staff to comply with the proposed disclosure requirements to be 43 hours, on average, per respondent.

Respondents would have ongoing burden in hours and/or vendor costs associated with the information technology used in producing the disclosure. All respondents would have ongoing vendor costs associated with distributing (*e.g.,* mailing) the disclosure and some will have production costs associated with the new disclosure. The Bureau estimates this ongoing burden to be 50 hours and $87, on average, for each respondent.

4. Early Intervention With Delinquent Borrowers

An information collection would be created by the Bureau's proposal to require servicers to provide an oral and written notice upon a borrower's reaching certain stages of delinquency. Most respondents currently provide some form of delinquency notice, and thus the expenses associated with this information collection are from the one-time costs to incorporate the Bureau's required information.

Fannie Mae, Freddie Mac, FHA, and the VA generally recommend that all institutions that service any of their guaranteed mortgages to perform duties similar to those set forth in the Bureau's proposed provisions regarding early intervention with delinquent borrowers; the Bureau estimates that 80% of outstanding mortgages are guaranteed by one of these institutions. The Bureau estimates that 75% of loans that are not guaranteed by one of these institutions are serviced by a servicer that is currently providing delinquency notices that would comply with the proposal. The Bureau estimates the one-time burden to be 0.4 hours, on average, for each institution. The Bureau estimates the ongoing burden to be 3 hours and $3, on average for each respondent.

5. Loss Mitigation

Under the Bureau's proposals, servicers that offer loss mitigation options in the ordinary course of business would be required to follow certain procedures when evaluating loss mitigation applications, including (1) providing a notice telling the borrower if the loss mitigation is incomplete, approved, or denied (and, for denials of loan modification requests, a more detailed notice of the specific reason for denial and appeal rights), (2) providing a notice of the appeal determination, and (3) providing servicers of senior or subordinate liens encumbering the property that is subject of the loss mitigation application copies of the loss mitigation application.

The loss mitigation provision would create an information collection by requiring servicers to notify borrowers who submit loss mitigation applications and any servicers of senior or second liens encumbering the property that is the subject of the loss mitigation application where an applications has been submitted. Servicers may be required to send up to three notices per loss mitigation application. For incomplete applications, servicers would be required to notify the borrower that their application is incomplete and explain the steps needed to complete. For complete applications, the servicer is required to notify the borrower of their decision and provide a copy of the application to any servicers of senior or subordinate liens encumbering the property that is the subject of the loss mitigation application. For incomplete applications that are resubmitted, and possess second-lien loan on their property, the provision would require three notices.

All respondents would have a one-time burden under this requirement associated with reviewing the regulation. Certain respondents would have one-time burden in hours or vendor costs from creating software and information technology costs associated with changes in the payoff statement disclosure. The Bureau estimates this one-time burden to be 20 minutes and $90, on average, for each respondent. The Bureau estimates the ongoing burden to be 135 hours and $229, on average, for each respondent.

B. Summary of Burden Hours

[244] Dollar figures are vendor costs and do not include the dollar value of burden hours.

	Respondents	Disclosures per respondent	Hours burden per disclosure	Total burden hours	Total vendor costs
Ongoing:					
Notice of Mortgage Service Transfer	12,813	726	0.003	26,000	$2,760,000
Force-Placed Insurance	12,813	77	0.003	3,000	290,000
Error Resolution & Response to Inquiries	12,813	300	0.167	642,000	1,110,000
Early Intervention for Delinquent Borrowers	12,813	12	0.250	37,000	40,000
Loss Mitigation	12,813	810	0.161	1,670,000	2,930,000
One-Time:					
Notice of Mortgage Service Transfer	12,813	1	0.495	6,000	1,160,000
Force-Placed Insurance	12,813	1	0.740	9,000	1,160,000
Error Resolution & Response to Inquiries	12,813	1	43	547,000	0
Early Intervention for Delinquent Borrowers	12,813	1	0.400	5,000	0
Loss Mitigation	12,813	1	0.295	4,000	1,160,000

Totals may not be exact due to rounding.

C. Comments

Comments are specifically requested concerning: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (2) the accuracy of the estimated burden associated with the proposed collections of information; (3) how to enhance the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology. All comments will become a matter of public record. Comments on the collection of information requirements should be sent to the Office of Management and Budget (OMB), Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, DC, 20503, or by the Internet to *http://oira_submission@omb.eop.gov*, with copies to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by the Internet to *CFPB_Public_PRA@cfpb.gov*.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to the text of the regulation. New language is shown inside ►bold-faced arrows◄, while language that would be removed is set off with **[**bold-faced brackets**]**. In certain cases deemed appropriate by the Bureau to aid understanding, redesignated text, such as text moved from one paragraph to another, is also shown inside arrows and brackets.

List of Subjects in 12 CFR Part 1024

Condominiums, Consumer protection, Housing, Insurance, Mortgage servicing, Mortgagees, Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend part 1024 of Chapter X in Title 1 of the Code of Federal Regulations as follows:

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

1. The authority citation for part 1024 is revised to read as follows:

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

2. Redesignate §§ 1024.1 through 1024.5 as Subpart A to part 1024 .

3. In part 1024, add the heading ''Subpart A—General'' above § 1024.1.

4. In § 1024.2, revise the definitions for ''Federally related mortgage loan,'' ''Mortgage broker,'' ''Origination service,'' ''Public Guidance Documents,'' ''Servicer,'' and ''Servicing,'' to read as follows:

§ 1024.2 Definitions.

* * * * *

(b) * * *

Federally related mortgage loan **[**or *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.

* * * * *

Mortgage broker means a person (not an employee of a lender) or entity 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 or entity that closes the loan in its own name in a table funded transaction. ❚A loan correspondent approved under HUD regulation 24 CFR 202.8 for Federal Housing Administration programs is a mortgage broker for purposes of this part.❚

* * * * *

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.

* * * * *

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 ❚at the address indicated in § 1024.3❚. ► 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.◄

* * * * *

Servicer means the 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; ❚and❚

►(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◄

(❚2❚►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 ❚National Credit Union Administration (❚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, ❚or❚ 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.

* * * * *

5. Revise § 1024.3 to read as follows:

§ 1024.3 ❚Questions or suggestions from public and copies of public guidance documents❚ ►E-Sign applicability◄.

❚Any questions or suggestions from the public regarding RESPA, or 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 20006. Legal questions concerning the interpretation of this part may be directed to the same address.❚ ►The disclosures required by this part may be provided to a borrower 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.*).◄

6. In § 1024.4, revise paragraph (a)(1), remove paragraph (b), and redesignate paragraph (c) as paragraph (b) to read as follows:

§ 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. ❚Such documents will be prepared by Bureau staff and counsel. Such documents may be revoked or amended by a subsequent document published in the **Federal Register** by the Bureau.❚ ►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.◄

7. In § 1024.5, revise paragraph (b)(7) as follows:

§ 1024.5 Coverage of RESPA.

* * * * *

(b) * * *

(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 as set forth in section 6 of RESPA (12 U.S.C. 2605)

and [§ 1024.21] ►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).

8. In § 1024.7, revise paragraph (f)(3) as follows:

§ 1024.7 Good faith estimate.

* * * * *

(f) * * *

(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 3 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.

9. Amend § 1024.17 by:

a. Revising paragraph (c)(8).

b. Revising paragraph (f)(2)(ii).

c. Revising paragraph (f)(4)(iii).

d. Revising paragraph (i)(2).

e. Revising paragraph (i)(4)(iii).

f. Adding paragraph (k)(5).

g. Removing paragraph (l) and redesignating paragraph (m) as paragraph (l).

The revisions and additions read as follows:

§ 1024.17 Escrow accounts.

* * * * *

(c) * * *

(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 the ►federally related◄ mortgage loan documents provide for lower cushion limits, then the terms of the loan documents apply. Where the terms of any [mortgage loan] ►such◄ document allow greater payments to an escrow account than allowed by this section, then this section controls the applicable limits. Where [the mortgage loan] ►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 [the mortgage loan] ►such◄ document►s are◄ [is] 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 [the loan] ►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.

* * * * *

(f) * * *

(2) * * *

(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.

* * * * *

(f) * * *

(4) * * *

(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.

* * * * *

(i) * * *

(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.

* * * * *

(4) * * *

(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 pay-off funds.

* * * * *

(k) * * *

►(5) Notwithstanding paragraphs (k)(1) and (k)(2) of this section, a servicer must make payments from a borrower's escrow account in a timely manner to pay the premium charge on a borrower's hazard insurance, as defined in § 1024.31, unless the servicer has a reasonable basis to believe that the borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges. If the borrower's escrow account does not contain sufficient funds to pay the premium charge, the servicer must advance funds to make such payment.◄

10. Redesignate §§ 1024.6 through 1024.21 as Subpart B to part 1024.

11. Add the heading ''Subpart B—Mortgage Settlement and Escrow Accounts'' above § 1024.6.

§ 1024.21 [Removed and reserved]

12. Remove and reserve § 1024.21.

§ 1024.22 [Removed]

13. Remove § 1024.22.

§ 1024.23 [Removed]

14. Remove § 1024.23.

15. Add Subpart C to part 1024 to read as follows:

Subpart C—Mortgage Servicing

Sec.

1024.30 Scope.
1024.31 Definitions.
1024.32 General disclosure requirements.
1024.33 Mortgage servicing transfers.
1024.34 Timely payments by servicer.
1024.35 Error resolution procedures.
1024.36 Requests for information.
1024.37 Force-placed insurance.
1024.38 Reasonable information management policies and procedures.
1024.39 Early intervention requirements for certain borrowers.
1024.40 Continuity of contact.
1024.41 Loss mitigation procedures.

►Subpart C—Mortgage Servicing

§ 1024.30 Scope.

This subpart applies to any mortgage loan, as that term is defined in § 1024.31.

§ 1024.31 Definitions.

For purposes of 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, except where legal public holidays, Saturdays, and Sundays are expressly excluded.

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 a submission from a borrower requesting evaluation for a loss mitigation option, as that term is defined in this section, in accordance with procedures established by the servicer for the submission of such requests.

Loss mitigation options means alternatives available from the servicer to the borrower to avoid foreclosure.

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 enables the servicer to identify the name and account of the borrower, and either:

(1) States the reasons the borrower believes an error relating to the servicing of the loan has occurred; 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 a servicer for which a borrower may incur a fee.

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

Transferee servicer means a servicer who obtains or who will obtain the right to perform servicing pursuant to an agreement or understanding with the owner or assignee of a mortgage loan.

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 pursuant to an agreement or understanding with the owner or assignee of a mortgage loan.

§ 1024.32 General disclosure requirements.

(a) *Disclosure requirements.* (1) *Form of disclosures.* Disclosures and notices required under this subpart must be clear and conspicuous, in writing, and in a form the consumer may keep, except as otherwise provided in this subpart. The disclosures required by this subpart may be provided to the consumer 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 the borrower's request.

(b) *Additional information; disclosures required by other laws.* Nothing in this subpart shall be construed as prohibiting a servicer from including additional information with a disclosure required by applicable law. Nothing in this subpart shall be construed as prohibiting a servicer from combining disclosures required by other laws (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 the terms of an agreement with a Federal or State regulatory agency with the disclosures required by this subpart, unless such prohibition is expressly set forth in this subpart, applicable law, or the terms of an agreement with a Federal or State regulatory agency.

§ 1024.33 Mortgage servicing transfers.

(a) *Servicing disclosure statement.* Within 3 days (excluding legal public holidays, Saturdays, and Sundays) after a person applies for a reverse mortgage transaction, the lender, table funding mortgage broker, or dealer in a first lien dealer loan shall provide to the person a servicing disclosure statement that states whether the servicing of the reverse mortgage transaction 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. If an application is denied credit within the 3-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 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.

(2) *Certain transfers excluded.* (i) The following transfers are not considered an assignment, sale, or transfer 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 payment due:

(A) A transfer between affiliates;

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

(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 paragraph (b)(2)(ii) 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.

(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 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 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 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, except with respect to calculating the period of delinquency for purposes of § 1024.39.

(2) *Treatment of payments.* A transferor servicer shall promptly either:

(i) Transfer a payment it has received incorrectly 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 to the transferor servicer.

(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.

§ 1024.34 Timely payments by servicer.

(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.* Within 20 days (excluding legal public holidays, Saturdays, and Sundays) of a borrower's payment of a mortgage loan in full, any amounts remaining in the escrow account shall be returned to the borrower.

(2) *Servicer may credit funds to a new escrow account.* A servicer may credit funds in an escrow account balance 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 oral or written notice from the borrower that asserts a covered 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 a covered error relating to the servicing of the mortgage loan is considered a notice of error and must comply with all requirements applicable to a notice of error.

(b) *Scope of error resolution.* For purposes of this section, the term ''error'' means 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, where such failure has resulted in a charge to the consumer or the furnishing of negative information to a consumer reporting agency.

(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 balanced 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 pursuant to 12 CFR 1026.36(c)(1)(iii).

(7) Failure to provide accurate information to a borrower for loss mitigation options and foreclosure, as required by §§ 1024.39 and 1024.40.

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

(9) Failure to suspend a scheduled foreclosure sale in the circumstances described in § 1024.41(g).

(c) *Contact information for borrowers to assert errors.* A servicer may, by notice provided to a borrower, establish a telephone number and 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 may assert an error by contacting the servicer through the telephone number or address established for that purpose. If a servicer designates a specific telephone number and address for receiving errors, a servicer shall

designate the same telephone number and address for receiving information requests pursuant to § 1024.36(b) of this part. A servicer shall provide a notice to a borrower before any change in the telephone number or address used for receiving a notice of error.

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

(e) *Response to notice of error.* (1) *Investigation and response requirements.* (i) *In general.* A servicer must respond to a notice of error by either:

(A) Correcting the error identified by the borrower and providing the borrower with notification of the correction, the date of the correction, and contact information for further assistance; or

(B) Conducting a reasonable investigation and providing the borrower with a 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 for further assistance.

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

(2) *Requesting information from borrower.* A servicer may request supporting documentation from a borrower, but may not:

(i) Require a borrower to provide such information as a condition of investigating the alleged 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 five days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the asserted error, if a notice of error identifies an error in paragraph (b)(6) of this section.

(B) Prior to the date of a scheduled foreclosure sale or within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the asserted error, whichever is earlier, if a notice of error identifies an error in paragraph (b)(9) of this section.

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

(ii) *Extension of time limits.* The servicer may extend the time period for completing its investigation of a notice of error by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period set forth in paragraph (e)(3)(i)(C) of this section, the servicer notifies the borrower of the extension and the reasons for the extension. A servicer may not extend the time period for completing its investigation of an error identified in paragraphs (b)(6) or (b)(9) 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 within 15 days (excluding legal public holidays, Saturdays, and Sundays) of receiving the borrower's request for such documents.

(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 identified by the borrower within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the notice of error, and the borrower is notified of that correction in writing.

(2) *Error asserted before foreclosure sale.* A servicer is not required to comply with the requirements of paragraphs (d) and (e) of this section if the servicer receives a notice of an error in paragraph (b)(9) of this section seven days or less before a scheduled foreclosure sale, so long as prior to the scheduled foreclosure sale, the servicer responds to the borrower, orally or in writing, and corrects the error or states 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) and (e) of this section if the servicer reasonably determines that any of the following applies:

(i) *Duplicative notice of error.* An 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 paragraph (e)(1) 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 error and is reasonably likely to change a servicer's prior determination about the error.

(ii) *Overbroad or unduly burdensome notice of error.* A notice of error is overbroad or unduly burdensome. A notice of error is overbroad if a servicer cannot reasonably determine from the notice of error the specific covered error that a borrower asserts has occurred on a borrower's account. A notice of error is unduly burdensome if a diligent servicer could not respond to the notice of error without either exceeding the maximum timeframe permitted by paragraph (e)(3)(ii) of this section or incurring costs (or dedicating resources) that would be unreasonable in light of the circumstances. To the extent a servicer can identify a valid assertion of an error in a submission that is otherwise overbroad or unduly burdensome, the servicer shall comply with the requirements of paragraphs (d) and (e) of this section with respect to that asserted error.

(iii) *Untimely notice of error.* An error is untimely if the error is asserted more than one year after:

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

(B) The mortgage loan amount was paid in full.

(2) *Notice to borrower.* A servicer shall notify the borrower of its determination that the servicer is not required to comply with the requirements of paragraphs (d) and (e) of this section in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making its determination. The notice to the borrower shall set forth the basis that is permitted 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 investigating and 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 error identified in paragraph (b)(9) 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 scheduled foreclosure sale.

§ 1024.36 Requests for information.

(a) *Information request.* A servicer shall comply with the requirements of this section for any oral or written request for information (including a qualified written request for information related to the servicing of the mortgage loan) 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 qualified written request that requests information relating to the servicing of the mortgage loan is considered a request for information and must comply with all requirements applicable to a request for information.

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

(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 response acknowledging receipt of the information request.

(d) *Response to information request.* (1) *Investigation and response requirements.* A servicer must respond to an information request by either:

(i) Providing the borrower with the requested information and contact information for further assistance either orally or in writing; or

(ii) Conducting a reasonable search for the requested information and providing the borrower with a 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 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 information requests, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives an information request.

(ii) *Extension of time limit.* For information requests governed by the time limit set forth in paragraph (d)(2)(i)(B) of this section, the servicer may extend the time period for completing its search for information 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.

(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 for further assistance within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving an information request. A servicer may provide the borrower such information orally or in writing.

(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 applies:

(i) *Duplicative information.* A borrower requests information that is substantially the same as information previously requested by the borrower for which the servicer has previously complied with its obligation pursuant to paragraph (d)(1) of this section.

(ii) *Confidential, proprietary, or general corporate information.* The borrower requests confidential, proprietary, or general corporate information.

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

(iv) *Overbroad or unduly burdensome information request.* An information request is overbroad or unduly burdensome. An information request is overbroad if a borrower requests a 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 maximum timeframe permitted by paragraph (d)(2)(ii) of this section or incurring costs (or dedicating resources) that would be unreasonable in light of the circumstances. To the extent a servicer can 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.* An 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 amount was paid in full.

(2) *Notice to borrower.* A servicer shall notify the borrower of its determination that the servicer is not required to comply with the requirements of paragraphs (c) and (d) of this section in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making its determination. The notice to the borrower shall set forth the basis that is permitted under paragraph (f)(1) 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 may not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to a valid information request.

(2) *Fees permitted.* Nothing in this section shall prohibit a servicer from charging a fee for providing a payoff statement or a beneficiary notice under

applicable State law, if such fees are 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 scheduled foreclosure sale, allowed by the underlying mortgage loan instruments, during the time period that response to an information request notice is outstanding.

§ 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 on a 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 to protect against flood loss obtained by a servicer as required by the Flood Disaster Protection Act of 1973.

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

(iii) Hazard insurance obtained by the borrower but renewed by the servicer at its discretion if the servicer is not required to renew the borrower's hazard insurance as required by § 1024.17(k)(1), (k)(2), or (k)(5).

(b) *Basis for obtaining force-placed insurance.* A servicer may not obtain 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 for charging borrower for force-placed insurance.* (1) *In general.* A servicer may not charge a borrower for force-placed insurance unless:

(i) The servicer delivers to the borrower or places in the mail a written notice with the disclosures set forth in paragraph (c)(2) of this section at least 45 days before the premium charge or any fee is assessed;

(ii) The servicer delivers to the borrower or places in the mail a written notice in accordance with paragraph (d)(1) of this section; and

(iii) During the 45-day notice period, the servicer has not received verification that the borrower has hazard insurance in place continuously. Determining whether the borrower has hazard insurance in place continuously shall take account of any grace period provided under State or other applicable law.

(2) *Content of notice.* The notice required under paragraph (c)(1)(i) of this section shall include the following:

(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 address;

(v) A statement that the borrower's hazard insurance is expiring or expired, as applicable, and that the servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date. For a borrower who has obtained more than one type of hazard insurance on the property, the servicer must identify the type of hazard insurance for which the servicer lacks evidence of coverage;

(vi) A statement that:

(A) Hazard insurance is required on the borrower's property; and

(B) The servicer has obtained or will obtain, as applicable, insurance at the borrower's expense;

(vii) A statement requesting the borrower to promptly provide the servicer with the insurance policy number, and the name, mailing address and phone number of the borrower's insurance company or the borrower's insurance agent;

(viii) A description of how the borrower may provide the information requested pursuant to paragraph (c)(2)(vii) of this section. A servicer that will only accept the requested information in writing must disclose that fact in the notice;

(ix) The cost of the force-placed insurance, stated as an annual premium. If the cost of the force-placed insurance is not known as of the date of the disclosure, a good faith estimate shall be disclosed and be identified as such;

(x) A statement that insurance the servicer obtains may:

(A) Cost significantly more than hazard insurance obtained by the borrower; and

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

(xi) The servicer's telephone number for borrower questions.

(3) *Format.* The disclosures set forth in paragraph (c)(2) of this section must be in a format substantially similar to form MS–3(A), set forth in Appendix MS–3 of this part. Disclosures made pursuant to paragraphs (c)(2)(vi) and (c)(2)(ix) of this section must be in bold text. Disclosure made pursuant to paragraph (c)(2)(iv) of this section must be in bold text, except that the physical address of the borrower's property may be in regular text.

(d) *Reminder notice.* (1) *In general.* One written notice in addition to the written notice required pursuant to paragraph (c)(1)(i) of this section must be delivered to the borrower or placed in the mail prior to the servicer charging a borrower for force-placed insurance. The servicer may not deliver to the borrower or place the written notice required pursuant to this paragraph (d)(1) in the mail until 30 days after delivering to the borrower or placing in the mail the written notice set forth in paragraph (c)(1)(i) of this section. A servicer that receives no insurance information after delivering to the borrower or placing in the mail the written notice set forth in paragraph (c)(1)(i) of this section must provide the disclosures set forth in paragraph (d)(2)(i) of this section. A servicer that receives insurance information after delivering to the borrower or placing in the mail the written notice set forth in paragraph (c)(1)(i) of this section but does not receive verification that the borrower has hazard insurance in place continuously must provide the disclosures set forth in paragraph (d)(2)(ii) of this section.

(2) *Content of the reminder notice.* (i) *Servicer receiving no insurance information.* A servicer that has not received any insurance information after delivering to the borrower or placing in the mail the written notice set forth paragraph (c)(1)(i) of this section must provide a written notice that shall include the following:

(A) The date of the notice;

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

(C) The disclosures set forth in paragraphs (c)(2)(ii) to (c)(2)(xi) of this section.

(ii) *Servicer not receiving verification of continuous coverage.* A servicer that has received insurance information after delivering to the borrower or placing in the mail the written notice required pursuant to paragraph (c)(1)(i) of this section, but not verification that the borrower has hazard insurance in place continuously, must deliver or place in the mail a written notice that shall include the following:

(A) The date of the notice;

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

(C) The disclosures set forth in paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), and (c)(2)(xi) of this section;

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

(E) A statement that indicates to the borrower that the servicer is unable to verify that the borrower has hazard insurance in place continuously; and

(F) A statement that the borrower will be charged for insurance the servicer obtains for the period of time where the servicer is unable to verify hazard insurance coverage unless the borrower provides the servicer with hazard insurance information for such period.

(3) *Format.* The disclosures set forth in paragraph (d)(2)(i) of this section must be in a format substantially similar to form MS–3(B), and the disclosures set forth in paragraph (d)(2)(ii) of this section must be in a format substantially similar to form MS–3(C). Both MS–3(B) and MS–3(C) are set forth in Appendix MS–3 of this part. Disclosures required by paragraphs (d)(2)(i)(B), (d)(2)(ii)(B), and (d)(2)(ii)(F) of this section must be in bold text.

(4) *Updating notice with borrower information.* If a servicer receives hazard insurance information from a borrower after a written notice required pursuant to paragraph (d)(1) of this section has been put into production, the servicer is not required to update the notice so long as the notice was put into production within a reasonable time prior to the servicer delivering the notice to the borrower or placing the notice in the mail.

(e) *Renewal or replacing force-placed insurance.* (1) *In general.* A servicer may not charge a borrower for renewing or replacing existing force-placed insurance unless:

(i) The servicer delivers or places in the mail a written notice to the borrower with the disclosures set forth in paragraph (e)(2) of this section at least 45 days before the premium charge or any fee is assessed; and

(ii) During the 45-day notice period, the servicer has not received evidence that the borrower has obtained hazard insurance.

(iii) *Charging a borrower before end of notice period.* Notwithstanding paragraphs (e)(1)(i) and (e)(1)(ii) of this section, a servicer that has renewed or replaced existing force-placed insurance during the 45-day notice period may charge the borrower for the renewal or replacement promptly after the servicer receives verification that hazard insurance obtained by the borrower did not provide the borrower with insurance coverage for any period of time following the expiration of the existing force-placed insurance.

(2) *Content of renewal notice.* A servicer must provide the following information in the notice required under paragraph (e)(1) of this section:

(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 address;

(v) A statement that the servicer previously obtained 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 obtained previously has expired or is expiring, as applicable; and

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

(vii) The cost of the force-placed insurance, stated as an annual premium. If the cost of the force-placed insurance is not known as of the date of the disclosure, a good faith estimate shall be disclosed and be identified as such;

(viii) A statement reminding the borrower that insurance the servicer obtains may:

(A) Cost significantly more than hazard insurance obtained by the borrower; and

(B) Not provide as much coverage as hazard insurance obtained by the borrower.

(ix) A statement that if the borrower obtains hazard insurance, the borrower should promptly provide the servicer with the insurance policy number, and the name, mailing address and phone number of the borrower's insurance company or the borrower's insurance agent.

(x) A description of how the borrower may provide the information requested pursuant to paragraph (e)(2)(ix) of this section. A servicer that will only accept the requested information in writing must disclose that fact in the notice; and

(xi) The servicer's telephone number for borrower questions.

(3) *Format.* The disclosures set forth in paragraph (e)(2) of this section must be in a format substantially similar to form MS–3(D), set forth in Appendix MS–3 to this part. Disclosures made pursuant to paragraphs (e)(2)(vi)(B) and (e)(2)(vii) of this section must be in bold text. Disclosures made pursuant to paragraph (e)(2)(iv) of this section must be in bold text, except that the physical address of the property may be in regular text.

(4) *Compliance.* Before the first anniversary of a servicer obtaining force-placed insurance on a borrower's property, the servicer shall deliver to the borrower or place in the mail the notice required by paragraph (e)(1) of this section. Subsequently, a servicer is not required to comply with paragraph (e)(1) of this section before charging a borrower for renewing or replacing existing force-placed insurance more than once every 12 months.

(f) *Mailing the notices.* If a servicer mails a notice required pursuant to paragraphs (c)(1)(i), (d)(1) and (e)(1) of this section, as applicable, 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 verification that the borrower has hazard insurance in place, a servicer must:

(1) Cancel force-placed insurance obtained for a borrower's property; and

(2) For any period during which the borrower's hazard insurance was in place, refund to the borrower all force-placed insurance premium charges and related fees paid by the borrower for such period 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 together with the notice required by section 102(e) of the Flood Disaster Protection Act of 1973.

§ 1024.38 Reasonable information management policies and procedures.

(a) *In general.* (1) *Reasonable policies and procedures.* A servicer shall establish reasonable policies and procedures for maintaining and managing information and documents related to borrower mortgage loan accounts. A servicer meets this requirement if:

(i) The servicer's policies and procedures are reasonably designed to achieve the objectives set forth in paragraph (b) of this section; and

(ii) The servicer's policies and procedures are reasonably designed to ensure compliance with the standard requirements in paragraph (c) of this section.

(2) *Safe harbor.* A servicer satisfies the requirements in this section if it does not engage in a pattern or practice of failing to achieve any of the objectives set forth in paragraph (b) of this section and does not engage in a pattern or practice of failing to comply with any of the standard requirements in paragraph (c) of this section.

(b) *Objectives.* (1) *Accessing and providing accurate information.*

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

(ii) Investigate, respond to, and, as appropriate, correct errors asserted by borrowers in accordance with the procedures set forth in § 1024.35, including asserted errors resulting from actions of service providers;

(iii) Provide borrowers with accurate and timely information and documents in response to borrower requests made in accordance with the procedures set forth in § 1024.36;

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

(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.

(2) *Evaluating loss mitigation options.* (i) Provide accurate information regarding loss mitigation options available to borrowers pursuant to §§ 1024.39 and 1024.40;

(ii) Identify all loss mitigation options for which a borrower may be eligible pursuant to any requirements imposed by an owner or assignee of a 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 make a loss mitigation application complete so that prompt notice of such requirements can be provided to the borrower pursuant to § 1024.41(b)(2); and

(v) Evaluate loss mitigation applications, and any appeals, pursuant to the requirements in § 1024.41.

(3) *Facilitating oversight of, and compliance by, service providers.* (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 an evaluation of a borrower's completed loss mitigation application and the status of any foreclosure proceeding among servicer personnel assigned to a borrower pursuant to § 1024.40 and service providers responsible for handling foreclosure proceedings.

(4) *Facilitating servicing transfers.* Timely transfer all information and documents 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 requirements of this subpart and the terms of the transferee servicer's contractual obligation to the owner or assignee of the mortgage loan. Such information and documents shall include 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.

(c) *Standard requirements.* (1) *Record retention.* A servicer shall retain records that document actions taken by the servicer 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 provide a borrower with a servicing file upon request in accordance with the procedures set forth in § 1024.36. The servicing file shall contain:

(i) A schedule of all payments 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 borrower's mortgage note;

(iii) A copy of the borrower's deed of trust;

(iv) Any collection notes created by servicer personnel reflecting communications with borrowers about the mortgage loan account;

(v) A report of any data fields relating to a borrower's mortgage loan account created by a servicer's electronic systems in connection with collection practices, including records of automatically or manually dialed telephonic communications; and

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

§ 1024.39 Early intervention requirements for certain borrowers.

(a) *Oral notice.* If a borrower is late in making a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle, a servicer shall notify or make good faith efforts to notify the borrower orally not later than 30 days after the payment due date that the borrower is late and that loss mitigation options, if applicable, may be available. If the servicer attempts to notify the borrower by telephone, good faith efforts require calling the borrower on at least three separate days in order to reach the borrower. A servicer is not required to notify or make good faith efforts to notify the borrower under this paragraph if the borrower makes the payment within 30 days after the payment due date.

(b) *Written notice.* (1) *In general.* If a borrower is late in making a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle, a servicer shall provide to the borrower a written notice that complies with paragraph (b)(2) of this section not later than 40 days after the payment due date. A servicer is not required to provide the written notice if the borrower makes the payment within 40 days after the payment due date. A servicer is not required to provide the written notice more than once during any 180-day period.

(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 servicer's mailing address and telephone number;

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

(iv) A statement, if applicable, informing the borrower how to obtain more information about loss mitigation options from the servicer;

(v) A statement explaining that foreclosure is a legal process to end the borrower's ownership of the property and an estimate, expressed in a number of days from the date of a missed payment, of when the servicer makes the referral to foreclosure; and

(vi) The Web site address, if applicable, and telephone number to access:

(A) Any State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) for the State in which the borrower's property is located; and

(B) Either the Bureau list of homeownership counselors or counseling organizations or the HUD list of homeownership counselors or counseling organizations.

(3) *Model clauses.* Model Clauses MS–4(A), MS–4(B), MS–4(C), MS–4(D), and MS–4(E) in Appendix MS–4 to this part may be used to comply with the requirements of paragraphs (b)(1) and (b)(2) of this section.

§ 1024.40 Continuity of contact.

(a) *Continuity of contact requirements.* (1) *In general.* No later than five days after a servicer has notified or made a good faith effort to notify a borrower as required by § 1024.39(a), the servicer must assign personnel to respond to the borrower's inquiries, and as applicable, assist the borrower with loss mitigation options. If a borrower has been assigned personnel as required by this paragraph and the assignment has not ended when servicing for borrower's mortgage loan has transferred to a transferee servicer, subject to paragraphs (c)(1)–(c)(4) of this section, the transferee servicer must assign personnel to respond to the borrower's inquiries, and as applicable, assist the borrower with loss mitigation options, within reasonable time of the transfer of servicing for the borrower's mortgage loan.

(2) *Access to assigned personnel.* A servicer shall make access to the assigned personnel available via telephone. If a borrower contacts the servicer and does not receive a live response from the assigned personnel, the borrower must be able to record his or her contact information. The servicer must respond to the borrower within a reasonable time.

(b) *Functions of servicer personnel.* (1) *Reasonable policies and procedures.* A servicer shall establish policies and procedures reasonably designed to ensure the servicer personnel it makes available to the borrower pursuant to paragraph (a) of this section perform the following functions where applicable:

(i) Provide the borrower with accurate information about:

(A) Loss mitigation options offered by the servicer and available to the borrower, based on information in the servicer's possession;

(B) Actions the borrower must take to be evaluated for such 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 denial of the borrower's loss mitigation application;

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

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

(E) Any loss mitigation deadlines established by the servicer that the borrower must meet.

(ii) Access:

(A) A complete record of the borrower's payment history in the servicer's possession;

(B) All documents the borrower has submitted to the servicer in connection with the borrower's application for a loss mitigation option offered by the servicer; and

(C) If applicable, documents the borrower has submitted to prior servicers in connection with the borrower's application for loss mitigation options offered by those servicers, to the extent that those documents are in the servicer's possession;

(iii) Provide the documents in paragraphs (b)(2)(ii)(B) and (b)(2)(ii)(C) of this section to persons authorized to evaluate a borrower for loss mitigation options offered by the servicer if the servicer personnel assigned to the borrower are not authorized to evaluate a borrower for loss mitigation options; and

(iv) Within a reasonable time after a borrower request, as applicable, provide the information to the borrower or inform the borrower of the telephone number and address the servicer has established for borrowers to assert an error pursuant to § 1024.35 or make an information request pursuant to § 1024.36.

(2) *Safe harbor.* A servicer's policies and procedures satisfy the requirements in paragraph (b)(1) of this section if servicer personnel do not engage in a pattern or practice of failing to perform the functions set forth in paragraph (b)(1) of this section where applicable.

(c) *Duration of continuity of contact.* A servicer shall ensure that the personnel it assigns and makes available to a borrower pursuant to paragraph (a) of this section remain assigned and available to the borrower until any of the following occurs:

(1) The borrower refinances the mortgage loan;

(2) The borrower pays off the mortgage loan;

(3) A reasonable time has passed since:

(i) The borrower has brought the mortgage loan current by paying all amounts owed in arrears; or

(ii) The borrower and the servicer have entered into a permanent loss mitigation agreement in which the borrower keeps the property securing the mortgage loan; or

(4) 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; or

(5) If applicable, a reasonable time has passed since servicing for the borrower's mortgage loan was transferred to transferee servicer.

(d) *Conditions beyond a servicer's control.* A servicer has not violated this section if the servicer's failure to comply with this section is caused by conditions beyond a servicer's control.

§ 1024.41 Loss mitigation procedures.

(a) *Scope.* This section applies to any servicer that makes loss mitigation options available to borrowers in the ordinary course of business with respect to the procedures for reviewing and responding to a loss mitigation application. Nothing in this section shall be construed to impose an obligation on an owner, assignee, guarantor, or insurer of a mortgage loan, unless such entity is also a servicer of a mortgage loan.

(b) *Loss mitigation application.* (1) *Complete loss mitigation application.* A complete loss mitigation application means a borrower's submission requesting evaluation for a loss mitigation option for which a servicer has received all the information the servicer regularly obtains and considers in evaluating loss mitigation applications by the deadline established

by the servicer pursuant to paragraph (f) of this section.

(2) *Incomplete loss mitigation application.* (i) Upon receipt of an incomplete loss mitigation application, a servicer shall exercise reasonable diligence in obtaining information from a borrower to make the loss mitigation application complete.

(ii) If a servicer receives an incomplete loss mitigation application earlier than 5 days (excluding legal public holidays, Saturdays, or Sundays) before the deadline established pursuant to paragraph (f) of this section, the servicer shall notify the borrower orally or in writing within 5 days (excluding legal public holidays, Saturdays, or Sundays) after receiving the incomplete loss mitigation application, of the following:

(A) That the loss mitigation application is incomplete;

(B) The additional documents and information the borrower must submit to make the loss mitigation application complete; and

(C) The date by which the borrower must submit the additional documents and information.

(c) *Review of loss mitigation applications.* Within 30 days of receiving a borrower's complete loss mitigation application that is submitted prior to the deadline established pursuant to paragraph (f) of this section, a servicer shall:

(1) Evaluate the borrower for all loss mitigation options available from the servicer for which the borrower may qualify; and

(2) Provide the borrower with a notice stating the servicer's determination of whether it will offer the borrower a loss mitigation option.

(d) *Denial of loan modification options.* A servicer that denies a borrower's loss mitigation application for any trial or permanent loan modification program offered by the servicer shall state in the notice provided to the borrower pursuant to paragraph (c)(2) of this section:

(1) The specific reasons for the servicer's determination for each such trial or permanent loan modification program; and

(2) The fact that the borrower may appeal the servicer's determination, the deadline for the borrower to make an appeal, and any requirements for making an appeal.

(e) *Borrower response.* (1) *In general.* A servicer may require that a borrower accept or reject an offer of a loss mitigation option by a deadline established by the servicer that is no earlier than 14 days after the servicer communicates the loss mitigation option to the borrower.

(2) *Acceptance.* A borrower that does not satisfy the servicer's requirements for accepting a loss mitigation option, but submits the first payment that would be owed pursuant to any such loss mitigation option within the deadline established by the servicer, shall be deemed to have accepted the offer of a loss mitigation option.

(3) *Rejection.* A servicer may deem a borrower that has not accepted an offer of a loss mitigation option within 14 days after the servicer offers the loss mitigation option to the borrower to have rejected the offer of a loss mitigation option.

(4) *Interaction with appeal process.* A servicer shall permit a borrower to accept or reject a loss mitigation option concurrently with making an appeal pursuant to paragraph (h) of this section.

(f) *Deadline for loss mitigation applications.* A servicer may establish a deadline for a borrower to provide a complete loss mitigation application, which shall be no earlier than 90 days before a scheduled foreclosure sale.

(g) *Prohibition on foreclosure sale.* A servicer shall not conduct a foreclosure sale if a borrower has provided a complete loss mitigation application to the servicer for a loss mitigation option within the deadline established by the servicer pursuant to paragraph (e) of this section, unless:

(1) The servicer has provided the borrower a notice pursuant to paragraph (c)(2) of this section that the borrower is not eligible for a loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal, or the time for requesting an appeal has expired;

(2) The servicer denies the borrower's appeal, as applicable;

(3) The borrower rejects the servicer's offer of a loss mitigation option;

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

(h) *Appeal process.* (1) *Appeal process required for loan modification denials.* A servicer that denies a borrower's loss mitigation application for any trial or permanent loan modification program offered by the servicer shall permit a borrower to appeal the servicer's determination.

(2) *Deadlines.* A servicer shall permit a borrower to make an appeal within at least 14 days after providing the notice required pursuant to paragraph (c)(2) 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. A servicer's offer of a loss mitigation option after appeal shall be subject to paragraph (e) of this section. A servicer's decision under this paragraph is not subject to another appeal.

(i) *Duplicative requests.* A servicer is only required to comply with the requirements of this provision for a single complete loss mitigation application for a borrower's mortgage loan account.

(j) *Other liens.* (1) *Duty to identify other servicers.* Any servicer that receives a loss mitigation application shall:

(i) Within 5 days, determine if any other servicers service mortgage loans that have senior or subordinate liens encumbering the property that is the subject of the loss mitigation application; and

(ii) Provide any other servicers identified pursuant to paragraph (j)(1)(i) with a copy of the loss mitigation application.

(2) *Receipt of loss mitigation application.* A servicer that offers loss mitigation options in the ordinary course of business shall comply with the requirements of this section with respect to any loss mitigation application received pursuant to paragraph (j)(1)(ii) of this section as if such loss mitigation application was provided by a borrower.◄

16. Revise Appendix MS–2 to Part 1024 to read as follows:

►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 your present servicer, [Name of present servicer], about your mortgage loan or this transfer, please

contact [Individual or Department] at [Telephone Number]. You may also write to your present servicer at the following address: [Address].

If you have any questions for your new servicer, [Name of new servicer], about your mortgage loan or this transfer, please contact [Individual or Department] at [Telephone Number]. You may also write to your new servicer at the following 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:

_____

_____

_____

[NAME OF PRESENT SERVICER]

_____

Date
[and]

_____

[NAME OF NEW SERVICER]

_____

Date◄

17. Add Appendix MS–3 to part 1024 to read as follows:

►Appendix MS–3 to part 1024—Model Force-Placed Insurance Notice Forms

Table of Contents

MS–3(A)—Model Form for Force-Placed Insurance Notice Required Pursuant to § 1024.37(c)(2)
MS–3(B)—Model Form for Force-Placed Insurance Notice Pursuant to § 1024.37(d)(2)(i)
MS–3(C)—Model Form for Force-Placed Insurance Notice Pursuant to § 1024.37(d)(2)(ii)
MS–3(D)—Model Form for Renewal or Replacement of Force-Placed Insurance Notice pursuant to § 1024.37(e)(2)

MS–3(A)—Model Form for Force-Placed Insurance Notice Required Pursuant to § 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], 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 policy number and the name, mailing address and phone number of your insurance company or insurance agent. [Describe how the borrower may provide the insurance information]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

• [Costs **$[premium charge]**] [Will cost an estimated **$[premium charge]**] annually, which is probably more expensive than insurance you can buy yourself.

• May not provide as much coverage as insurance policy you buy yourself.

If you have any questions, please contact us at [telephone number].

MS–3(B)—Model Form for Force-Placed Insurance Notice Pursuant to § 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], 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 policy number and the name, mailing address and phone number of your insurance company or insurance agent. [Describe how the borrower may provide the insurance information]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

• [Costs **$[premium charge]**] [Will cost an estimated **$[premium charge]**] annually, which is probably more expensive than insurance you can buy yourself.

• May not provide as much coverage as insurance policy you buy yourself.

If you have any questions, please contact us at [telephone number].

MS–3(C)—Model Form for Force-Placed Insurance Notice Pursuant to § § 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].

If you have any questions, please contact us at [telephone number].

MS–3(D)—Model Form for Renewal or Replacement of Force-Placed Insurance Notice Pursuant to § 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 have the right 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]**], which is probably 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 policy number and the name, mailing address and phone number of your insurance company or insurance agent. [Describe how the borrower may provide the insurance information]. [The information must be provided in writing.]

If you have any questions, please contact us at [telephone number].◄

18. Add Appendix MS–4 to part 1024 to read as follows:

►MS–4—Model Clauses for the Written Early Intervention Notice Pursuant to § 1024.39(b)(2)

MS–4(A)—Statement Encouraging the Borrower To Contact the Servicer (§ 1024.39(b)(2)(i) and (ii))

Please contact us. [We may be able to make your mortgage more affordable. 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 or Email Address]].

MS–4(B)—Available Loss Mitigation Options (§ 1024.39(b)(2)(iii))

[You may have options that could help make your mortgage more affordable, including:]

[*Forbearance.* This is a temporary reduction or suspension of your mortgage payments. Forbearance might be available if

recent events have made it difficult for you to make your payments—for example, if you recently lost your job, suffered from a disaster, or had an illness or injury that increased your health care costs. If this option is available, your lender could create a payment plan to make up any missed payments over a period of time.]

[*Mortgage modification.* Your lender may be able to change your loan terms, such as your interest rate, the amount of principal you owe, or the number of years you have to repay the loan.]

[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 might be able to transfer ownership of your home without having to pay off the full amount of your mortgage, although you would be required to leave your home. For example, you may be eligible for the following option[s]:]

• [*Short-sale.* With your lender's permission, you might be able to sell your home and pay off your mortgage even if the sale price is less than your remaining balance. You might also be eligible to receive money to help you move.]

• [*Deed-in-lieu of foreclosure.* Your lender may release you from your mortgage if you transfer ownership of your home to your lender. As with a short sale, you might also be eligible to receive money to help you move.]

MS–4(C)—Additional Information About Loss Mitigation Options (§ 1024.39(b)(2)(iv))

[Call us today to learn more about your options and for instructions on how to apply.]

MS–4(D)—Foreclosure Statement (§ 1024.39(b)(2)(v))

Foreclosure is a legal process a lender can use to take ownership of a property from a borrower who is behind on his or her mortgage payments. The foreclosure process usually begins approximately [__] days after you miss a mortgage payment, although it may begin earlier or later. The foreclosure process depends on the laws of the state where your home is located, the terms of your loan, whether you are covered by the Servicemembers Civil Relief Act, and other factors.

MS–4(E)—State Housing Finance Authorities and Housing Counselors (§ 1024.39(b)(2)(vi))

For help exploring your options, Federal government agencies provide contact information for housing counselors, which you can access by contacting [the Consumer Financial Protection Bureau at [Bureau Housing Counselor List Telephone Number] or [Bureau Housing Counselor List Web Site]] [the Department of Housing and Urban Development at [HUD Housing Counselor List Telephone Number] or [HUD Housing Counselor List Web Site]].

Your State housing finance authority may also be able to help. You can reach them at [State Housing Finance Authority Telephone Number] or [State Housing Finance Authority Web Site].◄

19. In part 1024, add Supplement I to read as follows:

►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. The requests 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.

Section 1024.17—Escrow Accounts

17(k) Timely payments.

Paragraph 17(k)(5).

1. *Reasonable basis.* The receipt by a servicer of a notice of cancellation or non-renewal from the borrower's insurance company before the insurance premium is due provides a servicer with a reasonable basis to believe that the borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges.

2. *Reasons other than nonpayment of premium charges.* A borrower's hazard insurance may be canceled or not renewed for a number of reasons other than the nonpayment of premium charges, to the extent permitted by State or other applicable law. Such reasons may include, for example:

i. The borrower cancels the hazard insurance before its expiration date or chooses to not renew the insurance.

ii. The insurance company cancels the hazard insurance before its expiration date or chooses to not renew the insurance because it decides to stop writing insurance for all properties in the community where the borrower's property is located.

iii. The insurance company cancels or chooses not to renew the borrower's hazard insurance based on its underwriting criteria, which may include, for example, borrower's claim history, or a change in the occupancy status of the property (*e.g.,* changing from occupied to non-occupied), or a change in the probability of the property being exposed to loss caused certain hazards (*e.g.,* a change in the property's exposure to loss by windstorm).

3. *Advancement of premium.* A servicer that advances the premium payment as required by § 1024.17(k)(5) 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.

Section 1024.31—Definitions

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 options.

1. *Types of loss mitigation options.* Loss mitigation options include temporary and long-term relief, and options that allow borrowers to remain in or leave their homes, 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 State or the Federal Government.

2. *Available from the servicer.* Loss mitigation options available from the servicer include options offered by the owner or assignee of the loan that are made available through the servicer.

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 loan or to request information relating to the servicing of the 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.

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.

Section 1024.33—Mortgage Servicing Transfers

33(a) Servicing disclosure statement.

Paragraph 33(a)(1).

1. *Terminology.* Although the servicing disclosure statement must be clear and conspicuous pursuant to § 1024.32(a)(1), § 1024.33(a)(1) 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 address for co-applicants.* When an application involves more than one applicant, notification need only be given to one applicant but must be given to the primary applicant where one is readily apparent.

Paragraph 33(a)(2).

1. *Lender servicing.* If the lender, table funding mortgage broker, or dealer in a first lien dealer loan will service the mortgage loan for which the applicant has applied, the disclosure should state that such entity will service such loan and does not intend to sell, transfer, or assign the servicing of the loan.

2. *Lender not servicing.* If the lender, table funding mortgage broker, or dealer in a first lien dealer loan will not service the mortgage loan for which the applicant has applied, the disclosure should state that such entity intends to assign, sell, or transfer servicing of such mortgage loan before the first payment is due.

3. *Other circumstances.* 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. *Notice given 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.

2. Delivery. A servicer should deliver the notice of transfer to the mailing address listed by the borrower in the mortgage loan documents, unless the borrower has notified the servicer of a new address pursuant to the servicer's requirements for receiving a notice of a change of address. When a mortgage loan has more than one borrower, the notice of transfer need only be given to one borrower, but must be given to the primary borrower where one is readily apparent.

Section 1024.34—Timely Payments by Servicer

34(b)(2) Servicer may credit funds to a new escrow account.

1. 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 by refunding the funds in the escrow account to the borrower pursuant to § 1024.34(a).

Section 1024.35—Error Resolution Procedures

35(a) Notice of error.

1. *Borrower's representative.* A notice of error is deemed to be submitted by a borrower if the notice of error 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.

2. *Information request.* A servicer should not solely rely on the borrower's description of a request to determine whether the notice constitutes a notice of error, an information request or both. For example, a borrower may submit a letter that claims to be a ''Notice of Error'' 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. Although the servicer's failure to provide the borrower an annual escrow statement is not defined as an error pursuant to § 1024.35(b), 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 should evaluate whether the letter fulfills the substantive requirements of a notice of error or an information request.

35(b) Scope of error resolution.

1. *Excluded errors.* A servicer is not required to comply with sections 1024.35(d) and (e) with respect to a borrower's assertion of an error that is not defined as a covered error in section 1024.35(b). For example, the following are not covered errors:

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.

35(c) Contact information for borrowers to assert errors.

1. *Exclusive telephone number and address not required.* A servicer is not required to designate a specific telephone number and address that a borrower must use to assert an error. If a servicer does not designate a specific telephone number and 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 telephone number and address.* A notice establishing a telephone number and address that a borrower must use to assert an error may be included with a different disclosure, such as on a notice of transfer, periodic statement, or coupon book. The notice is subject to the clear and conspicuous requirement in § 1024.32(a)(1). If a servicer establishes a telephone number and address that a borrower must use to assert an error, a servicer should provide that telephone number and address to the borrower in any communication in which the servicer provides the borrower with contact information for assistance from the servicer.

3. *Multiple offices.* The purpose of the designation of an exclusive telephone number and address is to distinguish offices that are capable of receiving errors from other offices maintained by a servicer. A servicer may designate multiple office addresses and phone numbers for receiving 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 address and phone number regardless of whether that specific address or phone number was provided to a specific borrower asserting an error. For example, a servicer may designate a phone number and address to receive errors for borrowers located in California and a separate phone number and address to receive errors for borrowers located in Texas. If a borrower located in California asserts an error through the phone number or address used by the servicer for borrowers located in Texas, a servicer is still considered to have received a notice of error and must comply with the requirements of § 1024.35.

4. *Internet intake of information requests.* A servicer may, but is not required to, establish a process for receiving error notices through email, Web site form, or other online intake method. Any such process shall be in addition to, and not in lieu of, any process for receiving error notices by phone or mail. The process established by the servicer for receiving errors through an online intake method shall be considered the exclusive online intake process for receiving errors. A servicer is not required to provide a separate notice to a borrower to establish a specific online intake process as an exclusive process for receiving such errors.

5. *Automated systems.* Servicers may use toll-free telephone numbers that connect borrowers to automated systems, such as an interactive voice response system, through which consumers may assert errors by inputting information using a touch-tone telephone or similar device. The prompts for asserting errors must be clear and provide the borrower the option to connect to a live representative.

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 for § 1024.35(e)(1)(ii) 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.

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 scheduled foreclosure sale or 30 days, a servicer may cancel or postpone a scheduled foreclosure sale, in which case, the servicer meets the time limits in § 1024.35(i)(B) by complying with the requirements of § 1024.35(e) before the earlier of 30 days or the date of the rescheduled foreclosure sale.

35(e)(3)(ii) Extension of time limits.

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 errors for which an extension is permissible.

35(e)(4) Copies of documentation.

1. *Types of documents to be provided.* A servicer is only required to provide 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.

Paragraph 35(g)(1)(i).

1. *New and material information.* A dispute between a borrower and a servicer with respect to (i) whether information was previously reviewed by a servicer or (ii) 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. *Indicia of overbroad or unduly burdensome notices of error.* The following are indicia of notices of error that are overbroad or unduly burdensome:

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 covered error asserted by a borrower.

35(h) Payment requirements prohibited.

1. *Borrower obligation to make payments.* Section 1024.35(g) prohibits a servicer from requiring a borrower to make a payment that may be owed on a borrower's account as a prerequisite for complying with its obligations regarding 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(g) 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.

Section 1024.36—Requests for Information

36(a) Information request.

1. *Borrower's representative.* An information request is deemed to be submitted by a borrower if the information request 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.

2. *Owner or assignee of a mortgage loan.* A servicer responds to an information request for the owner or assignee of a mortgage loan by identifying the entity that holds the legal obligation to receive payments from the borrower. For example:

i. A servicer services a mortgage loan that is owned by the servicer, or an affiliate of the servicer, in portfolio. A servicer responds to the borrower's information request with the name, address, and appropriate contact information for the servicer or the affiliate, as applicable.

ii. A servicer services a mortgage loan that has been securitized. In general, in a securitization transaction, a special purpose vehicle, such as a trust, is the owner or assignee of a mortgage loan. If a securitization transaction is structured such that a trust is the owner or assignee of a mortgage loan and the trust is administered by an appointed trustee, a servicer responds by providing the borrower with the name of the trust and the name, address, and appropriate contract information for the trustee. Assume a mortgage loan is owned by Mortgage Loan Trust, Series ABC–1, for which XYZ Trust Company is the trustee. The servicer responds 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.

Although investors or guarantors, including, among others, Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, may be exposed to risks related to the mortgage loans held by the trust either in connection with an investment in securities issued by the trust or the issuance of a guaranty agreement to the trust, entities that act as investors or guarantors should not be considered the owner or assignee of the mortgage loans solely as a result of their roles as investors or guarantors. In certain circumstances, however, a party such as a guarantor may assume multiple roles for a securitization transaction. For example, the Federal National Mortgage Association may act as trustee, master servicer, and guarantor in connection with a securitization transaction in which a trust owns a mortgage loan subject to a request. In this example, because Federal National Mortgage Association is the trustee of the trust that owns the mortgage loan, a servicer responds to a borrower's request for information regarding the owner or assignee of the mortgage loan by providing the name of the trust, and the name, address, and appropriate contact information for Federal National Mortgage Association as the trustee.

36(b) Contact information for borrowers to request information.

1. *Exclusive telephone number and address not required.* A servicer is not required to designate a specific telephone number and address that a borrower must use to request information. If a servicer does not designate a specific telephone number and 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 telephone number and address.* A notice establishing a telephone number and address that a borrower must use to request information may be included with a different disclosure, such as on a notice of transfer, periodic statement, or coupon book. The notice is subject to the clear and conspicuous requirement in § 1024.32(a)(1). If a servicer establishes a telephone number and address that a borrower must use to request information, a servicer should provide that telephone number and address to the borrower in any communication in which the servicer provides the borrower with contact information for assistance from the servicer.

3. *Multiple offices.* The purpose of the designation of an exclusive telephone number and address is to distinguish offices that are capable of receiving information requests from other offices maintained by a servicer. A servicer may designate multiple office addresses and phone numbers for receiving information requests. However, a servicer is required to comply with the requirements of § 1024.36 with respect to a notice of error received at any such address and phone number regardless of whether that specific address or phone number was provided to a specific borrower that is requesting information. For example, a servicer may designate a phone number and address to receive information requests for borrowers located in California and a separate phone number and address to receive information requests for borrowers located in Texas. If a borrower located in California requests information through the phone number or address used by the servicer for borrowers located in Texas, a servicer is still considered to have received an information request and must comply with the requirements of § 1024.35.

4. *Internet intake of information requests.* A servicer may, but is not required to, establish a process for receiving information requests through email, Web site form, or other online method. Any such process shall be in addition to, and not in lieu of, any process for receiving information requests by phone or mail. The process established by the servicer for receiving information requests through an online intake method shall be considered the exclusive online intake process 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 process for receiving information requests.

5. *Automated systems.* Servicers may use toll-free telephone numbers that connect borrowers to automated systems, such as an interactive voice response system, through which consumers may request information by using a touch-tone telephone or similar device, so long as the prompts for requesting information are clear and the borrower has the option to connect to a live representative.

36(d) Response to information request notice.

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:

i. A borrower requests a copy of a telephonic communication from a servicer. Assume 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 should be considered readily accessible.

ii. A borrower requests information stored on electronic back-up media. Access to information on electronic back-up media is not available to that 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 should not be considered readily accessible.

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 should be considered readily accessible.

36(e) Alternative compliance.

1. A servicer may provide the information requested either orally or in writing. If a servicer provides the information requested orally, a servicer may demonstrate that it has complied with its requirements by, among others, setting forth a notation in a servicer file that information requested by a borrower was provided, or maintaining a copy of a recorded telephone conversation in which the information requested by the borrower was provided to the borrower.

36(f) Requirements not applicable.

Paragraph 36(f)(1)(i).

1. A borrower's request for a type of information that can change over time should not be considered as substantially the same as a previous information request for the same type of information.

Paragraph 36(f)(1)(ii).

1. *Confidential, proprietary, or general corporate information.* A request for confidential, proprietary or general corporate 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 general corporate information includes information requests relating to, for example:

i. Information regarding management or profitability of a servicer, including information provided to investors of the servicer.

ii. 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.

iii. Compensation, bonuses, or personnel actions relating to servicer personnel, including personnel responsible for servicing a borrower's mortgage loan account;

iv. The servicer's training program for servicing personnel;

v. The terms of any agreement relating to the sale of a mortgage loan, including, an indenture, purchase agreement, or pooling and servicing agreement;

vi. The evaluation or exercise of any remedy of the owner of a mortgage loan including a foreclosure action, a mortgage insurance payment claim, or a claim relating to mortgage loan's compliance with a seller's representations and warranties;

vii. The servicer's servicing program guide;

viii. Investor instructions or requirements for servicers regarding criteria for negotiating or approving any program with a borrower, including any loss mitigation option; or

ix. Records of examination reports, compliance audits, consumer complaints, and internal investigations or external investigations.

Paragraph 36(f)(1)(iv).

1. *Indicia of overbroad or unduly burdensome requests for information.* The following are indicia 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 substitute for discovery in a judicial action, such as information requests in the form of a discovery request that purports to require a servicer to respond to each numbered paragraph;

iii. Requests for information that are not reasonably understandable or are included with voluminous tangential discussion or assertions of errors;

iv. 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; or

v. Requests for information that are not reasonably likely to assist a mortgage loan borrower with the mortgage loan borrower's account, including, for example, a request for copies of the front and back 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.

Section 1024.37—Force-Placed Insurance

37(b) Basis for obtaining force-placed insurance.

1. *Borrowers with escrow.* A servicer has a reasonable basis to believe that a borrower with an escrow account established for hazard insurance has failed to maintain hazard insurance if, for example, by a reasonable time prior to the expiration date of the borrower's hazard insurance (*e.g.,* 30 days before the expiration date), the servicer has not received a renewal bill. The receipt by a servicer of a notice of cancellation or non-renewal from the borrower's insurance company before payment is due on the borrower's hazard insurance premium also provides a servicer with a reasonable basis to believe that the borrower has failed to maintain hazard insurance.

2. *Borrowers without escrow.* A servicer has a reasonable basis to believe the borrower without an escrow account established for hazard insurance has failed to maintain hazard insurance if, for example, a servicer receives a notice of cancellation or non-renewal from the borrower's insurance company.

37(c) Requirements for charging borrower for force-placed insurance.

37(c)(1) In general.

1. The notice period begins on the day that the servicer delivers or mails the notice to the borrower and expires 45 days later. The servicer may charge a borrower for force-placed insurance beginning on the 46th day if the servicer has fulfilled the requirements of § 1024.37(c) and (d). If not prohibited by State or other applicable law, the servicer may retroactively charge a borrower for force-placed insurance obtained during the 45-day notice period.

Paragraph 37(c)(1)(iii).

1. *Examples of continuous insurance coverage.* A borrower's prior hazard insurance might have expired on January 2. But so long as a borrower's current hazard insurance takes effect January 3, then the borrower has hazard insurance in place continuously. When there is a grace period, § 1024.37(c)(1)(iii) requires the servicer to take the grace period into account when determining whether the borrower has hazard insurance in place continuously. For example, a borrower's prior hazard insurance might have an expiration date of June 1, but a grace period extends the effectiveness of the borrower's prior hazard insurance to June 10. Accordingly, so long as the borrower obtains hazard insurance, effective June 11, then the borrower has hazard insurance in place continuously.

Paragraph 37(c)(2)(v).

1. *Identifying of type hazard insurance.* If a borrower has purchased a homeowner's insurance policy and a separate hazard insurance policy to insure loss against hazards not covered under his or her homeowner's insurance policy, the servicer must disclose whether it is the borrower's homeowner's insurance policy or the separate hazard insurance policy for which it lacks evidence of coverage to comply with § 1024.37(c)(2)(v).

Paragraph 37(c)(2)(ix).

1. *Good faith estimate of the cost of force-placed insurance.* The good faith estimate of the cost of the force-placed insurance the servicer may obtain should be consistent with the best information reasonably available to the servicer at the time the disclosure is provided. Differences between the amount of the estimated cost disclosed

under § 1024.37(c)(2)(ix) and the actual cost later assessed to the borrower do not necessarily constitute a lack of good faith, so long as the estimated cost was based on the best information reasonably available to the servicer at the time the disclosure was 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(c)(2)(ix).

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, on June 1, the servicer places in the mail the written notice required pursuant to § 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 one written notice, with the content set forth in § 1024.37(d)(2)(i), 15 days before the servicer charges Borrower A for force-placed insurance. Take the example above, 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 one reminder notice, with the content set forth in § 1024.37(d)(2)(ii), 15 days before charging Borrower A for force-placed insurance it obtains for the period between June 10 and June 15.

37(d)(4) Updating notice with borrower information.

1. *Reasonable time.* A servicer may have to prepare the written notice required pursuant to § 1024.37(d)(1) in advance of delivering or placing the notice in the mail. If the notice has already been put into production, the servicer is not required to update the notice with insurance information received from the borrower after production has started so long as the notice was put into production within a reasonable time prior to the servicer delivering or placing the notice in the mail. For purposes of § 1024.37(d)(4), five days is a reasonable time.

37(e) Renewal or replacing force-placed insurance.

37(e)(1)(iii) Charging before end of notice period.

1. *Example illustrating charging before end of notice period.* On January 2, the servicer sends the notice required by § 1024.37(e)(1)(i). On January 12, the existing force-placed insurance the servicer had obtained on the borrower's property expires and the servicer replaces the expired force-placed insurance policy with a new force-placed insurance policy effective January 13. On February 5, the servicer receives verification that the borrower obtained hazard insurance effective January 31. The servicer may charge the borrower for force-placed insurance from January 13 to January 30, as early as February 5.

Paragraph 37(e)(2)(vii).

1. *Good faith estimate of the cost of force-placed insurance.* The good faith requirement set forth in § 1024.37(e)(2)(vii) is the same good faith requirement set forth in § 1024.37(c)(2)(ix). *See* commentary to § 1024.37(c)(2)(ix) regarding the good faith requirement.

37(g) Cancellation of force-placed insurance.

1. *Example of providing a refund and removing charges.* Assume that a servicer obtains force-placed insurance, effective January 1, and the premium charge and related fees are paid by the borrower in monthly installments, due on the first of each month. After the borrower paid the April installment, the servicer receives insurance information from the borrower, and verifies that the borrower had obtained hazard insurance and that the insurance had been in place since March 15. To comply with § 1024.37(g), within 15 days of receiving such verification, the servicer must: (1) Cancel the force-placed insurance; (2) provide a refund for force-placed insurance premium charges and related fees paid by the borrower for the period between March 15 and April 30; and (3) remove from the borrower's account any force-placed insurance premium charges and related fees for the period after March 15 that the servicer has assessed to the borrower but the borrower has not yet paid.

Section 1024.38—Reasonable Information Management Policies and Procedures

38(a) In general.

1. *Policies and procedures.* A servicer may determine the specific methods by which it will implement information management policies and procedures that are reasonably designed to achieve the objectives set forth in § 1024.38(b) and are reasonably designed to ensure compliance with the standard requirements in § 1024.38(c). Servicers have flexibility to do so 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.

Paragraph 38(a)(1).

1. *Examples of pattern or practice failures.* A servicer may exhibit a pattern or practice of failing to achieve the objectives in § 1024.38(b) in the following circumstances:

i. Disclosures provided to borrowers regularly contain inaccurate information or are not provided by required deadlines;

ii. Multiple covered errors as defined in § 1024.35(b) are documented with respect to the same or similar types of processes and a servicer does not modify its policies and procedures to seek to reduce the frequency or severity of such errors over a reasonable timeframe;

iii. Documents provided by borrowers are lost or misplaced on a regular basis and borrowers are requested to provide the same documents on multiple occasions;

iv. Servicer personnel regularly do not have access to accurate account information (such as information about credited payments, current balances, and reasons for fees) when responding to borrower inquiries, and thus provide borrowers with inaccurate information; or

v. Servicer personnel regularly do not have access to information regarding the substance of prior communications with borrowers.

38(a)(2) Safe harbor.

1. Impact of the safe harbor. A servicer is not liable for a violation under § 1024.38 if the servicer is in compliance with the safe harbor set forth in § 1024.38(a)(2). If a servicer is not in compliance with § 1024.38(a)(2), a servicer may be liable for a violation under § 1024.38. The servicer's liability in the event of a pattern or practice of failing to achieve the objectives in § 1024.38(b) or to ensure compliance with the standard requirements in § 1024.38(c) is based on whether the servicer's policies and procedures were reasonably designed to achieve the objectives in § 1024.38(b) and to ensure compliance with the standard requirements in § 1024.38(c), as appropriate.

Section 1024.39—Early Intervention Requirements for Certain Borrowers

39(a) Oral notice.

1. *In general.*

i. *Live contact.* The notice required under § 1024.39(a) must be made through live contact or good faith efforts to make live contact, such as by telephoning or conducting an in-person meeting with the borrower, but not by leaving a recorded phone message.

ii. A servicer is not required to describe specific loss mitigation options; the servicer need only inform the borrower that loss mitigation options may be available, if applicable. The servicer may provide more detailed information that the servicer believes would be helpful.

2. *Good faith efforts to notify—telephone calls.* In order to make a good faith effort by telephone, the servicer must have made the phone calls to the borrower on three separate days by the end of the 30-day period after the payment due date. Thus, if the servicer attempts to reach the borrower by telephone, the servicer should make the first call not later than the 28th day after the payment due date in order to make a good faith effort by the 30th day, assuming the first two calls are unsuccessful.

3. *Timing requirements.* Under § 1024.39(a), a servicer must notify or make good faith efforts to notify the borrower if the borrower is late in making the payment during the 30-day period after the payment due date, unless the borrower satisfies the payment during that time. *See* comment 39(a)–4. For purposes of § 1024.39, a payment is considered late the day after the payment due date, even if the borrower is afforded a grace period before the servicer assesses a late fee. For example, if a payment due date is January 1 and the full payment remains due during the 30-day period after

January 1, the servicer is required to notify or make good faith efforts to notify the borrower not later than 30 days after January 1—*i.e.,* by January 31.

4. *Borrower makes the payment.* A servicer is not required to notify the borrower unless the borrower is late in paying the amount owed in full during the 30 days after the payment due date. If the borrower satisfies the payment in full before the end of the 30-day period, the servicer is not required to notify or make good faith efforts to notify the borrower. For example, if a borrower misses a January 1 due date but makes that payment on January 20, a servicer would not be required to provide the oral notice by January 31.

5. *Borrower contacts the servicer about a late payment.* If the borrower contacts the servicer at any time prior to the end of the 30-day period in § 1024.39(a) to explain that the borrower is or expects to be late in making a particular payment, the servicer may satisfy the notification requirement in § 1024.39(a) by informing the borrower orally at that time that loss mitigation options, if applicable, may be available.

i. *Examples.*

A. A borrower contacts a servicer on January 25 to explain that he expects to miss a payment due February 1. The borrower makes the required payment on February 8 and the servicer did not notify or make good faith efforts to notify the borrower that loss mitigation may be available on January 25 or by February 8. The servicer is not required to provide the oral notice about loss mitigation options because the borrower made the required payment within the 30-day period after February 1. *See* comment 39(a)–4.

B. The borrower in comment 39(a)–5.i.A subsequently misses a payment due March 1 but does not contact the servicer to explain that he expects to become or acknowledges that he is late on that payment. The borrower remains late on that payment during the 30 days after March 1. Not later than 30 days after March 1, the servicer is required to notify or make good faith efforts to notify the borrower orally that he has missed the March 1 payment and that loss mitigation options, if applicable, may be available to assist him.

6. *Borrower performing under a loss mitigation option.* A servicer is not required under § 1024.39(a) to notify a borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment.

39(b) Written notice.

39(b)(1) In general.

1. *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).

2. *Timing requirements.* As noted in comment 39(a)–3, a payment is considered late the day after the payment due date, even if the borrower is afforded a grace period before the servicer assesses a late fee. For example, if a payment due date is January 1 and the payment remains due during the 40-day period after January 1, the servicer is required to provide the written notice not later than 40 days after January 1—*i.e.,* by February 10.

3. *Borrower satisfies the payment.* A servicer is not required to provide the written notice unless the borrower has not made the payment during the 40 days after the payment due date. For example, a servicer contacts a borrower on January 20 to notify him that he has missed a January 1 payment and that loss mitigation options may be available. The borrower explains that he forgot to send payment and will send the payment to the servicer. The servicer receives the full payment on January 30 and has not yet provided the written notice. Because the borrower has satisfied the January 1 payment within the 40-day time period, the servicer is not required to provide the written notice by February 10.

4. *Frequency of the written notice.* A servicer is not required to provide the written notice more than once during a 180-day period beginning on the date on which the written notice is provided. Notwithstanding this limitation, a servicer must still provide the oral notice required under § 1024.39(a) for each payment that is overdue. For example, a borrower is late in making a payment due March 1. The borrower remains late on that payment during the 40 days after March 1 and the servicer provides the written disclosure 40 days after March 1—*i.e.,* by April 10. If the borrower subsequently fails to make a payment due April 1 and remains late on that payment during the 40 days after April 1, the servicer is not required to provide the written notice again for the 180-day period beginning on April 10. However, the servicer is required to provide the oral notice under § 1024.39(a) for each of the 30-day periods beginning on March 1 and April 1.

5. *Borrower performing under a loss mitigation option.* A servicer is not required to provide the written notice to a borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment.

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.

2. *Format.* Any color, number of pages, size and quality of paper, size and type of print, and method of reproduction may be used, so long as the disclosure is clearly legible.

Paragraph 39(b)(2)(i).

1. *Statement encouraging the borrower to contact the servicer.* The servicer is not required to specifically request the borrower to contact the servicer about any particular loss mitigation option.

Paragraph 39(b)(2)(ii).

1. *Servicer's mailing address and telephone number.* If applicable, the servicer should provide contact information for the personnel assigned to the borrower pursuant to § 1024.40.

Paragraph 39(b)(2)(iii).

1. *Number of examples.* The regulation does not mandate 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 may require the borrower to end their ownership in order 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 loss mitigation programs, the servicer may provide a generic description of each 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 this requirement 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 § 1024.39(b)(2)(iv). 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 for 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.

Paragraph 39(b)(2)(v).

1. *Foreclosure statement.* The servicer may explain that a foreclosure may proceed in different ways depending on the circumstances, such as the location of the borrower's property that secures the loan, whether the borrower is covered by the Servicemembers Civil Relief Act (50 U.S.C. App. 501 *et seq.*), and the requirements of the owner or assignee of the borrower's loan.

2. *Estimated foreclosure timelines.* The servicer may qualify its estimate with a statement that different timelines may vary depending on the circumstances, such as those listed in comment 39(b)(2)(v)–1. The servicer may provide its estimate as a range of days.

Section 1024.40—Continuity of Contact

40(a)(1) In general.

1. For purposes of responding to borrower inquiries and assisting the borrower with loss mitigation options as required pursuant to § 1024.40, the term ''borrower'' includes a person the borrower has authorized to act on behalf of the borrower (a borrower's agent), which may include, for example, a housing counselor or attorney. Servicers may undertake reasonable procedures to determine if such person has authority from the borrower to act on the borrower's behalf.

2. For purposes of § 1024.40(a)(1), a reasonable time for a transferee servicer to

assign personnel to a borrower is by the end of the 30-day period of the transfer of servicing for the borrower's mortgage loan.

3. Implementation of continuity of contact.

i. A servicer has discretion to determine the manner by which continuity of contact is implemented. For purposes of § 1024.40(a)(1), a servicer may assign a single person or a team of personnel to respond to a borrower.

ii. Section 1024.40(a)(1) requires servicers to assign personnel to borrowers whom servicers are required to notify pursuant to § 1024.39(a). If a borrower whom a servicer is not required to notify pursuant to § 1024.39(a) contacts the servicer to explain that he or she expects to make be late in making a particular payment, the servicer, at its election, may assign personnel to the borrower.

4. Section 1024.40(a)(1) does not permit or require a servicer to take any action inconsistent with applicable bankruptcy law or a court order in a bankruptcy case.

40(a)(2) Access to assigned personnel.

1. For purposes of § 1024.40(a)(2), three days (excluding legal public holidays, Saturdays, and Sundays) is a reasonable time to respond.

40(b) Functions of servicer personnel.

40(b)(1) Reasonable policies and procedures.

Paragraph 40(b)(1)(iv).

1. For purposes of § 1024.40(b)(1)(iv), three days (excluding legal public holidays, Saturdays, and Sundays) is a reasonable time to provide the information the borrower has requested or inform the borrower of the telephone number and address the servicer has established for borrowers to assert an error pursuant to § 1024.35 or make an information request pursuant to § 1024.36.

40(b)(2) Safe harbor.

1. For purposes of § 1024.40(b)(2), a servicer may exhibit a pattern or practice:

i. With respect to a single borrower, if servicer personnel assigned to the borrower pursuant to § 1024.40(a) fail to perform any of the functions listed in § 1024.40(b)(1) where applicable on multiple occasions, such as, for example, repeatedly providing the borrower with inaccurate information about the status of the loss mitigation application the borrower has submitted.

ii. With respect to a large number of borrowers, if servicer personnel assigned to the borrowers pursuant to § 1024.40(a) fail to perform any of the functions listed in § 1024.40(b)(1) where applicable in similar ways, such as, for example, providing a large number of borrowers with inaccurate information about the status of the loss mitigation applications the borrowers have submitted.

40(c) Duration of continuity of contact.

Paragraph 40(c)(3).

1. For purposes of § 1024.40(c)(3), a reasonable time has passed when the borrower has made on-time mortgage payments for three consecutive months.

Paragraph (40)(c)(5).

1. For purposes of § 1024.40(c)(5), a reasonable time has passed when servicing for the borrower's mortgage loan was transferred to a transferee borrower 30 days ago.

40(d) Conditions beyond a servicer's control.

1. The term ''conditions beyond a servicer's control'' include natural disasters, wars, riots or other major upheaval, delays or failures caused by persons other than the servicer, disruptions in telephone service, computer system malfunctions, and labor disputes, such as strikes.

Section 1024.41—Loss Mitigation Options

41(a) Scope

1. *Loss mitigation not required.* Nothing in section 1024.41 imposes a duty on a servicer to offer loss mitigation options to borrowers in the ordinary course of business or to provide any borrower with a right to a loss mitigation option. Nothing in section 1024.41 should be construed to permit a borrower to enforce the terms of any agreement between a servicer and any owner, assignee, guarantor, or insurer of a mortgage loan, including any agreement with respect to the evaluation for, or provision of, any loss mitigation option.

2. *Ordinary course of business.* A servicer that does not engage in a practice of offering loss mitigation to borrowers in the ordinary course of business is not covered by this section 1024.41. A servicer offers loss mitigation options in the ordinary course of business if the servicer either (1) has a duty to an owner or assignee of a mortgage loan to engage in loss mitigation to improve the recovery to the owner or assignee of the mortgage loan, or (2) engages in a practice of evaluating borrowers for loss mitigation options. A servicer that (1) does not have policies or procedures for evaluating borrowers for loss mitigation options, or (2) engages only in temporary or pilot programs designed to evaluate the impact of implementing loss mitigation options is not considered to offer loss mitigation options in the ordinary course of business. For example, the following practices should not be considered offering loss mitigation in the ordinary course of business:

a. A servicer waives adverse consequences to individual borrowers for missed payments, such as by providing a waiver of late fees.

b. A servicer participates in a targeted pilot program for which only a relatively small percentage of mortgage loans serviced by the servicer are potentially eligible.

3. *Eligibility requirements.* A servicer that engages in evaluations of borrowers for loss mitigation options for some mortgage loans it services offers loss mitigation in the ordinary course of business even though the servicer's loss mitigation programs are not available to other borrowers, including borrowers subject to different investor or guarantor requirements. Any such servicer that receives a complete loss mitigation application is required to comply with its obligations pursuant to section 1024.41(c) and (d). Such compliance may include informing the borrower that the borrower is not eligible for loss mitigation options, including loan modifications, as a result of investor requirements, as set forth in sections 1024.41(c) and (d).

41(b) Loss mitigation application.

41(b)(2) Incomplete loss mitigation application.

Paragraph 41(b)(2)(i)

1. *Obtain additional documents and information before submitted information becomes stale. A* servicer should undertake reasonable diligence to obtain information to constitute a complete loss mitigation application by the earlier of (i) the deadline established by the servicer pursuant to section 1024.41(f) or (ii) the earliest time any documents or information submitted by the borrower will no longer be considered current or valid for evaluation for a loss mitigation option pursuant to applicable loss mitigation program guidelines. For example, if a servicer's guidelines require that income information must be no older than 90 days, the servicer should undertake reasonable diligence to obtain information that constitutes a complete loss mitigation application earlier than the date when the income information would be considered stale where such deadline is earlier than the deadline established by the servicer pursuant to section 1024.41(f).

41(c) Review of loss mitigation applications.

Paragraph 41(c)(1).

1. *Evaluation for all loss mitigation options offered.* A servicer should evaluate a borrower for all loss mitigation options for which a borrower may qualify based upon eligibility criteria applicable to each loss mitigation option, as established by the servicer, guarantor, owner, or assignee of a mortgage loan. A servicer is not required to evaluate a borrower for a loss mitigation option for which the borrower does not meet threshold eligibility criteria, including any pilot program, temporary program, or loss mitigation program that is limited to a certain percentage or number of participants.

41(d) Denial of loan modification options.

Paragraph 41(d)(1).

1. *Investor requirements.* If a trial or permanent loan modification 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 should identify the owner or assignee of the mortgage loan and the requirement that is the basis of the denial.

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 should include the monthly gross income and property value used in the net present value calculation.

41(e) Borrower response and performance.

Paragraph 41(e)(4).

1. *Acceptance pending appeal.* A borrower may accept an offer of a different loan modification or other loss mitigation option pending appeal of a denial of any loan modification program for which a borrower was denied.

41(f) Deadline for loss mitigation applications.

1. *No scheduled foreclosure sale.* If a foreclosure sale has not been scheduled, or where a foreclosure sale may occur less than 90 days after the foreclosure sale is scheduled, a servicer should set a deadline that is no earlier than 90 days before the day a servicer reasonably anticipates that a foreclosure sale may occur.

2. *Servicing transfers.* If servicing for a mortgage loan is transferred, the transferee servicer is subject to the requirements of § 1024.41 unless the effective date of the servicing transfer occurs after the deadline that the transferee servicer establishes pursuant to section 1024.41(f).

41(g) Prohibition on foreclosure sale.

Paragraph 41(g)(4).

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.* A borrower is deemed to be performing under an agreement on a loss mitigation option if a short sale transaction 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.

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.

41(j) Other liens.

Paragraph 41(j)(1)(i).

1. *Reasonable diligence to identify other servicers.* A servicer should undertake reasonable diligence to determine if a property is encumbered by liens as a result of other senior or subordinate mortgage loans serviced by other servicers. Servicers may obtain this information by, among other things, requesting that the borrower provide information in a loss mitigation application regarding any other mortgage loans with liens encumbering the property, conducting a search of the land records, reviewing a consumer report from a consumer reporting agency, or consulting a database designed to match senior and subordinate lien records.

Appendix MS—Mortgage Servicing Model Forms and Clauses

1. *In general.* This appendix contains model forms and clauses for mortgage servicing disclosures. 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 deemed to be in compliance with disclosure requirements of the regulation. 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.''

iii. Addition of graphics or icons, such as the servicer's corporate logo.

Appendix MS–3—Model Force-Placed Insurance Notice Forms

1. *Model MS–3(A).* The model form MS–3(A) illustrates how a servicer may comply with § 1024.37(c)(2).

2. *Model MS–3(B).* The model form MS–3(B) illustrates how a servicer may comply with § 1024.37(d)(2)(i).

3. *Model MS–3(C).* The model form MS–3(C) illustrates how a servicer may comply with § 1024.37(d)(2)(ii).

4. *Model MS–3(D).* The model form MS–3(D) illustrates how a servicer may comply with § 1024.37(e)(2).

5. 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 ''homeowner's 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 and how a servicer may request that the borrower contact the servicer, as required by paragraphs (b)(2)(i) and (b)(2)(ii) of § 1024.39.

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. 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 or by adding or substituting applicable loss mitigation options for options not represented in these model clauses, as long as the information required to be disclosed is accurate and clear and conspicuous.

3. *Model MS–4(C).* These model clauses illustrate how the servicer may inform the borrower how to obtain additional information about loss mitigation options, required by § 1024.39(b)(2)(iv), if applicable. A servicer that offers no loss mitigation options may not include the model clauses in MS–4(C).

4. *Model MS–4(D).* These model clauses illustrate the foreclosure statement, as required by § 1024.39(b)(2)(v). To use the model clauses, the servicer must fill in the estimated number of days following a missed payment in which the servicer may refer the borrower to foreclosure.

5. *Model MS–4(E).* These model clauses illustrate how a servicer may provide contact information for housing counselors and State housing finance authorities, as required by § 1024.39(b)(2)(vi). 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 (b)(2)(vi)(A) and (b)(2)(vi)(B) of § 1024.39. A servicer would be required to provide the telephone number and, if applicable, the Web site, for the appropriate State housing finance authority, as required by § 1024.39(b)(2)(vi).◀

Dated: August 9, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–19974 Filed 9–7–12; 4:15 pm]

BILLING CODE 4810–AM–P