September 17, 2012

CFPB Mortgage Servicing Proposal to Amend Regulation Z, Implementing the Truth-in-Lending Act (TILA), and Regulation X, Implementing the Real Estate Settlement Procedures Act (RESPA)

Executive Summary

- The Consumer Financial Protection Bureau (CFPB) has issued a proposed rule.
- The proposed rule would apply to most closed-end consumer mortgages. Under proposed amendments to Regulation X, open-end lines of credit, construction loans, and business-purpose loans are excluded. Under proposed amendments to Regulation Z, the periodic statement and ARMs disclosure provisions apply only to closed-end mortgage loans, but the prompt crediting and payoff statement requirements would apply to both open-end and closed-end mortgage loans. Reverse mortgages and timeshares are excluded from the periodic statement requirement, and certain construction loans are excluded from the ARM disclosure requirements.

Proposals to Amend Regulation Z

Periodic Statements Required

- The proposed rule would require servicers of closed-end mortgage loans to send a periodic statement for each billing cycle. The requirement would not apply for fixed-rate loans if the servicer provides a coupon book, as long as the coupon book contains certain information required by the rule and certain other information is made available to consumers. The proposal contains an exception for small servicers that service 1000 or fewer mortgage loans and service only mortgage loans that they originated or own.

Advance ARM Notice Requirements

- 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.
- Servicers would also have to provide an earlier notice on ARM loans 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.

Prompt Crediting of Payments and Payoff Statement Requirements

- Servicers must promptly credit payments from borrowers, generally on the day of receipt. If a payment is received 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 servicers to apply the funds to the oldest outstanding payment owed.
- Servicers would also 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.

Proposals to Amend Regulation X

Force-Placed Insurance Notice Requirements

- Servicers would not be allowed 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 the forced-place 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, the servicer would be required to cancel any force-placed insurance and refund any premiums paid for periods in which the borrower's policy was in place.
- If a servicer makes payments for hazard insurance from a borrower's escrow account, a servicer would be required to continue these 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. Such charges would have to bear a reasonable relationship to the servicer's cost of providing the service.

Error Resolution and Information Request Requirements

- Servicers would be required to meet certain procedural requirements for responding to information requests or complaints of errors, such as how the borrower could assert an error. 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. Borrowers would be allowed to 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 5 days, and would have to correct or respond to the borrower with the results of the investigation generally within 30-45 days.
- Servicers 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.
- Servicers 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 the sale during a borrower's evaluation for alternatives to foreclosure.

Information Management Policy and Procedure Requirements

- Servicers would be required to establish reasonable information management policies and procedures, and would be required to take into account the servicer's size, scope and nature of its operations.
- This requirement would be satisfied 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 servicing personnel to have prompt access to documents and information submitted in connection with loss mitigation applications.
- Servicers would be required to 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.

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, servicers would have to notify the borrower orally and let the borrower know that loss mitigation options may be available. If the borrower is 40 days late, servicers would be required to provide the borrower with a written notice with certain specific information such as examples of loss mitigation options available, if applicable.
- The notice would also provide information to the borrower about the foreclosure process. The proposal contains model language servicers could use for these notices.

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.
- Servicers would be required to assign dedicated contact personnel for a borrower no later than 5 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 to 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.

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.
- Servicers would also be required 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 5 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. Appeals would have to be decided within 30 days by personnel different than those responsible for the initial decision.
- Servicers that receive 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.

Comments are due to the CFPB on October 9, 2012 and can be filed using http://www.regulations.gov. **Please submit comments to CUNA by September 28, 2012.** If commenting directly to the CFPB, commenters should refer to Docket No. CFPB-2012-0033 or RIN 3170-AA14 on the comment letter.

For more information about this proposed rule, contact CUNA Deputy General Counsel Mary Dunn at Mdunn@cuna.coop or Senior Assistant General Counsel Jared Ihrig at jihrig@cuna.coop. For further details, please visit the Regulation Z and Regulation X proposals in the Federal Register.

Detailed Summary

Background

When the mortgage crisis erupted, the CFPB notes in the proposal that many servicers were ill-equipped to handle the high volumes of delinquent mortgages, loan modification requests, and foreclosures they were required to process. These servicers, according to the CFPB, lacked the infrastructure, trained staff, controls, and procedures needed to manage effectively the flood of delinquent mortgages they were forced to handle.

As a result, 49 State attorneys general, joined by the CFPB and other Federal agencies entered into a National Mortgage Settlement with the nation's five largest servicers in February of this year. Loans owned by Government Sponsored Enterprises, private investors, and small servicers are not covered by the settlement. As part of this settlement, a Settlement Term Sheet was created which included standards to be met by the five largest servicers to comply with the terms of the settlement.

These standards involved: (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.

Of these standards, the CFPB has incorporated elements from four of the above categories into its proposed rules: (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.

When adopted in final form, the CFPB's mortgage servicing regulations will apply to all mortgage servicers, and to all segments of the mortgage market, regardless of the ownership of the loan.

Proposed Changes to Regulation Z

Section 1026.17 – General Disclosure Requirements, Section 1026.18 – Content of Disclosures, and Section 1026.19 – Certain Mortgage and Variable-Rate Transactions

The CFPB's proposal makes largely technical amendments to these sections, relating to the proposed ARM interest rate adjustment payment change notice requirements and the initial ARM interest rate adjustment notice requirements, which are further discussed in Sections 1026.20(c) and (d) in this Comment Call, respectively.

Section 1026.20(c) – Subsequent Disclosure Requirements for Rate Adjustments

Currently, this section requires disclosures to consumers with variable-rate mortgages each time an adjustment results in a corresponding payment change and at least once annually when an interest rate is adjusted, even if the payment does not change. The CFPB is proposing to eliminate this annual notice requirement. However, most of this information will still be required in the new periodic statement, which is addressed later in this Comment Call.

The CFPB is proposing to use the term "adjustable-rate-mortgage" or "ARM" to replace the current term "variable-rate transaction."

Additionally, the CFPB is proposing to amend the payment change disclosure for ARMs when an interest rate adjustment results in a payment change. The proposal retains much of the content required in the current notice, but would add additional information, as well. Importantly, lenders, servicers and assignees would be required to provide notice of an initial interest rate adjustment at least 210, but not more than 240 days prior to when the first payment at the adjusted level becomes due. If the new interest rate is not known as of the date of disclosure, an estimate may be used. Also, servicers would be required to provide separate, additional disclosure notices to consumers at least 60, but no more than 120 days before a payment is due at a new level.

These ARM notice requirements would also apply to ARMs converting to fixed-rate mortgages when an interest rate adjustment results in a payment change. For open-end loans converting to a closed-end ARM loan, these disclosures would not be

required until the implementation of the first interest rate adjustment that results in a payment change post-conversion.

Currently, § 1026.20(c) requires disclosures only for adjustments to the interest rate for loans secured by the consumer's principal dwelling where the term of the loan is greater than one year. The proposed rule would expand the scope of this requirement to those loans with terms of one year or less, as well. Construction loans with terms of one year or less would be excluded from this requirement. Additionally, if the interest rate adjustment is due within 210 days after closing, and the actual, not estimated, new interest rate was disclosed at closing, a subsequent disclosure of the interest rate adjustment would not be required under the proposal.

Section 1026.20(c)(2) – Timing and Content of Rate Adjustment Disclosures

This section of the proposal would require that ARM disclosures be provided to consumers 60 to 120 days before payment at a new level is due. Currently, the advance notice must be provided to consumers 25-120 days before payment at a new level is due.

The proposal contains two exceptions to this timing requirement: Existing ARM loans with look-back periods of less than 45 days that were originated before July 21, 2013 will be in compliance with the rule as long as creditors provide the notices within 25 to 120 days before payment at a new level is due. ARMs originated on or after July 21, 2013 must be structured to permit compliance with the proposed 60 to 120-day time frame. For ARMs that adjust for the first time within 60 days of closing where the actual, not estimated, new interest rate was ***not*** disclosed at closing, the disclosure notices must be provided as soon as practicable, but not less than 25 days before a payment at a new level is due.

The advance notice would be required to include the following:

- A disclosure that the current interest rate under the ARM loan is ending and that the interest rate and mortgage payment will change on that date;
- The date of the impending and future interest rate adjustments;
- Disclosure of any other changes to the loan taking place on the same day of the rate adjustment, such as changes in amortization caused by the expiration of interest-only or payment-option features;
- A table containing:
    - The current and new interest rates;
    - The current and new periodic payment amounts and the date the first new payment is due; and

    - For interest-only or negatively-amortizing payments, the amount of the current and new payment allocated to interest, principal, and property taxes and mortgage-related insurance, as applicable.
- An explanation of how the interest rate is determined, including the index or formula and any adjustments to the index or formula;
- Any limits on the interest rate or payment increases at each adjustment and over the life of the loan, as well as disclosure of the extent to which a creditor has foregone any increase in the interest rate due to a limit, referred to as unapplied carryover interest;
- An explanation of how the new payment is determined, including the index or formula and any adjustment to the index or formula, such as the addition of a margin or application of previously foregone interest;
- The loan balance and the remaining loan term expected on the date of the interest rate adjustment;
- For interest-only and loans with negative amortization, a statement regarding the allocation of payments to principal and interest; and
- The circumstances under which a prepayment penalty may be imposed.

Section 1026.20(c)(3) – Format of Disclosures

The disclosures must be grouped together, segregated from everything else, and no additional information may be added which is not directly related to the information in Section 1026.20(c) as listed above. The ARM adjustment disclosures must be provided in a tabular format, in the same order as and with headings and format substantially similar to model forms H-4(D)(1) and (2) included with the proposal.

Section 1026.20(d) – Initial Rate Adjustment Disclosures

This section of the proposal contains the requirements for the advance notice of the initial interest rate change for ARM loans. This notice would be required at least 210 days, but not more than 240 days before the first payment at the adjusted level is due.

The notice would contain key information about the upcoming adjustment, including the new rate and payment and options for consumers to pursue alternatives to their ARM loans. Specifically, the following statutorily-required content would be required in the notice:

- Any index or formula used in adjusting or resetting the interest rate and a source of information about the index or the formula;
- An explanation of how the new rate and payment would be determined, including how the index may be adjusted, such as by the addition of a margin;

- A good faith estimate, based on accepted industry standards, of the amount of the resulting monthly payment after the adjustment or reset and the assumptions on which the estimate is based;
- A list of alternatives that the consumer may pursue, including refinancing, renegotiation of loan terms, payment forbearance, and pre-foreclosure sales, and descriptions of actions the consumer must take to pursue these alternatives;
- Contact information for HUD- or state housing agency-approved housing counselors or programs reasonably available; and
- Contact information for the state housing finance authority for the state where the consumer resides.

Aside from the statute-mandated disclosures listed above, the CFPB is also proposing to require the following within the notice, under its authority under the Truth in Lending Act:

- The date of the disclosures;
- Telephone number of the creditor, assignee or servicer;
- Statements specifying that the consumer's interest rate is scheduled to adjust pursuant to the terms of the loan, and that the adjustment may effect a change in the mortgage payment;
- The specific time period the current interest rate has been in effect;
- The dates of the upcoming and future interest rate adjustments, and any other changes to loan terms, features, or options taking effect on the same date as the interest rate adjustment;
- The due date of the first payment after the adjustment;
- For interest-only or negatively-amortizing payments, the amount of the current and new payment allocated to principal, interest and taxes and insurance in escrow, as applicable;
- For interest-only or negatively-amortizing loans, a statement regarding payment allocation, including the payment required to fully amortize an ARM that becomes negatively amortizing as a result of the interest rate adjustment;
- Any interest rate or payment limits and any foregone interest;
- If the new interest rate or new payment provided is an estimate, a statement that another disclosure containing the actual new interest rate and payment will be provided within a specified time period – if the actual interest rate adjustment results in a corresponding payment change; and
- The amount and expiration date of any prepayment penalty and the circumstances under which such penalty might apply.

The notice must be delivered in writing, and be separate and distinct from all other correspondence. The Official Staff Commentary states that in the case of mailing the

disclosure, there should be no material in the envelope other than the notice, and in the case of emailing the disclosure, there should be no other attachments to the email.

For ARMs adjusting for the first time within 6 months after closing, these notices must be provided to the consumer at closing, and when this occurs, the disclosure must be provided 210 days before the first date payment at a new level is due.

The notice requirements would apply to closed-end ARMs, but open-end dwelling secured loans with adjustable rate features, such as home equity lines of credit would be exempted from this notice requirement, as they are already subject to Section 1026.40 of Regulation Z.

This notice would be similar to the disclosures required under Section 1026.20(c), and model forms H-4(D)(3) and (4) are included with the proposed rule.

If an estimate is used for purposes of the "good faith estimate" of the new payment listed above, the proposal would require that the estimate be calculated using the index figure disclosed in the "source of information" within 15 business days prior to the date of the disclosure.

Regarding the disclosures relating to the contact information for government agencies and housing counselor agencies or programs, the proposed rule will allow lenders to simply provide the website address to access either the CFPB's list or the HUD list of homeownership counseling agencies and programs to comply with these disclosure requirements.

Section 1026.36 – Prohibited Practices in Connection with Credit Secured by a Dwelling

36(c) Servicing Practices

Existing Regulation Z requires servicers to promptly credit payments, prohibits "pyramiding" of late fees, and to provide payoff statements at the consumer's request. The Dodd-Frank Act essentially codifies these requirements on prompt crediting and payoff statements, with minor changes. Additionally, the CFPB is proposing a new subsection on partial payments and is proposing four substantive changes regarding payoff statements.

Current Regulation Z does not define "payment" for purposes of the crediting requirement. As such, the regulation defers to applicable state or other law to determine whether a partial payment is a "payment" under the payment crediting provisions. Lenders handle partial payments in a variety of ways: some do not accept partial payments, some apply partial payments, and some send partial payments to a suspense or unapplied funds account.

The proposal would allow creditors flexibility when it comes to receipt of a partial payment. Creditors could either credit the payment upon receipt, return the payment, or hold the payment in a suspense account or unapplied funds account.

Under the proposal, if a servicer holds a partial payment, meaning any payment less than a full contractual payment (which would consist of principal, interest, and escrow, if applicable (but would not include late fees)) in a suspense or unapplied funds account, the servicer would be required to disclose on the periodic statement (discussed under a separate section of this Comment Call) the amount of funds held in such account. The servicer must also disclose when such funds will be applied to the outstanding payments due on the account. Additionally, if a servicer holds a partial payment in a suspense or unapplied funds account, once there are sufficient funds in the account to cover a full contractual payment, the servicer must apply those funds to the oldest outstanding payment due. The effect of this last requirement would be to advance the date of delinquency by one billing cycle.

The Dodd-Frank Act (DFA) added a new section to the Truth in Lending Act, which requires creditors and servicers to send an accurate payoff balance amount to the consumer within a reasonable amount of time, but in no case more than 7 business days, after the receipt of a written request from or on behalf of a consumer. The proposed provisions codify existing Section 1026.36 of Regulation Z with the following four changes:

- Existing Regulation Z applies to servicers, while the DFA applies to both servicers and creditors;
- The DFA applies the prompt response requirement to “home loans,” rather than consumer credit transactions secured by the consumer’s principal dwelling;
- The DFA limits the reasonable time for responding to not more than 7 business days, while existing Regulation Z generally creates a 5 business day safe harbor for responding; and
- The DFA requires a prompt response only to written requests for payoff amounts, while the existing regulation requires a prompt response to all such requests.

Section 1026.41 Periodic Statements for Residential Mortgage Loans

This section of the proposal would establish the periodic statement requirement for residential mortgage loans. The DFA requires the periodic statement to disclose 7 items of information: the amount of the principal obligation, current interest rate and reset date if applicable, information on prepayment penalties and late fees, contact information for the servicer, and housing counselor information, as well as other information as the CFPB may prescribe in regulations. The CFPB is also proposing to

require periodic statements to include information regarding upcoming payment obligations and the application of past payments, a list of recent transaction activity, additional account information and delinquency information.

The requirement to provide a periodic statement is applicable to creditors, assignees and servicers of residential mortgage loans, and must be sent to the consumer each billing cycle.

The information contained within the proposed periodic statements would be broken down into the following groupings of information:

- The Amount Due: The most prominent disclosure on the statement, which would disclose the due date of the payment due, the amount of any fee that would be assessed for a late payment, as well as the date on which that fee would be imposed if payment is not received;
- Explanation of Amount Due: Would include a breakdown of the amount due, showing allocation to principal, interest, and escrow, as well as the total sum of any fees or charges imposed since the last statement, and any amount of past due payment (which would include both over-due payments and over-due fees);
- Past Payment Breakdown: This grouping would include a breakdown of how previous payments were applied, and include both the total of all payments received since the last statement and a breakdown of how those payments were applied to principal, interest, escrow, fees and charges, and any partial payment or suspense account (if applicable). This section would also require these same details for all payments received since the beginning of a calendar year;
- Transaction Activity: This grouping would disclose any activity that credits or debits the outstanding account balance, for example, charges imposed or payments received. Additionally, the statement must include the date, amount and description of each transaction;
- Certain Messages: As required at certain times, for example, information on funds held in a suspense or unapplied funds account;
- Contact Information for the Servicer, which must include a toll-free telephone number, and may include a web address at the creditor's option;
- Account information as required by the DFA, including the amount of the principal obligation, current interest rate, and when it might change (if applicable), information on prepayment penalties (if applicable) and late fees, contact information for the servicer, and housing counselor information. Statements would include the contact information for the state housing finance authority for the state in which the property is located, and the website and telephone number to access either the CFPB's list or the HUD list of homeownership counselors or counseling organizations; and

- Additional delinquency information when a consumer is more than 45 days delinquent on his or her loan, which would include the date on which the consumer became delinquent, a recent account history (showing the amount due for each billing cycle or date on which a payment for a billing cycle was considered fully paid), limited to the lesser of the past 6 months or the time the account was current, a notice of any acceptance into a modification program, either trial or permanent, a notice that the loan has been referred to foreclosure (if applicable), and a statement directing the consumer to the housing counselor information located on the statement.

The periodic statement can be mailed or delivered electronically to consumers, and joint obligors need not receive separate statements to comply with the rule. Statements must be provided in a form that the consumer may keep. If statements are delivered electronically, the consumer must agree to receive the statements in this manner, but compliance with E-Sign verification procedures is not required. Creditors may satisfy the requirement to transmit a periodic statement to a consumer by sending the consumer an email notification that the statement is available, rather than emailing the statement itself in light of information security concerns. Electronically-delivered statements must also be in a form which the consumer can print or download. The proposal contains sample forms in Appendix H-28, but these are not required forms.

For loans with billing cycles shorter than a period of 31 days (for example, a bi-weekly billing cycle), a periodic statement covering and entire month may be used, rather than having to generate statements every other week, for example.

The periodic statement must be sent within a "reasonably prompt" time after the close of the grace period of the previous billing cycle. The proposal provides that 4 days after the close of any grace period would be considered "reasonably prompt." For the first payment on the mortgage loan, the first periodic statement must be sent no later than 10 days before this first payment is due.

Section 1026.41(e) – Exemptions

Reverse mortgages and timeshares are exempt from the periodic statement requirements under the proposal. Fixed-rate loans for which the servicer provides a coupon book containing substantially similar information as found in the periodic statement would also be exempted. To meet the requirements for this exemption, the coupon book must contain the payment due date, the amount due, and the amount and date that any late fee will be incurred. For the amount due on each coupon, servicers would assume that all prior payments have been paid in full.

The proposal would also require the following information to be included in the coupon book itself, though it need not be on each coupon: the amount of the principal loan

balance, the interest rate in effect for the loan, the date on which the interest rate may next change, the amount of any prepayment fee that may be charged, the contact information for the servicer, and housing counselor information. This information may be included anywhere in the coupon book, including on the covers, or on filler pages.

The coupon book would also be required to disclose information on how the consumer may obtain the monthly payment amount, including a breakdown showing how much, if any, will be allocated to principal, interest, and any escrow account; the total of fees or charges imposed since the last payment period; any payment amount past due; the total of all payments received since the beginning of the payment period, including a breakdown of how much, if any, of those payments was applied to principal, interest, escrow, fees and charges and any partial payment suspense accounts; the total of all payments received since the beginning of the calendar year, including a breakdown of how much, if any, of those payments was applied to principal, interest, escrow, fees and charges, and how much is currently in any partial payment or suspense account, and a list of all the transaction activity that occurred since the payment period. This information would be required to be disclosed upon the consumer's request. The information could be provided orally, or in writing, or electronically, if the consumer consents.

If the coupon book exception is used by a servicer, the delinquency information discussed above would still have to be sent to the consumer in writing for each billing cycle for which the consumer is more than 45 days delinquent at the beginning of the billing cycle.

Under the proposal, "small servicers" would also be exempt from the periodic statement requirements. A small servicer would be defined as a servicer who (i) services 1,000 or fewer mortgage loans; and (ii) only services mortgage loans for which the servicer or an affiliate is the owner or the assignee, or for which the servicer or an affiliate is the entity to whom the mortgage loan obligation was initially payable.

For purposes of determining whether a small servicer services 1,000 mortgages or less, a servicer would be evaluated based on its number of mortgages serviced as of January 1 for the remainder of the calendar year. Servicers that cross the threshold will have 6 months or until the beginning of the next calendar year, whichever is later, to begin providing periodic statements. Subservicers or servicers who do not own the loans they are servicing do not qualify for this small servicer exemption, even if such servicers are below the 1,000 loan threshold. Additionally, if a servicer subservices mortgage loans for a master servicer that does not meet the small servicer exemption, the subservicer cannot claim the benefit of the exemption, even if it services 1,000 or fewer loans.

Proposed Changes to Regulation X

In addition to the proposed changes amending Regulation Z, discussed above, the CFPB's proposed rule would also amend sections of Regulation X, which implements RESPA. The proposed revisions would include new force-placed insurance requirements, error resolution and information request requirements, new policy and procedure requirements relating to information management, requirements relating to early intervention with delinquent borrowers, certain requirements for continuity of contact with delinquent borrowers, and loss mitigation procedural requirements. Each of these will be discussed in more detail below.

Subpart A - General

In addition to the requirements listed above, the proposed rule would also reorganize Regulation X to include 3 distinct subparts. Subpart A would include general provisions of Regulation X, including provisions that apply to both subpart B and 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 obligations of mortgage servicers. Subpart C (mortgage servicing) would include provisions relating to obligations of mortgage servicers.

Subpart B – Mortgage Settlement & Escrow Accounts

Section 1024.17 – Escrow Accounts

The proposal would add a new section 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. Under the proposal, the servicer would be required to make payments from a borrower's escrow account in a timely manner to pay the premium charge on a borrower's hazard insurance policy, unless the servicer has a "reasonable basis" to believe that such insurance has been canceled or not renewed for reasons other than nonpayment of premiums. The proposal would require servicers to advance funds to pay the premiums even if the borrower's escrow account does not contain sufficient funds.

For purposes of determining a "reasonable basis," if a servicer receives a notice of cancellation or non-renewal from the borrower's insurance company before the insurance premium is due, this would provide a servicer with a reasonable basis to believe that the insurance policy has been canceled or not renewed for reasons other than nonpayment of premiums. In these instances, this requirement would not apply.

Servicers advancing the premium payment as required under this provision may advance the payment on a month-to-month basis, if permitted by state or other applicable law, and accepted by the borrower's insurance company.

Under existing law, servicers are already contractually required to obtain alternative hazard insurance to protect the interest of the owner or assignee of a mortgage loan if the servicer is unable to obtain evidence of acceptable borrower-purchased hazard insurance for the property. The CFPB reasons that because the servicer is already contractually required to do so, and likely would advance the premium with its own funds in many instances, requiring the servicer to continue paying the premiums for a borrower's existing insurance policy would provide borrowers with greater protection and be less harmful than if a servicer obtained force-placed insurance, which could be more costly for the borrower.

Subpart C – Mortgage Servicing

Section 1024.30 – Scope

The scope section currently encompasses a "mortgage servicing loan" as defined in current Section 1024.21(a), which does not include subordinate-lien loans or open-end lines of credit (home equity plans), including open-end lines of credit secured by a first lien. Under the proposal, the CFPB would delete this term and instead replace it with "mortgage loan," which would have the effect of now including new servicer obligations with respect to subordinate-lien closed-end mortgage loans under Regulation X. Home equity plans including open-end lines of credit secured by first liens would continue to be excluded from coverage under the proposed rule.

Section 1024.31 – Definitions

"Day" – Under the proposed rule, "day" would mean a calendar day. The term "business day" would mean a "day excluding legal public holidays, Saturdays, and Sundays)."

"Hazard insurance" means 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. This definition under the proposal would include, but not be limited to, homeowner's insurance.

"Loss mitigation application" is an application from a borrower requesting evaluation for a loss mitigation option. A loss mitigation application is separate from an "application," and may be submitted by a representative of a borrower and a servicer may undertake

reasonable procedures to determine if a purported representative actually represents a borrower.

“Loss mitigation options” are alternatives available from the servicer to the borrower to avoid foreclosure, and 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 federal government. This would also include options offered by the owner or assignee of the loan that are made available through the servicer.

“Mortgage loan” means a federally related mortgage loan, including closed-end subordinate lien mortgages, but excluding open-end lines of credit, and open-end lines of credit secured by a first lien.

“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. This 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.

“Qualified written request” this definition would be revised to state that a qualified written request is 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 must be in writing, not be written on a payment coupon or other payment form from a servicer, and 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. A qualified written request may also request information without asserting an error with respect to the servicing of a mortgage loan (and vice versa).

Section 1024.32 – General Disclosure Requirements

Under the proposal, this section would require that disclosures provided by servicers be clear and conspicuous, in writing, and in a form the consumer may keep. Disclosures would be permitted to be made in languages other than English, as long as disclosures are made available in English upon a borrower’s request. Additionally, disclosures required under Subpart C would be permitted 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.

Section 1024.33 – Mortgage Servicing Transfers

For closed-end reverse mortgage transactions, the CFPB is proposing to implement through the Official Staff Commentary a clarification relating to providing a servicing disclosure statement for co-applicants. Current Regulation X requires 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 should be provided to each of the co-applicants. Under the proposal, the CFPB would require that if co-applicants provide different addresses, a servicing disclosure statement need only be provided to the primary applicant.

Additionally, this section would remove the requirement that the transferor and transferee servicers provide collect-call telephone numbers (but retain the requirement to provide toll-free telephone numbers).

Finally, this proposed section would require that in connection with a servicing transfer, a transferor servicer must 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.

Section 1024.34 – Timely Payments by Servicer

This section of the proposal would move existing Section 1024.17(k), requiring servicers to pay amounts owed for taxes, insurance premiums, and other charges from an escrow account in a timely manner, to this section. Additionally, servicers would be required to refund to a borrower any amounts remaining in an escrow account when a mortgage loan is paid in full.

Additionally, subsection (b) of this Section would clarify 3 points: (1) 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 the 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; (2) 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; and (3) the 20-day allowance 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 date of the new mortgage loan. Servicers are not required to credit an escrow account balance to a new mortgage loan in any circumstance in which they would be merely permitted to do so. A

servicer may determine, in all circumstances, to return funds in an escrow account to the borrower, instead of crediting the escrow amount to an account in connection with a new mortgage loan.

Section 1024.35 – Error Resolution Procedures

This section provides the error resolution requirements that servicers would be required to follow upon receiving a notice of error from a borrower. Servicers would be prohibited from charging a fee for responding to valid qualified written requests, from failing to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balance for purposes of paying off the loan, avoiding foreclosure, or other standard servicer's duties, and for failing to comply with any other obligation found by the CFPB to be appropriate to carry out the consumer protection purposes of RESPA.

Notices of Error

Under the proposal, a notice of error may be made either 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. Notices of errors may be submitted by persons acting on behalf of the borrower, and servicers may undertake reasonable procedures to determine if a person who claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf. 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.

The CFPB notes that servicers may adopt systems to ensure that a borrower's notice of error is tracked and receives the required acknowledgment and response.

Qualified Written Requests

Servicers would be required to treat notices of error, whether oral or written, the same way a qualified written request that asserts an error is treated. Servicers 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).

Section 1024.35(b) – Scope of Error Resolution

This section of the proposal would provide a finite list of nine errors to which the error resolution procedures would apply. Servicers would not be required to comply with the error resolution procedures if a notice relates to something other than one of these error types. These exclusions would relate to matters of origination or underwriting of a

mortgage loan, a subsequent sale or securitization of a mortgage loan, and 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 types of covered errors would include the following:

- A servicer's failure to accept a payment that conforms to the servicer's written requirements for the borrower to follow in making payments;
- 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;
- A servicer's error 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;
- 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, or to refund an escrow account balance in a timely manner;
- A servicer's imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower;
- A servicer's failure to provide an accurate payoff balance to a borrower upon request;
- 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;
- A servicer's failure to accurately and timely transfer information relating to a borrower's mortgage loan account to a transferee servicer; and
- A servicer's failure to suspend a scheduled foreclosure sale.

Section 1024.35(c) – Contact Information for Borrowers to Assert Errors

This section 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. 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.

Proposed Section 1024.36(b) provides procedural requirements for information requests. Servicers would be required to use the same telephone number and address they designate for receiving notices of error for receiving information requests, and vice versa. 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. Servicers would be prohibited from determining 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 even if it was not received via the specific phone number or address identified to a specific borrower.

Servicers may use automated systems, such as interactive voice response systems, to manage the intake of borrower calls, but prompts for asserting errors must be clear and provide the borrower the option to connect to a live representative. Additionally, servicers are not required to establish a process for receiving notices of error through email, website or other online methods. If such processes are established, however, the process must be the only online intake process that a borrower can use to assert an error. Finally, a servicer's decision to accept notices of error through an online intake method must not have any impact on a servicer's obligation to comply with the error resolution procedural requirements with respect to notices of error received either orally or in writing.

Section 1024.35(d) – Acknowledgment of Receipt

This section would require servicers to provide a borrower a written acknowledgment of a notice of error within five days (excluding legal public holidays, Saturdays and Sundays) of receiving a notice of error. This provision would amend the existing acknowledgment deadline for qualified written requests of 20 days to 5 days, as required by the Dodd-Frank Act. The 5-day timeline would apply to any notice of error, not just qualified written requests.

Section 1024.35(e) – Response to Notice of Error

This section would require servicers to correct an error, generally, within 30 calendar days (excluding legal public holidays, Saturdays, and Sundays) unless the servicer concludes after a reasonable investigation that no error occurred. There are two general exceptions to this requirement: for 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, there are shortened time limits that must be followed, as discussed below. 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.

Servicers would not be allowed to 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. Additionally, servicers 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.

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 who can provide further assistance to the borrower.

Servicers 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. Servicers must provide the documents within 15 days of the servicer's receipt of the borrower's request, but need only provide documents actually relied upon by the servicer to determine that no error occurred, and not all documents reviewed by the servicer. Where a servicer relies upon entries in its collection systems, a servicer should provide print-outs reflecting the information entered into the system.

Servicers determining that an error did occur, and who correct the error, would not be required 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.

If a notice of error asserts multiple errors, a servicer may respond to those errors through a single or separate written response that addresses the alleged errors. 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.

Finally, 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, they would not be required to provide documents to the borrower regarding the error identified.

Servicers may 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. Additionally, servicers may not determine that no error occurred because the borrower failed to provide the requested documentation.

With respect to the general 30-day timeframe required under the proposal, servicers would be allowed to extend this 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, the servicer notifies the borrower of the extension and the reasons for the delay in responding. 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. These extensions are not applicable, however, to the two exceptions listed below relating to payoff statements or servicers' failure to suspend scheduled foreclosure sales.

Shortened Time Limits to Correct Certain Errors

As discussed above, there are two exceptions to the general requirement for servicers to correct errors within a 30-day time frame.

If a borrower submits a notice of error asserting that a servicer has failed to provide an accurate payoff balance, a servicer must respond to the notice of error not later than 5 days (excluding legal public holidays, Saturdays and Sundays) after the borrower notifies the servicer of the alleged error.

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 the foreclosure sale.

Section 1024.35(f) - Alternative Compliance

Servicers would not be required to comply with either the acknowledgment or the response requirements associated with receipt of a notice of error in two instances: (1) If a servicer corrects the error identified within five days of receiving the notice of error and notifies the borrower in writing, or (2) If a servicer receives a notice of error for failure to suspend a scheduled foreclosure sale seven days or less before a scheduled foreclosure, and 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.

Section 1024.35(g) – Requirements not Applicable

Servicers would not be required to comply with the notice of error requirements for the following:

- 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, 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. 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 does not require a servicer to re-open a prior, resolved investigation of a notice of error.

- A notice of error that is overly broad and 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 discussed above, or incurring costs (or dedicating resources) that would be unreasonable in light of the circumstances.

  If a notice of error is overly broad or unduly burdensome, the servicer is required to notify the borrower that it is not required to comply with the error resolution requirements. The notice must state that the notice of error was overly broad or unduly burdensome, but does not need to state the specific basis for such a determination.

  If a servicer can identify a proper assertion of a covered error in a notice of error that is otherwise overly broad or unduly burdensome, the servicer is required to respond to the covered error submissions it can identify.

- An notice of error that is untimely, received by a servicer more than one year after either servicing for the mortgage loan was transferred by that servicer to another servicer, or the mortgage loan amount was paid in full, whichever date is applicable.

Under any of these three scenarios, the servicer must provide a notice to the borrower informing the borrower of the servicer's determination. This notice must be sent not later than 5 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 also indicate the particular one of these 3 scenarios that applies.

Section 1024.36 – Requests for Information

This section of the proposal contains requirements that servicers would have to follow for information requests received from borrowers.

Section 1024.36(a) – Information Requests

An information request that includes the borrower's 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 will be subject to these requirements. Borrowers may make these requests either orally or in writing. Additionally, an information request submitted by a person acting as an agent of the borrower is treated the same as a request by the borrower.

In general, any information requested by a borrower is subject to the information request requirements in this section. 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 the mortgage loan.

Section 1024.36(b) – Contact Information for Borrowers to Request Information

Servicers would be permitted 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 this purpose. 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. If a servicer has not designated a telephone number and address that the borrower must use to request information, the servicer will be required to comply with the information request requirements for any information request received by any office of the servicer.

Similar to the notices of error, servicers would not be required to establish a process for receiving information requests through email, website or other online methods. However, if a servicer does establish an online process, then this process is the only online intake process that a borrower can use to make an information request.

Additionally, servicers would be required to use the same telephone number and address they designate for receiving notices of error for receiving information requests, and vice versa. Any telephone numbers or address designated by a servicer for any borrower may be used by any other borrower to submit an information request. A servicer may not determine than 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. Servicers may use automated systems, such as an interactive voice response system, to manage the intake of borrower calls. However,

prompts for requesting information must be clear and provide the borrower the option to connect to a live representative.

Section 1024.36(c) – Acknowledgment of Receipt

Servicers would be required to provide a borrower with a written acknowledgment of an information request within 5 days (excluding legal public holidays, Saturdays and Sundays) of receiving an information request.

Section 1024.36(d) – Response to Information Request

Servicers would be required 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, 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.

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.

With one exception, servicers would be required 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. 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 must respond to the information request within 10 days (excluding legal public holidays, Saturdays and Sundays).

Servicers may 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, the servicer notifies the borrower of the extension and the reasons for the delay in responding.

Section 1024.36(e) – Alternative Compliance

A servicer is not required to comply with the information request requirements if the information requested by a borrower is provided to the borrower within 5 days along with contact information the borrower can use for further assistance.

Servicers would be able to respond either orally or in writing (or electronically with the borrower's consent) if the servicer is providing the information requested by the borrower, and servicers would be able to demonstrate compliance with this requirement, for example, by 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.

Section 1024.36(f) – Requirements not Applicable

Servicers would not be required to comply with the information request requirements with respect to the following:

- A request for 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;
- A request for confidential, proprietary, or general corporate information of a servicer;
- A request that is not directly related to the borrower's mortgage loan account;
- A request that is overbroad or unduly burdensome. The proposal adopts the same definitions of "overbroad" and "unduly burdensome" as previously discussed in Section 1024.35 concerning notices of error;
- A request that is delivered to a servicer more than one year after either the servicing for the mortgage loan that is the subject of the information request was transferred from the servicer to another servicer, or the mortgage loan amount was paid in full, whichever date is applicable.

For any one of these 5 scenarios, a servicer must provide a notice to the borrower informing the borrower of the servicer's determination. The notice must be sent not later than 5 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, along with a reference to which of these scenarios is applicable.

Section 1024.36(g) – Payment Requirement Limitations

This section 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 a borrower's information request.

Section 1024.36(h) – Servicer Remedies

The existence of an outstanding information request does not prohibit a servicer from furnishing adverse information to a consumer reporting agency or from pursuing any

remedies, including proceeding with a foreclosure sale, permitted under the terms of a mortgage loan.

Section 1024.37 – Force-Placed Insurance

The proposal would require servicers to provide certain advance notices to borrowers before obtaining, renewing or replacing force-placed insurance. The proposal would 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 the loan. Hazard insurance obtained by a borrower, but renewed by the borrower's servicer, would not be included in this definition, nor would hazard insurance renewed by the servicer at its discretion if the servicer is not required to renew the borrower's hazard insurance.

The proposal would also exempt hazard insurance to protect against flood loss obtained by a servicer.

Section 1024.37(b) – Basis for Obtaining Force-Placed Insurance

This section of the proposal would require 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 the servicer obtains force-placed insurance. Servicers may also not obtain force-placed insurance unless they have a reasonable basis to believe that the borrower has failed to comply with the mortgage loan contract's requirement to maintain hazard insurance.

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, the servicer has not received a renewal bill by a reasonable time leading up to the expiration date of the borrower's hazard insurance (e.g., 30 days before the expiration date). In addition, for both borrowers with and without an escrow account, a servicer's receipt of a notice of cancellation or non-renewal from the borrower's insurance company before payment is due for a borrower's hazard insurance would provide a servicer with a reasonable basis to believe that the borrower has failed to maintain hazard insurance.

Section 1024.37(c) – Requirements for Charging Borrower Force-Placed Insurance

This section of the proposal would require servicers to deliver to the borrower or place in the mail an initial written notice containing certain force-placed insurance disclosures at least 45 days before the premium charge or any fee is assessed. Additionally, prior to assessing any premium charge or fee, servicers would be required to send a

reminder notice to the borrower not earlier than 30 days after sending the initial notice, and during the initial 45-day notice period, the servicer must not have received verification that the borrower has hazard insurance in place continuously.

Determining whether a borrower has hazard insurance in place continuously must take account of any grace period provided under state or other applicable law. For purposes of calculating the 45-day period, 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 assess the premium charge and any fees for force-placed insurance beginning on the 46th day if the servicer has fulfilled both notice requirements.

The proposal outlines the contents of the disclosure requirements, and contains sample forms that servicers may use for both the 45-day and the subsequent reminder notice. Both notices must be in forms that are substantially similar to the forms contained in Appendix MS-3 to the proposal. Importantly, all notices required to be sent under this section relating to force-placed insurance, if sent by mail, are required to be sent using a class of mail that is not less than the first-class USPS mail service. Finally, the notices required under the force-placed insurance requirements of the proposal may be delivered to the borrower or placed in the mail together with required flood hazard insurance notices.

Initial 45-Day Notice

For the 45-day advance notice, the notice must contain the following:

- A reminder of the borrower's obligation to maintain hazard insurance on the property securing the federally related mortgage;
- A statement that the servicer does not have evidence of insurance coverage of such property;
- A clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage;
- 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;
- The date of the notice;
- The servicer's name and mailing address;
- The borrower's name and mailing address;
- A statement that requests the borrower to provide hazard insurance information for the borrower's property and identifies the property by its address;
- 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;
- A statement that hazard insurance is required on the borrower's property and that the servicer has obtained or will obtain insurance at the borrower's expense;
- A statement requesting the borrower to promptly provide the servicer with the insurance company or the borrower's insurance agent;
- A description of how the borrower may provide the information requested by the servicer. Servicers that will only accept the requested information in writing must disclose that fact in the notice;
- The cost of force-placed insurance, stated as an annual premium. If the cost of force-placed insurance is not known as of the date of the disclosure, a good faith estimate must be disclosed and be identified as such;
- A statement that insurance the servicer obtains may cost significantly more than hazard insurance obtained by the borrower; and
- The servicer's telephone number for borrower questions.

Servicers must accept any reasonable form of written confirmation from a borrower of existing force-placed coverage, which must include 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.

For purposes of the good faith estimate of the cost of force-placed insurance, this 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 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. Since a borrower's delinquency status can affect the cost of force-placed insurance coverage, 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 would comply with this requirement.

"Reminder" Notice

For purposes of the second "reminder" notice, 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 initial 45-day notice. The servicer does not receive any insurance information from the borrower. The servicer must then deliver to the borrower or place in the mail the second, reminder

notice, at least 15 days before the servicer charges the borrower for force-placed insurance.

In the example above, assume the borrower provides the servicer with insurance information on June 18, but the servicer cannot verify that the borrower has had continuous insurance coverage based on the information provided by the borrower (e.g., the servicer cannot verify that the borrower had coverage between June 10 and June 15). In this case, the servicer must either deliver to the borrower or place in the mail a reminder notice, with the required content (discussed later in this Comment Call), 15 days before charging the borrower for force-placed insurance it obtains for the period between June 10 and June 15.

A servicer that has not received any insurance information from the borrower within 30 days after delivering or placing the 45-day initial notice must provide the reminder notice, the date of the notice, and a statement that the notice is the second and final notice.

If a servicer receives insurance information from the borrower within 30 days after delivering to the borrower or placing in the mail the initial 45-day notice, but not verification that the borrower has hazard insurance in place continuously, then the servicer must deliver or place in the mail a reminder notice with the required content, as well.

If a servicer receives hazard insurance information from a borrower after the reminder notice 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. The CFPB is proposing that 5 days prior would be considered a "reasonable time" for this purpose.

Notice Required for Renewing or Replacing Force-Placed Insurance

Under the proposal, a servicer may not charge a borrower for renewing or replacing existing force-placed insurance unless the servicer delivers or places in the mail a written notice to the borrower with disclosures generally similar to those contained within the initial 45-day notice, in addition to a statement that the servicer previously obtained insurance on the borrower's property and assessed a 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 the servicer has the right to maintain insurance by renewing or replacing the insurance it previously obtained because insurance is required. Similar to the initial 45-day notice discussed above, the proposal would require servicers 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, a good faith estimate must be disclosed and identified as such.

This notice must also be provided at least 45 days before the premium charge or any fee is assessed, and the servicer must not have received evidence that the borrower has obtained hazard insurance during this 45-day notice period. This notice must be in a format that is substantially similar to form MS-3(d), included in appendix MS-3 of the proposal.

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, however. For example, assume that on January 2, the servicer sends the 45-day notice under this section. 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 5th.

Before the first anniversary of a servicer obtaining force-placed insurance on a borrower's property, the servicer must deliver to the borrower or place in the mail this renewal or replacement notice. However, a servicer is not required to send this notice before charging a borrower for renewing or replacing existing force-placed insurance more than once every 12 months.

Cancellation of Force-Placed Insurance

Within 15 days of receiving verification that the borrower has hazard insurance in place, a servicer must:

- Cancel force-placed insurance obtained for a borrower's property; and
- 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.

To illustrate these requirements, the Official Staff Commentary provides an example: 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.

Within 15 days of receiving such verification, the servicer must cancel the force-placed insurance, provide a refund for force-placed insurance premium charges and related fees for the period between March 15 and April 30, and 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.

Charges Must Be Reasonable

The proposal provides that except for charges subject to state regulation as the business of insurance and flood insurance charges, all charges related to force-placed insurance assessed to a borrower by or through the servicer must be bona fide and reasonable. 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.

Section 1024.38 – Reasonable Information Management Policies and Procedures

The proposal would require servicers to establish reasonable policies and procedures for maintaining and managing information and documents relating to a borrower's mortgage loan accounts. A servicer would meet these requirements if the servicer's policies and procedures are designed to meet certain objectives listed below and are reasonably designed to ensure compliance with standard requirements contained within this section, as also discussed below.

Servicers may determine the specific methods by which they will implement reasonable information management policies and procedures to achieve the required objectives, and servicers will have flexibility to design the operations that are reasonable 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.

For purposes of meeting the requirement to establish reasonable policies and procedures, the proposal contains a safe harbor if the servicer does not engage in a pattern or practice of failing to achieve any of the objectives listed below, and does not engage in a pattern or practice of failing to comply with any of the standard requirements, also discussed below.

Objectives

<u>Accessing and Providing Accurate Information</u>

A servicer's policies and procedures for maintaining and managing systems and documents must be designed to enable the servicer to:

- Provide accurate and timely disclosures to borrowers;
- Investigate, respond to, and correct errors;
- Provide borrowers with requested information;
- Provide owners or assignees of mortgage loans with accurate and current information about any mortgage loans they own; and
- Submit documents or filings required for a foreclosure process that reflect accurate and current information and comply with applicable law.

Evaluating Loss Mitigation Options

A servicer's policies and procedures for maintaining and managing information and documents must be designed to enable the servicer to:

- Provide accurate information to borrowers regarding loss mitigation options;
- Identify all loss mitigation options for which a borrower may be eligible;
- Provide prompt access to all documents and information submitted by a borrower in connection with a loss mitigation option;
- Identify documents and information that a borrower is required to submit to make a loss mitigation application complete; and
- Evaluate borrower applications, and any appeals, as appropriate.

Facilitating Oversight of, and Compliance by, Service Providers

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 servicers personnel and service providers.

Facilitating Servicing Transfers

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 mortgage servicing requirements under the proposal and the terms of the transferee servicer's contractual obligations to owners or assignees of the mortgage loans.

Additionally, a transferee servicer must 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 by a servicer with respect to potential recovery from a non-performing mortgage loan, as appropriate (typically called a final recovery determination).

Standards

In addition to the objectives listed above, the proposal sets forth two standard requirements that servicers must include in their policies and procedures. These include provisions for record retention and identification of a servicing file.

Servicers would be required to retain documents and information relating to a mortgage file until 1 year after a mortgage loan is paid in full or servicing of a mortgage loan was transferred to a successor servicer.

Servicers would also be required to provide a borrower, upon request, a servicing file, which must include the following:

- A schedule of all payments credited or debited to the mortgage loan account, including any escrow account and any suspense account;
- A copy of the borrower's mortgage note;
- A copy of the borrowers deed of trust;
- Any collection notes created by servicer personnel reflecting communications with borrowers about their 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 the error resolution and loss mitigation sections of the proposal, discussed above and subsequently in this Comment Call.

Section 1024.39 Early Intervention Requirements for Certain Borrowers

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 CFPB is proposing to establish minimum early intervention requirements under RESPA. Proposed § 1024.39 would require servicers to provide delinquent borrowers with two notices, one oral and one written.

39(a) Oral Notice

As 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. Servicers would be required to take this action 30 days after the payment due date, unless the borrower satisfies the payment during that period.

The oral notice is intended to work together with the written periodic statement proposed in the CFPB's 2012 TILA Mortgage Servicing Proposal, which would inform the borrower of any late fees that the borrower faces due to a delinquency. For example, a servicer could use the oral notice to explain any late charge appearing on the periodic statement the borrower would receive.

In order to provide servicers with flexibility in contacting borrowers who may have different default risk profiles, the proposal would provide servicers with discretion to make the contact at any time during the 30-day period. Thus, servicers that provide the oral notice sooner than 30 days after a missed payment would be in compliance with this provision of the proposal.

Under the proposal, if the servicer attempts to notify the borrower by telephone, a good faith effort would require calling the borrower on at least three separate days.

39(b) Written Notice

As 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 CFPB recognizes that not all delinquent borrowers who receive these notices may respond to the servicer and pursue available loss mitigation options. However, the CFPB 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.

The written notice would be required even if the servicer provided information about loss mitigation and foreclosure previously during an oral communication with the borrower (under § 1024.39(a)).

The proposed commentary notes that, 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. As with the oral notice, the proposal would permit servicers to provide the written notice at any time during the 40-day period. Further, a servicer would not be required to provide the written notice more than once during a 180-day period.

While the proposed regulation does not require that a specific number of examples be disclosed, the proposed commentary does note that 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 would be permitted to 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.

Proposed § 1024.39(b)(2) contains minimum content requirements for the written notice. Thus, a servicer may provide additional information that the servicer determines would be helpful. The proposal includes model clauses that may be used to comply with the written notice requirement.

Section 1024.40 Continuity of Contact

As proposed, § 1024.40, would establish minimum staffing requirements that would apply to all mortgage servicers. The proposal is built around the following three obligations: (1) servicers would be required to assign personnel to delinquent borrowers; (2) servicers would be required to provide delinquent borrowers with live (including via the telephone) responses to inquiries and assist the borrower with loss mitigation options; and (3) servicers would need to establish policies and procedures reasonably designed to ensure that servicer personnel available to the borrower can perform an enumerated list of functions.

40(a) Continuity of Contact Requirements

In general, within five days of a servicer notifying or making a good faith effort to notify a borrower as required by § 1024.39(a), the servicer would be required to assign personnel to respond to the borrower's inquiries and assist the borrower with loss mitigation options. If a borrower has been assigned personnel and the assignment has not ended when servicing for borrower's mortgage loan has transferred to a transferee servicer, that servicer would then need to assign personnel to the borrower, within reasonable time of the transfer.

The servicer would need to make the assigned personnel available via telephone, and have a voicemail system in place for instances where the borrower is unable to answer the call as it is received. The servicer would then be required to respond to the borrower within a reasonable time, which the proposed commentary indicates is three business days.

The proposed commentary also clarifies that the term "borrower" includes a person authorized to act on his or her behalf (e.g., a housing counselor or attorney).

40(b) Functions of Servicer Personnel

Reasonable policies and procedures: As proposed, a servicer would need to establish policies and procedures reasonably designed to ensure that the personnel that it makes available perform certain functions, as applicable.

These functions include providing the borrower with accurate information about:

- Loss mitigation options offered by the servicer and available to the borrower;
- Actions the borrower must take to be evaluated for such options, including actions necessary to submit a loss mitigation application (see § 1024.41 below for details) and actions necessary to appeal denial of a loss mitigation application;
- The status of a loss mitigation application that has been submitted;
- The circumstances under which the servicer may make a referral to foreclosure; and
- Any loss mitigation deadlines the servicer has established that the borrower must meet.

In addition, the policies would need to address access to certain documentation related to the borrower, including:

- A 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
- Any documents the borrower has submitted to prior servicers in connection with an application for loss mitigation options offered by those servicers, to the extent such documents are in the servicer's possession.

In instances where the servicer personnel assigned to the borrower are not authorized to evaluate a borrower for loss mitigation options, the servicer would need to establish a policy that directs such servicer personnel to provide these documents to persons authorized to evaluate the borrower.

Lastly, the servicer would need a policy providing that, within a reasonable time after a borrower's request, the servicer will provide the information to the borrower or inform the borrower of the servicer's phone number and address where the borrower can assert an error (pursuant to § 1024.35) or request information (pursuant to § 1024.36). According to the proposed commentary, three business days is a reasonable amount of time to respond to the borrower.

Safe harbor: As proposed, a servicer's policies and procedures satisfy the requirements of this section if servicer personnel "do not engage in a pattern or practice of failing to perform the functions" described in this section.

The proposed commentary clarifies that a servicer may exhibit a pattern or practice, with respect to a single borrower, if servicer personnel assigned to the borrower fail to perform any of the functions listed above where applicable on multiple occasions (e.g., repeatedly providing the borrower with inaccurate information about the status of his or her loss mitigation application).

With respect to a large number of borrowers, the proposed commentary states that, if servicer personnel assigned to the borrower fail to perform any of the functions listed above where applicable in similar ways (e.g., providing a large number of borrowers with inaccurate information about the status of their loss mitigation applications).

40(c) Duration of Continuity of Contact

Under the proposal, a servicer would need to ensure that the personnel it assigns to a borrower remain assigned and available until any of the following occurs:

- The borrower refinances the mortgage loan;
- The borrower pays off the mortgage loan;
- A reasonable time (see the last bullet under this section for more on what is a "reasonable time") has passed since the borrower has brought the loan current, or the borrower and the servicer have entered into a permanent loss mitigation agreement in which the borrower keeps the property securing the mortgage (according to the proposal, a reasonable time would include when the borrower has made on-time mortgage payments for three consecutive months);
- Title to the borrower's property has been transferred to a new owner; or
- A reasonable time has passed since servicing for the borrower's mortgage loan was transferred to transferee servicer (according to the proposal, a reasonable time would include when servicing for the borrower's mortgage loan was transferred 30 days ago).

Section 1024.41 Loss Mitigation

Under the proposal, § 1024.41 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. This proposed section is intended to achieve the following three goals: (1) provide protections to borrowers to ensure that borrowers will receive timely information about how to apply and that a complete application will be evaluated in a timely manner; (2) prohibit a servicer from proceeding with a scheduled foreclosure sale until the borrower and servicer have ended discussions regarding loss mitigation options; and (3) set timelines that are designed to be completed without requiring a suspension of the foreclosure sale date.

41(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. The proposed commentary clarifies that nothing in this section 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.

In addition, the proposed commentary states that a servicer offers loss mitigation options in the ordinary course of business if the servicer either has a duty to an owner or assignee of a mortgage loan to engage in loss mitigation to improve the recovery of the loan, or engages in a practice of evaluating borrowers for loss mitigation options. Further, a servicer that does not have policies or procedures for evaluating borrowers for loss mitigation options, or 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.

41(b) Loss Mitigation Application

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 servicer's deadline (discussed below).

Incomplete loss mitigation application: Upon receipt of an incomplete loss mitigation application, a servicer would need to exercise reasonable diligence to obtain information from the borrower to complete the application. If a servicer receives an incomplete loss mitigation application earlier than five business days before the deadline, the servicer would need to contact the borrower within five days to let him or her know the application is incomplete, request additional information, and provide a deadline for such information.

41(c) Review of Loss Mitigation Applications

A servicer that receives a borrower's complete loss mitigation application prior to the deadline, would be required within 30 days to: evaluate the borrower for all loss mitigation options available from the servicer for which the borrower may qualify and notify the borrower whether the servicer will offer a loss mitigation option.

41(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 would need to notify the borrower of:

the specific reasons for the servicer's determination and the borrower's ability to appeal, including the appeal deadline and other specific requirements.

According to the proposed commentary, if a trial or permanent loan modification were denied because of a requirement of an owner or assignee of a mortgage loan, the servicer's notice to the borrower would need to identify the owner or assignee and the requirement that is the basis of the denial. Further, if a trial or permanent loan modification were denied because of a net present value calculation, the servicer's notice to the borrower would need to include the monthly gross income and property value used in the net present value calculation.

41(e) Borrower Response and Performance

In general, a servicer would be permitted to establish a deadline for the borrower to accept or reject an offer of a loss mitigation option, so long as the deadline is at least 14 days from when the servicer notifies the borrower of the option. Under the proposal, 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 servicer's deadline, would be deemed to have accepted the offer of a loss mitigation option.

In addition, a servicer would be required to permit a borrower to accept or reject a loss mitigation option concurrent to filing an appeal. The proposed commentary clarifies that, 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

The proposal would permit a servicer to establish a deadline for a borrower to provide a complete loss mitigation application. However, such deadline may not be earlier than 90 days before a scheduled foreclosure sale. The proposed commentary clarifies that, 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.

41(g) Prohibition on Foreclosure Sale

Under the proposal, a servicer would be prohibited from conducting a foreclosure sale if a borrower has provided a complete loss mitigation application within the deadline, unless:

- The servicer has provided the borrower a notice that the borrower is not eligible for a loss mitigation option and the appeal process is not applicable, the borrower has not requested an appeal, or the time for requesting an appeal has expired;
- The servicer denies the borrower's appeal;
- The borrower rejects the servicer's offer of a loss mitigation option; or
- The borrower fails to perform under an agreement on a loss mitigation option.

The proposed commentary notes that, 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 loss mitigation option if a short sale transaction has been approved by all relevant parties and the servicer has received proof of funds or financing.

41(h) Appeal Process

A servicer that denies a borrower's loss mitigation application for any trial or permanent loan modification program offered by the servicer would need to allow the borrower to appeal the servicer's determination within at least 14 days of notifying the borrower.

The proposal would require that the appeal be reviewed by different personnel than those responsible for evaluating the borrower's complete loss mitigation application. The proposed commentary clarifies that, 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.

As proposed, within 30 days of a borrower making an appeal, the servicer would need to 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 decision would not be subject to another appeal.

41(j) Other Liens

The proposal would require a servicer within five days of receiving a loss mitigation application to 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. The servicer would be required to provide such other servicers with a copy of the loss mitigation application.

The proposed commentary states that, a servicer would need to 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.

Questions to Consider Regarding the Proposal

Impact and Compliance Costs

1. **Impact and Compliance Costs:** How does this proposal impact your credit union? Please provide specific data regarding the areas of your credit union that are impacted, the likely costs for compliance, and the implementation timeframe that will be necessary for your credit union to comply with the requirements contained within the proposal?

   _____
   _____
   _____

2. **Small Servicers:** The CFPB seeks comment on what types of exemptions might be appropriate for small servicers. Do you agree with the proposed small servicer threshold of 1,000 mortgages serviced (which must be either originated or owned by your credit union, as well)? If you service more than 1,000 mortgage loans, please provide this number, as well. The CFPB particularly requests data on implementation costs and the level of general servicing activity by small servicers.

   _____

3. **Effective Date:** What effective date would provide your credit union with an adequate implementation timeframe? The CFPB also notes that some entities may also need to implement other new requirements under other parts of the Dodd-Frank Act, and seeks comment on the overlap and cumulative burden from all these new requirements. Regarding outside software vendors, the CFPB seeks comment on whether a delayed effective date for smaller servicers would provide significant relief if the vendors will have to develop software solutions for larger servicers on a shorter timeline? The CFPB also seeks comment on the impacts of delayed implementation on consumers and on other market participants.

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Proposed Requirements

4. **Grandfathering Existing ARMs:** In two circumstances, the CFPB is proposing a different time period from the proposed 60 to 120 days. The CFPB seeks

comment on whether July 21, 2013 is an appropriate time frame for grandfathering existing ARMs with look-back periods of less than 45 days or if another time period would be more appropriate and why. If not, the CFPB seeks comment on what would be an appropriate time frame for the expiration of the grandfathering period. The CFPB also solicits comments on whether other adjustable-rate mortgages should be allowed to continue with a 25- to 120- day period.

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5. **Initial ARM Interest Rate Notice:** Does your credit union have concerns or any comments regarding the burden imposed by the early notice of the initial ARM interest rate adjustment relative to its benefits?

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6. **State in which Consumer Resides:** The initial interest rate adjustment notices must include the name, mailing and internet address, and telephone number of the State housing finance authority for the State in which the consumer resides. However, two other mortgage servicing requirements proposed by the CFPB, the periodic statement, and the early intervention for delinquent borrowers, would require contact information for the State housing finance authority for the State in which the property is located. How should the CFPB reconcile any compliance difficulties posed by this inconsistency?

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7. **Housing Counselor Information:** Do you support the proposed requirement that a list of several individual housing counselors be included in the initial ARM interest rate adjustment notice? If so, should this information be required to be located on the front of this statement? If not, what is the basis for your concerns?

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8. **Late Fees:** The proposed regulation text provides that a full contractual payment covers principal, interest, and escrow (if applicable), but not late fees. Should late fees should also be included in the definition of a full contractual payment?

_____

9. **Suspense Accounts:** For small servicers, does the proposed rule differ from existing practices?

_____

10. **Payoff Statement:** The payoff statement must be sent within 7 business days after a written request is received from the consumer under the proposal. How does this proposal differ from existing small servicer practices?

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11. **Timing of Periodic Statement:** Do you support the proposed requirement that the periodic statement must be sent within a reasonably prompt time after the

close of the grace period of the previous billing cycle, which is “four days after the close of any grace period”? The CFPB also seeks comment on whether it is operationally difficult to have the first statement delivered or placed in the mail 10 days before the first payment is due.

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12. **Combined Statements:** Some institutions provide a combined statement for mortgage loans and other financial products. How should servicers actually combine statements? In particular, the CFPB notes that difficulties may arise when different disclosures have different timing requirements, and when multiple disclosures have requirements that information be presented on the first page of the statement.

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13. **Periodic Statement:** If a servicer receives a partial payment and decides to return the payment to the consumer, such a payment would not need to be included as a line item in the Transaction Activity section of the periodic statement, because this activity would neither credit nor debit the outstanding account balance. Should the periodic statement be required to include a message when a partial payment is returned to the consumer? Should a message be on the front of the statement if a partial payment of funds is being held in a suspense account regarding what must be done for the funds to be applied? Should additional messages be required? In particular, the CFPB seeks comment on whether there should be a required disclosure where the consumer has a negatively amortizing or interest-only loan. In addition, the CFPB seeks comment on whether there should be a required disclosure on private mortgage insurance and when it may be eliminated. Finally, the CFPB seeks comment as to if more than one message is required, and if so, should these be grouped together and should these messages be required to be on the first page of the statement? Will the dynamic nature of either the messages or delinquent information sections of the periodic statement be problematic for your credit union to implement? If so, please provide details.

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14. **Telephone Number:** The CFPB seeks comment on whether consumers are likely to contact the servicer for information other than errors or inquiries, which would necessitate a different number being included on the periodic statement (different numbers for errors and requesting information).

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15. **Prepayment Penalty:** The CFPB seeks comment on whether a minimum finance charge should be listed as an example of a prepayment penalty and whether loan guarantee fees should be excluded from the definition of the term prepayment penalty. Also, the CFPB seeks comment on the feasibility of

disclosing the amount of any prepayment penalty, as the amount of the penalty could depend on the timing or amount of prepayment, and if a preferable alternative would be to disclose the maximum amount of a prepayment penalty. Alternatively, the CFPB seeks comment on whether a better alternative would be for the periodic statement to disclose the existence of a prepayment penalty in place of the amount.

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16. **State Housing Finance Authority:** The CFPB seeks comment on which State housing finance authority's contact information (state where property is located or the state where the consumer resides) should be required on the periodic statement.

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17. **Coupon Book:** The CFPB seeks comment on whether requiring servicers to make dynamic information available in connection with the coupon book would impose significant burdens or costs. Does providing the past payment breakdown information impose significant burdens upon your credit union? Would this proposed exemption be helpful to your credit union? Please explain.

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18. **The proposed initial interest rate adjustment notice:** Do you have any comments on the estimated costs of the proposed initial interest rate adjustment notice?

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19. **Hazard Insurance:** Should servicers be required to pay the hazard insurance premiums of borrowers who have not escrowed for hazard insurance? Also, should servicers 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? Do you have any comments on the proposed requirement that servicers be required to pay hazard insurance premiums, even when there are insufficient funds in a borrower's escrow account?

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20. **"Reasonable Time" of Making Payments:** Is there any other criteria other than a borrower making on-time mortgage payments for three consecutive months that should be used to determine what is a "reasonable time" of making payments?

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21. **Duration of Continuity of Contact:** CFPB 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 CFPB, however,

seeks comment on whether a longer time period is reasonable.

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22. **Loss Mitigation:** The CFPB seeks comment on whether there are additional appropriate measures within the authority of the CFPB, or the federal agencies collectively, that could be taken to improve loss mitigation outcomes for all parties. The CFPB seeks comment on whether the proposed requirements 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. Do the requirements in the loss mitigation section appear reasonable? Do you have any comments or concerns relating to the proposed appeal requirements under this section?

_____

23. **Error Resolution and Information Requests:** Do you have any comments with respect to the error resolution and/or information request requirements contained within the proposal? Do the proposed timeframes for handling such requests appear reasonable? Will these requirements excessively burden your credit union? Please explain in detail.

_____

24. **Early Intervention Requirements:** Does your credit union have comments relating to the notification requirements under this section for delinquent borrowers? Please explain in detail the operational difficulties that each of the servicing requirements required by the RESPA sections of the proposal will cause for your credit union, if any.

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25. **Continuity of Contact:** Does your credit union have comments or concerns about the proposal's requirement to assign dedicated contact personnel for a borrower not later than 5 days after providing the early intervention notice? Any other comments or concerns relating to this section of the proposal?

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26. **General:** Does your credit union have any other general comments regarding the proposed rules on mortgage servicing?

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